

DECLARATION OF EMERGENCY

Department of Revenue Policy Services Division

Sales Tax Refund for Tangible Personal Property Destroyed in a Natural Disaster (LAC 61:I.4371)

The Department of Revenue, Policy Services Division, is exercising the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), to clarify the types of property destroyed in natural disasters, the sales tax paid on which will be eligible for refund under R.S. 47:315.1. This statute provides that refunds are available of the state sales taxes paid on destroyed property "used in or about a person's home, apartment, or homestead". This Emergency Rule deletes from the existing rule any language that might suggest that refunds are available on vehicles, boats, and boat trailers that are acquired and intended for use away from the home, apartment, or homestead, and adds language that provides specifically that refunds will not be made of the taxes paid on such property.

This Emergency Rule is being adopted to provide accurate tax information to and facilitate the prompt issuance of refunds to persons whose property was destroyed by Hurricane Katrina. This Emergency Rule will apply to the four percent sales tax imposed by the State of Louisiana and the Louisiana Tourism Promotion District.

This Emergency Rule is effective September 8, 2005, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act, or until the promulgation of a permanent rule, whichever is sooner.

Title 61 REVENUE AND TAXATION Part I. Taxes Collected and Administered by the Secretary of Revenue

Chapter 43. Sales and Use Tax

§4371. Sales Tax Refund for Tangible Personal Property Destroyed in a Natural Disaster

A. Under certain circumstances, a refund is allowed for state sales or use tax paid on tangible personal property that has been destroyed in a natural disaster. The conditions and requirements are as follows:

1. The property destroyed must be classified as tangible personal property at the time of destruction rather than being classified as real or immovable property. For purposes of determination of the classification of such property, reference and guidance shall be to the rules of the Louisiana Civil Code. In Louisiana, property is classified as either movable or immovable rather than as personal or real. Under Louisiana law a corporeal movable is equivalent to tangible personal property at common law, and an immovable is equivalent to real property. Generally speaking a house or a building and all central heating or cooling systems, lighting fixtures, lavatories, etc. that are actually connected with or attached to the house or building by the owner are immovable by their nature. Such items as clothing, drugs, food, recreation equipment, appliances not permanently attached to a house or building where the removal thereof would not damage the movable or immovable, etc. would be classified as tangible personal property or movable property. Automobiles, trucks, motorcycles, boats, boat trailers, and other vehicles will not be considered tangible personal property used in or about a person's home, apartment, or homestead, the sales tax paid on which will be refunded under this statute.

2. Such property destroyed must be a part of and used in or about a person's home, apartment or homestead, on which Louisiana sales tax has been paid by the owner of the property destroyed in an area subsequently determined by the president of the United States to warrant assistance by the federal government. Therefore, it is necessary that individuals suffer the loss, since R.S. 47:315.1 does not apply to partnerships or corporations. Further, it does not apply to business losses, even by individuals, since the law limits the losses to property that is part of and used in or about a person's home, apartment or homestead. Also, the area where the natural disaster occurred must be designated as an area warranting assistance by the federal government in order to qualify under this Section.

3. The claimant suffering the loss of the tangible personal property must be the owner of such property that was destroyed in Louisiana, as well as being the one who purchased and paid the Louisiana sales tax on such property. Any refund claim filed shall be made in accordance with the rules and regulations prescribed by the secretary. Accordingly, any refund claim shall be filed on or before the end of the third calendar year following the year in which the property was destroyed, and the refund claim shall be limited to the tax paid on such tangible personal property destroyed for which no reimbursement was received by insurance or otherwise.

B. A refund claim packet can be obtained from the secretary, and when the claimant properly executes the required forms and prepares a sworn statement attesting to the facts, a refund will be processed.

C. The secretary may estimate the sales tax originally paid on the purchase of the tangible personal property that was destroyed if the taxpayer is unable to provide documentation to show the actual amount of tax that was paid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:315.1.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, LR 13:107 (February 1987), amended by the Department of Revenue, Policy Services Division, LR 31:99 (January 2005), LR 31:

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