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SALES & USE TAX ALERT

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INSIDE

- ▼ Constitutional challenge of tax on Kentucky satellite TV fails ... 2
- ▼ Idaho amends software rule 3
- ▼ Arkansas issues emergency rule on food rate reduction 3
- ▼ Arizona empowers DOR to deal with disaster tax relief 4
- ▼ Illinois may suspend business license if liability outstanding ... 4
- ▼ Puerto Rico issues guidance on qualified agreements, government purchases 4
- ▼ Connecticut creates and updates energy efficiency exemptions 5
- ▼ Louisiana enacts phase-in for machinery and equipment exemption for auto maker 5
- ▼ State Updates 6
- ▼ Michigan resale exemption for dealer demos used by employees 8
- ▼ Georgia successor liability falls to purchaser on unrecorded liens 8

■ PERSONAL LIABILITY

Nevada Supreme Court upholds pay-to-play; no violation of equal protection rights

In a dispute involving a sales tax assessment, the Nevada Supreme Court has held that the statutory requirement that a taxpayer pay a tax determination prior to seeking judicial review of a final Nevada Tax Commission decision is valid.

In *Silver State Electric Supply Co. v. The State of Nevada Ex Rel. Dept. of Taxation*, Dkt. No. 45630, the court also determined that the pay-to-play requirement does not violate a taxpayer's right to equal protection.

Facts and circumstances

The Dept. of Taxation determined that a corporation owed \$20,000 in sales tax and sent the corporation a deficiency determination. After the corporation's unsuccessful redetermination hearing and appeal to the tax commission, the corporation petitioned for judicial review. In the meantime, the department determined that one of the corporation's corporate officers and directors, and a major shareholder, was personally liable for the corporation's tax deficiency as a responsible person.

The department moved to dismiss the corporation's petition for judicial review because the corporation failed to satisfy the requirement that a taxpayer must, before seeking judicial review, pay the amount of the determination or enter into a written agreement with the department to do so.

The corporate officer offered to enter into an agreement with the department. However, an agreement was never signed because the officer tried to qualify the agreement with the demand that the agreement include a provision stating that the department would refund him all of his payments if he was later found not to be responsible for the deficiency. The department refused to agree to those terms, and the district court dismissed the corporation's petition based upon the fact that the corporation had not paid the determination or entered into an agreement to do so.

No suspect class

The tax statute requiring payment be made or an agreement be entered into did not violate the corporation's right to equal protection because there was no suspect class or fundamental right, and the statute protected a legitimate state interest. Furthermore, the

relevant regulation was valid and did not exceed statutory authority. Therefore, the corporation's petition for judicial review was determined to be properly dismissed. ♦

■ DIRECTV

Constitutional challenge to Kentucky's telecom tax rejected

Satellite companies that provided multichannel video programming to subscribers failed to prove that Kentucky's telecommunications tax system discriminated against interstate commerce in violation of the Commerce Clause of the U.S. Constitution.

The U.S. Court of Appeals for the Sixth Circuit issued this determination in *DirectTV v. Treesh*, Dkt. No. 06-5523.

Multichannel video programming tax

Under the system in effect prior to the creation of the new tax system in 2005, satellite companies were exempt from all local taxes and fees while cable companies were subject to franchise fees, typically 5% of gross revenue, imposed by local governments. The 2005 legislation created new excise and gross revenue taxes on multichannel video programming services and prohibited local governments from levying franchise fees or taxes on such services.

Further, the legislation provided that 1) localities that imposed such a fee would forfeit their share of

the proceeds of the excise and gross revenue taxes, and 2) multichannel video programming providers that paid such a fee would be entitled to a credit against the excise and gross revenue taxes.

Tax preference?

The satellite companies claimed that the prohibition against local franchise fees, together with the credit for companies that paid such fees, constituted a tax preference for cable companies. The cable companies received relief from a portion of their operating costs while the satellite companies, which had never been subject to local franchise fees, did not.

However, the satellite companies failed to prove that the tax system created the functional equivalent of a protective tariff for the cable companies. The 2005 legislation simply prevented localities from imposing franchise fees and substituted a uniform state taxation scheme.

Further, the court noted that the satellite companies and cable companies used two very different means of delivering broadcasts. The Commerce Clause does not protect a particular structure or method of operation in a retail market.

Finally, the legislation included non-market share goals such as simplifying the system of fees faced by cable companies and collecting taxes from the previously untaxed satellite industry. The court determined that the state's banning of local franchise fees could serve many purposes and have many effects other than reducing a cost

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Idaho rule on software maintenance support services amended

If a computer software maintenance contract is optional to a purchaser of canned software, only the portion of the contract fee representing upgrades or enhancements is subject to Idaho sales tax if the fee for any maintenance agreement support services is separately stated.

The Idaho State Tax Commission issued Rule 35.01.02.027, effective March 30, 2007.

In determining whether an agreement is optional or mandatory, the terms of the contract are controlling.

Maintenance not separately stated

If the fee for any maintenance agreement support services is not separately stated from the fee for upgrades or enhancements, then 50% of the entire charge for the maintenance contract is subject to sales tax.

