SALT Alert! 2016-11: Louisiana: Special Session Revises Treatment of Services Performed On and Taxability of Transactions Involving "Other Constructions"

Effective April 1, 2016, the Louisiana state-level sales and use tax is made up of five different components, a two percent tax levied under R.S. 47:302, a one percent tax levied under R.S. 47:321, what equates to a one percent tax levied under R.S. 47:331, and a new, temporary one percent tax levied under R.S. 47:321.1. Also effective April 1, 2016, House Bill 61 set forth an exclusive list of the exclusions and exemptions that will be allowed under each of the four historical components of the state sales and use tax, thus having the effect of suspending those exemptions and exclusions allowed prior to April 1 that are not included in the "exclusive" list. One of the suspended provisions relates to "other constructions" permanently attached to the ground, as provided in R.S. 47:301(16)(l).

Under R.S. 47:301(16)(l), the term "tangible personal property" does not include "other constructions" permanently attached to the ground; the statute requires such other constructions to be treated as immovable property. This provision alters, for state and local sales and use tax purposes only, the Louisiana Civil Code, which classifies "other constructions" as movable property when there is no unity of ownership between the other constructions and the land on which they are located. So, for sales and use tax purposes, "other constructions" have historically been treated as immovable property if they are permanently attached to the land, regardless of who owns the underlying land. Persons constructing, selling, leasing, renting, or repairing "other constructions" that are permanently attached to the ground have been required to treat those constructions, for both state and local sales tax purposes, as immovable property. This characterization has a number of tax implications. Notably, sales and use tax has not been collected by sellers or lessors of "other constructions" because such transactions do not involve the sale, rental or lease of tangible personal property. Repair services on such "other constructions" treated as immovable property have not been taxable, as only repair services performed on tangible personal property are taxable. Instead, persons performing repairs on "other constructions" have owed state and local sales or use tax on the materials that they acquire for repairing such property.

House Bill 61, ACT 25 – Consequence of sales tax treatment related to "other constructions" permanently attached to the ground

The sales and use tax treatment of "other constructions" will, however, be changing for certain components of the state sales tax as a result of legislation passed in the recent special session of the Louisiana legislature. As noted, House Bill 61 sets forth the specific exemptions and exclusions that apply for purposes of the four state sales tax components in

effect prior to the special session. Louisiana Revised Statute 47:301(16)(l), which mandates that other constructions be treated as immovable property, even if there is no unity of ownership with respect to the underlying land, was not included in the exclusive lists. This means that during the suspension periods, other constructions will be treated as tangible personal property for purposes of the four state sales tax components in effect prior to the special session.

As a result, effective April 1, 2016, persons selling, leasing, renting, or repairing "other constructions" that do not share unity of ownership with the owner of the land are liable for collecting and remitting state sales tax on such transactions as tangible personal property (for purposes of the four sales tax components in effect prior to the special session). Sales, leases or rentals of such property are subject to state sales and use tax as sales, leases or rentals of tangible personal property and any repair services performed on such property is now considered a repair to tangible personal property subject to state sales and use tax. Per the Department's guidance, the rate of tax due on such transactions is four percent through June 30, 2016 and two percent through June 30, 2018.[1]

The new one percent state sales tax enacted during the special session as R.S. 47:321.1 (House Bill 62, ACT 26), however, continues to treat "other constructions" permanently attached the ground as immovable property regardless of who owns the land on which the other construction rests. Consequently, persons involved in the sale, lease, rental, or repair of other constructions permanently attached to the ground will continue to be treated as acting upon immovable property for purposes of the new state one percent tax, which is effective from April 1, 2016 through June 30, 2018.

Importantly, other constructions permanently attached to the ground will continue to be treated as immovable property for all local sales and use tax purposes throughout this period.

Using the dates provided in the Department's guidance, the chart below summarizes the state tax treatment of other constructions permanently attached to the ground during the period in which the exemptions/exclusions are suspended and the new one cent sales and use tax is effective.

	Tangible Personal Property	Immovable Property
April 1, 2016 – June 30, 2016	4 percent	1 percent
July 1, 2016 – June 30, 2018	2 percent	3 percent
July 1, 2018 forward	0 percent	4 percent

Next Steps

This revised treatment could catch a number of taxpayers unaware. For example, service providers performing repair services on oil wells, which are often located on leased land, will be required to collect state-level sales tax on those services. During the time when the service provider is considered to be performing taxable services, it may be entitled to a resale exemption for certain purchases used to provide the services. Companies renting, leasing or selling property that, effective April 1, 2016, is treated as tangible personal property will required to collect and remit sales tax at the above rates during the requisite periods. Taxpayers should also be aware that the sales and use tax exemption for isolated or occasional sales of tangible personal property has been suspended as well. As such,

[1] Per House Bill 61, the actual dates the exemptions and exclusions are suspended are from April 1, 2016 through July 1, 2016, and from July 2, 2016 through July 1, 2018. In Revenue Information Bulletin 16-012 and R-1002A, a chart listing all the suspended exemptions and exclusions, the Department has indicated that it is interpreting the suspensions to run through June 30, 2016 and June 30, 2018.

taxpayers engaged in transactions involving property no longer treated as immovable will not be able to claim the casual or occasional sale exemption. Taxpayers should consider the impact of selling items such as: pipelines, oil and gas wells, utility assets, cell phone towers and colocation sites, or other large assets where there is a lack of unity between the land owner and the asset owner. The revised treatment of other constructions and the suspension of the occasional sale exemption should also be considered in the course of M&A deals.

Please contact a member of the KPMG State and Local Tax indirect team with questions on the sales and use tax changes outlined above.

Bobby Bui	Emily Gauthier	Randy Serpas
713.319 2566	225.379.6048	504.569.8810
bbui@kpmg.com	egauthier@kpmg.com	rserpas@kpmg.com

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