

**RULE**

**Department of Revenue  
Policy Services Division**

**Definition of Sale for Sales Tax Purposes  
(LAC 61:I.4301)**

Under the authority of R.S. 47:301 and R.S. 47:1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, has amended LAC 61:I.4301 relative to the definition of the term "sale" for sales tax purposes.

These amendments to LAC 61:I.4301 provide guidance concerning the definition of a "sale" under R.S. 47:301(12). They also explain the appropriate sales tax treatment of tips and gratuities that restaurants, hotels, catering facilities, taverns, and other sellers of prepared food and drink include in the charges to their customers.

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

**Chapter 43. Sales and Use Tax**

**§4301. Definitions**

A. - C. ...

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***Sale*—**

a. R.S. 47:301(12) defines a *sale* as receiving or giving consideration in return for:

i. transferring title or ownership of tangible personal property;

ii. transferring possession of tangible personal property when the seller retains legal title to the property as security to ensure full payment of the selling price;

iii. fabricating tangible personal property for consumers who furnish, either directly or indirectly, the materials used in fabrication work; and

iv. furnishing, preparing or serving tangible personal property that is consumed on the premises of the seller.

b. Fabricating or fabrication, for sales tax purposes, means to make, build, create, produce, or assemble components of tangible personal property, or to make tangible personal property work in a new or different manner.

c. A *sale* includes, but is not limited to, transactions where:

i. tangible personal property is transferred on a conditional basis (i.e., the customer has the option of returning the property and obtaining a refund of the sales price); and

ii. payment is made in a form other than money, as in a barter agreement, an exchange of property, or a promissory note.

d. When tangible personal property, like food, is served on the vendor's premises, the vendor is required to charge sales tax for:

i. the total price of preparing and serving the food even if these charges are billed separately; and

ii. tips and gratuities, if the vendor fails to separately list these charges on the bill, or if any portion of these amounts (except reimbursement for credit card processing fees) is retained by the vendor. Sales tax is not charged on tips and gratuities if they are separately stated and the total amounts collected are distributed to the employees that prepare and serve the food.

e. When tangible personal property, like food, is served at the customer's premises, sales tax is not charged for preparing and serving the food, provided these charges are separately stated from the sale of the food.

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AUTHORITY NOTE: Promulgated in Accordance with R.S. 47:301 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987), amended by the Department of Revenue and Taxation, Sales Tax Division, LR 21:957 (September 1995), LR 22:855 (September 1996), amended by the Department of Revenue, Policy Services Division, LR 27:1703 (October 2001), LR 28:348 (February 2002), LR 28:1488 (June 2002).

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