If the maintenance contract only provides canned computer software upgrades or enhancements, and no maintenance agreement support services, then the entire sales price of the contract is taxable.

However, if the maintenance contract only provides support services, and the customer is not entitled to or does not receive any canned computer software upgrades or enhancements, then the sale of the contract is not taxable. ♦

Arkansas issues emergency rule for reduced food rate

An emergency rule has been issued that implements the reduction of the state sales and use tax rate on food and food ingredients from 6% to 3%, effective July 1, 2007.

The Arkansas Dept. of Finance and Administration issued Emergency Rule 2007-3, effective July 1, 2007, and a publication, Sales Tax Guide on 3% Reduced Food Tax.

Food and food ingredients continue to be subject to any applicable local sales and use tax. Prepared food, alcoholic beverages, dietary supplements, and tobacco are not considered food and food ingredients and therefore are subject to the full state rate of 6%.

Prepared food

The rule sets forth criteria for determining which items are and are not prepared food. Numerous examples of each category are provided.

When prepared food is sold together with food and food ingredients for a single non-itemized price, the sale will be taxed at the full state tax rate.

Caterers that provide food or beverages are deemed to be selling prepared food.

Prepared food sales percentage

Food sold with an eating utensil provided by the seller is considered a prepared food and therefore taxable at the full state tax rate. A prepared food sales percentage is used to determine when making utensils available to customers at a self-service station constitutes selling food with a utensil.

If a seller has a prepared food sales percentage greater than 75% (sales of prepared food are greater than 75% of total sales of food items) and utensils are made available by way of a self-service station or otherwise, then all food items sold by the seller are considered prepared food and taxable at the full state tax rate, unless the item meets the serving-size exception below.

If a seller has a prepared-food sales percentage that is 75% or less, then food is considered to be sold with an eating utensil provided by the seller only if the seller physically gives the utensil to the customer or the utensil is necessary for the customer to receive or consume the item.

Items that contain four or more servings packaged as one item sold for a single price are not considered to be sold with utensils unless the seller provides a utensil.

Calculating the percentage

A formula is provided for calculating the prepared food sales percentage. The prepared food sales percentage must be calculated by the seller for each tax year or business fiscal year, based on the seller's data from the prior year. The percentage must be calculated not later than 90 days after the beginning of the year.

A new business must make a good faith estimate of its prepared food sales percentage for the first year and should adjust this estimate after the first three months of operation if the actual prepared food sales percentage materially affects the estimate. ♦

Arizona law lets DOR give tax relief following disasters

The Director of the Arizona Dept. of Revenue may extend any tax due date and suspend the associated penalties and interest for up to one year for any taxpayer affected by a presidentially declared disaster, a military or terroristic action, or a governor-declared state of emergency.

SB1036 of 2007 is effective 90 days after adjournment of the Legislature.

For this purpose, "affected taxpayer" includes a business entity whose principal place of business is located in a covered area or whose necessary records to meet a tax filing or payment deadline are maintained there and any other person determined by the DOR to be an affected taxpayer.

Background info

The IRS is authorized to extend federal income tax due dates for up to one year for taxpayers affected by a presidentially declared disaster or terroristic or military action. The IRS also may waive any penalties or interest associated with these taxes. Under Arizona law, a taxpayer who has been granted an extension for filing a federal income tax return is eligible to receive the same extension from the DOR for filing an Arizona income return if at least 90% of the taxpayer's Arizona income tax liability has been paid. The DOR also may grant an extension of up to three months for the filing of transaction privilege, use, and severance tax returns. However, the DOR, unlike the IRS, previously did not have the authority to waive any interest, which began to accumulate on the original due date, when a taxpayer had been granted an extension.

Traditionally, the DOR has requested special legislation for the extension of due dates and suspension of penalties and interest for taxpayers affected by governor-declared emergencies. Now, the DOR may automatically grant extensions and waive penalties and interest for taxpayers affected by both federal and state disasters. ♦

Nonpayment of Illinois taxes could affect business license status

The Illinois Dept. of Financial and Professional Regulation has adopted a rule under which the agency will deny, refuse to renew, or suspend the business license of any person who has not filed an

appropriate return or paid a tax for any tax administered by the state Dept. of Revenue.

68 Illinois Administrative Code §1100.560 is effective May 16, 2007.

The DFPR will implement the license actions following qualifying notice from the DOR that an entity has failed to file a return; pay a tax, penalty, or interest shown on a filed return; or pay a final assessment of tax, penalty, or interest.

Prima facie evidence

In the notice, the DOR also must certify the amount of any unpaid tax liability and/or the years for which a return was not filed. The notice constitutes prima facie evidence of a licensee's or applicant's failure to comply with any tax law administered by the DOR, and no hearing is required before the DFPR acts upon the person's license.

However, any order issued under this rule will be immediately stayed for 60 days in order to allow the licensee or applicant to file a request for a hearing with the DOR. The DFPR will restore or renew any person's license that was suspended, refused renewal, or denied if the licensee or applicant, who otherwise qualifies for the license, provides proof of a satisfactory repayment record with the DOR. ♦

Puerto Rico issues guidance on qualified agreements, government purchases

The Puerto Rico Treasury Department has released guidance on the sales and use taxation of qualified agreements and government purchases.

