



JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
P.O. BOX 94005
BATON ROUGE
70804-9005

MAR 18 2013
OPINION 13-0010

Honorable Jerome "Dee" Richard
State Representative, District 55
907 Jackson Street
Thibodaux, Louisiana 70301

150 - TAXATION
La. R.S. 47:301

Sales and use taxes are not due or collectable on either the sale of a storm shutter device by a wholesale supplier or manufacturer to a retail dealer for resale of such device to an end user or the sale or installation of a storm shutter device by a retail dealer to or for an end user.

Dear Representative Richard:

Your request for an opinion from this office has been assigned to me for research and reply. You ask whether state and local sales and use taxes would be due and collectable on either of the following transactions:

1. The sale of a storm shutter device by a wholesale supplier or manufacturer to a retail dealer for resale of such device to an end user;
or
2. The sale or installation of a storm shutter device by a retail dealer to or for an end user.

Under La. R.S. 47:302(A), the sale at retail, the use, the consumption, the distribution, and the storage for use or consumption in the State of Louisiana, of each item or article of tangible personal property is taxed at the rate of two percent. Further, under La. R.S. 47:301(16)(a) "tangible personal property" means and includes personal property which may be seen, weighed, measured, felt or touched, or is in any other manner perceptible to the senses. For purposes of this opinion, we will assume that the wholesale and retail sale of the storm shutter devices will occur prior to being affixed to immovable properties. Therefore, we will not discuss immovability under La. Civ. Code. Art. 466. Consequently, these storm shutter devices will be tangible personal property for the purposes of this opinion.

Sale for Resale

As to the first inquiry of whether a wholesale transaction is taxable, La. R.S. 47:301 exempts from sales and use taxation the sale of tangible personal property for resale.¹ More specifically, a wholesaler's sale of tangible personal property to a retailer is not

¹ La. R.S. 47:301(10)(a)(i).

subject to sales and use tax, as the transaction is not a "retail sale" or "sale at retail" for purposes of La. R.S. 47:301. La. R.S. 47:301 does not define a "sale for resale;" however, "retail sale" is defined by La. R.S. 47:301(10)(a)(i) as a "sale to a consumer or to any other person for any purpose other than for resale."² Further, retail sales have been jurisprudentially defined as the "selling of commodities or goods in small quantities to the ultimate consumer. A 'retail sale' is any sale by one regularly engaged in the business of selling to customers who buy for their use or consumption and not for resale to others."³

Based on the transactions described in your opinion request, it is the opinion of this office that the sale of storm shutter devices by a wholesale supplier or manufacturer to a retail dealer for resale of such devices to end users is exempt from sales and use taxation.

Use Tax

Under La. R.S. 47:302(A)(2), Louisiana levies a use tax on:

the cost price of each item or article of tangible personal property when the same is not sold but is used, consumed, distributed, or stored for use or consumption in this state; provided there shall be no duplication of the tax.

The La. R.S. 47:302(A)(2) requirement of "when the same is not sold but is used..." allows the Louisiana fisc to capture lost tax revenue from the importation of goods purchased in jurisdictions with lower or no sales taxes. La. R.S. 47:301(10)(ee)(i) provides, however, that:

solely for the purposes of the imposition of the state *sales and use* tax, the term "retail sale" and "sale at retail" shall not include the sale of any storm shutter device.

Therefore, it is the opinion of this office that a retail sale of storm shutter devices is not subject to use taxes.

Retail Sale

Regarding the second inquiry, La. R.S. 47:301(10)(ee) provides, in pertinent part, as follows:

² *J & B Pub. Co. of Louisiana, Inc. v. Secretary, Dept. of Revenue*, 34,105 (La. App. 2d Cir. 12/15/00), 775 So.2d 1148 ("purchases made in this state are not subject to an advance sales tax when the buyer sells the tangible personal property to another party rather than using or consuming the property himself as an end user").

³ *S&R Hotels v. Fitch*, 25,690 (La. App. 2d Cir. 3/30/94), 634 So. 2d 922.

(i) Solely for the purposes of the imposition of the state sales and use tax, the term "retail sale" and "sale at retail" shall not include the sale of any storm shutter device.

(ii) As used in this Subparagraph, "storm shutter device" means materials and products manufactured, rated, and marketed specifically for the purpose of preventing window damage from storms.

Accordingly, it is the opinion of this office that sales of storm shutter devices by a retail dealer to an end user are exempt from Louisiana sales and use taxation.

Installation

Finally, under La. R.S. 47:301 installation costs are not taxable in a retail sale. Installation costs related to cost price are addressed in La. R.S. 47:301(3)(a), providing that:

"Cost price" means the actual cost of the articles of tangible personal property without any deductions therefrom on account of the cost of materials used, labor, or service cost, *except those service costs for installing the articles of tangible personal property if such cost is separately billed to the customer at the time of installation*, transportation charges, or any other expenses whatsoever, or the reasonable market value of the tangible personal property at the time it becomes susceptible to the use tax, whichever is less.

The exclusion of installation costs from sales price is found in La. R.S. 47:301(13)(a), providing in pertinent part as follows:

"Sales price" means the total amount for which tangible personal property is sold, less the market value of any article traded in including any services, except services for financing, that are a part of the sale valued in money, whether paid in money or otherwise, and includes the cost of materials used, labor or service costs, except costs for financing which shall not exceed the legal interest rate and a service charge not to exceed six percent of the amount financed, and losses; provided that cash discounts allowed and taken on sales shall not be included, *nor shall the sales price include the amount charged for labor or services rendered in installing, applying, remodeling, or repairing property sold.*

Based on the foregoing, it is the opinion of this office that sales and use taxes are not collectable or due on:

1. The sale of a storm shutter device by a wholesale supplier or manufacturer to a retail dealer for resale of such device to an end user; or

2. The sale or installation of a storm shutter device by a retail dealer to or for an end user.

We trust this adequately responds to your request. However, if our office can be of further assistance, please do not hesitate to contact us.

Yours very truly,

JAMES D. "BUDDY" CALDWELL
Attorney General

By:

A handwritten signature in black ink, appearing to read "B. A. Huxen II", written over a horizontal line.

BENJAMIN A. HUXEN II
Assistant Attorney General

JDC/BAH II