

Call for Client Impact Statements Regarding Louisiana State Taxation of Remotely Accessed Media and Downloaded or Pay- Per-View Movies as Tangible Personal Property Subject to Sales/Use Taxation

March 17, 2011

The Department of Revenue has formed a working group to study the policy issues inherent in sales and use taxation of those remotely-accessed media transactions identified in Revenue Ruling 10-001 (Mar. 23, 2010) (electronically-delivered products) and Revenue Information Bulletin ("RIB") 10-015 (downloaded and pay-per-view movies) (Jun. 25, 2010). Both the Ruling and the RIB have been temporarily suspended while the working group prepares its report, due June 30, 2011, as stated in Revenue Information Bulletin 10-028 (Nov. 15, 2010). The members of the working group have been asked to provide client impact statements by April 5, 2011.

Electronically Delivered Products

In Louisiana Revenue Ruling 10-001 (Mar. 23, 2010), the Louisiana Department of Revenue stated that:

Tangible personal property includes, but is not limited to, all electronically delivered products, including computer software and applications, stored media, and entertainment media or products, to equipment located in Louisiana. Taxable transactions include, but are not limited to, remotely accessed software, information materials, and entertainment media or products, whether as a one-time use or through ongoing subscription, and whether capable of only being viewed, or being downloaded when that transfer requires payment of consideration in any form. ...Any consideration paid for electronic receipt or access to data, information, materials, media or other form of communications that are converted to readable, viewable, or

usable form by browsers or software installed on mobile hardware or system hardware located in Louisiana is subject to sales, use, or lease tax in this state.

The Ruling also states that the Department will review contracts to determine whether the transactions described are subject to tax.

Pay-Per-View/On Demand Movies and other Programs

The Department of Revenue has also issued a revenue information bulletin announcing that pay-per-view movies and programs and on-demand television purchased for viewing by customers of cable or satellite TV providers are subject to tax. Rentals of pay-per-view and on-demand movies and programs that are not considered part of regular subscription purchases by cable or satellite TV customers and other “downloaded media” was held to be tangible personal property. See Louisiana Revenue Information Bulletin 10-015 (Jun. 25, 2010).

Clarification Regarding Canned/Custom Software, Maintenance Agreements and Electronic Discovery Services

In Louisiana Revenue Information Bulletin 11-005 (Feb. 14, 2011), the Department clarified that sales and use taxes remain applicable to the sale, use, or lease of canned computer software or software maintenance agreements, citing previously guidance including Louisiana Revenue Ruling 02-008 (Aug. 28, 2002) (canned/custom software), Louisiana Revenue Ruling 04-001 (Mar. 17, 2004) (computer software maintenance agreements) and Louisiana Private Letter Ruling 05-003 (Mar. 24, 2005) (electronic discovery services). The Department stated that the suspension of Revenue Ruling 10-001 only impacts transactions in which the customer pays an access fee or subscription fee for the use of (but not the ownership of) information on a website or software, and that RIB 10-015 impacts only Pay-Per-View and Video-on-Demand movies purchased by cable and satellite viewers. The Department also indicated that La. Admin. Code §61:I.4301, which lists digital or electronic products including canned computer software, electronic files, and “on-demand” and “video” downloads as taxable tangible personal property, remains in effect.