Exempt transactions

The department has released Circular Letter No. 07-04, March 6, 2007, to provide information on the criteria and procedures to follow to document the exempt nature of transactions carried on as a part of a qualified agreement, either by using the certificate of purchase or through alternative methods and documents. A qualified agreement, under Reg. No. 7249, is a written agreement executed before Oct. 31, 2006, in the ordinary course of business of a merchant, between the merchant and one or more persons, where the merchant is bound to sell at retail a determined quantity of tangible personal property at a set price.

This term also includes auctions adjudicated before Oct. 31, 2006. Any person purchasing tangible personal property under a qualified agreement has the obligation to provide the merchant seller with the certificate of purchase.

Effective March 1, 2007, the requirement of Reg. 7249 Art. 2901-3(b)(2) may be satisfied by the merchant seller by keeping copies of all certificates of purchase received during the month so that they may be available for inspection by tax officials. No certificate of purchase issued to make purchases between Nov. 15, 2006, and Feb. 28, 2007, will be valid unless the requirement of Article 2901-3(b)(2) has been complied with, no later than March 20, 2007.

For sales made on or after March 1, 2007, the merchant seller, after the first transaction with the purchaser, may replace the certificate of purchase with its invoice or any other replacement document, such as the purchase receipt, bill, or purchase order, provided that the invoice includes some additional required information. Regardless of the method used by the merchant seller, it must provide the department with a copy of the qualified agreement no later than the twentieth day of the calendar month following the month in which the first sale covered by the qualified agreement was made after Nov. 14, 2006.

Government purchases exempt

Circular Letter No. 07-07, issued March 19, 2007, clarifies the scope of the sales and use tax exemption for government purchases made for official use, whether directly or through the persons operating or acting on behalf of the government. Section 2508 of the Code and its regulatory provisions establish that purchases made by the government are exempt from the sales and use tax.

This exemption extends to purchases made directly by the government and to entities created exclusively to act in an official government capacity and certified as such by the department. This exemption does not extend to entities simply because they have government contracts and are to acquire taxable items subject to sales and use tax under those contracts. ♦

Connecticut energy efficiency bill enacted

Connecticut Gov. M. Jodi Rell has signed HB7432 of 2007, which adds new and amends existing sales and use tax provisions regarding exemptions for 1) passenger cars with a specified estimated gasoline mileage rating, 2) a new exemption for certain solar energy electricity generating systems and ice storage systems, 3) the existing exemption for residential weatherization products, 4) a new exemption for compact fluorescent light bulbs, and 5) a new exemption for certain Energy Star qualified household appliances.

Fuel efficient passenger cars

Effective Jan. 1, 2008, and applicable to sales made on and after that date and prior to July 1, 2010, the sale of any passenger car that has a U.S. Environmental Protection Agency estimated city or highway gasoline mileage rating of at least 40 miles per gallon is exempt from sales and use taxes. This exemption was formerly available on and after July 1, 2000, and prior to July 1, 2002, for sales of passenger cars with a U.S. EPA estimated highway gasoline mileage rating of at least 50 miles per gallon.

Solar energy, ice storage

Effective July 1, 2007, and applicable to sales that occur on or after that date, an exemption is enacted for the sales and use of 1) solar energy electricity generating systems, 2) passive or active solar water or space heating systems, and 3) geothermal resource systems, including related equipment and installation services.

Also effective and applicable on July 1, 2007, sales and use of ice storage systems used for cooling, including related equipment and installation services, by a utility ratepayer who is billed on a time-of-service metering basis are exempt.

Residential weatherization products

Effective June 1, 2007, the exemption provided for certain residential weatherization products, originally enacted in 2005, and reinstituted for the period of June 1, 2006, through June 30, 2007, is made permanent. Also effective June 1, 2007, an exemption is enacted for the sale of compact fluorescent light bulbs.

Energy Star appliances

Effective June 4, 2007, and applicable to sales made on and after that date and until on or before June 30, 2008, sales of certain household appliances that meet the federal Energy Star standard are exempt. ♦

■ SHREVEPORT GM

Louisiana enacts phase-in of exclusion for auto maker

Louisiana Gov. Kathleen Babineaux Blanco has signed legislation that accelerates the full sales and use tax exclusion on machinery and equipment used by motor vehicle manufacturers.

(Continued on page 8)

STATE UPDATES

ALABAMA

A Dept. of Revenue chart reflects the latest information concerning local governments' participation in the state sales tax holiday enacted in 2006. The state holiday begins at 12:01 a.m. on the first Friday in August of each year and ends at midnight the following Sunday. Visit www.ador.state.al.us/salestax/STholiday.htm. (*Sales Tax Holiday Notice, DOR, May 3, 2007*)

ARKANSAS

Natural gas and electricity used in the manufacturing of tires are exempt from sales and use tax, effective Jan. 1, 2008. "Manufacturing of tires" means the manufacturing of new motor vehicle tires and does not include retreading. "Motor vehicle" means any vehicle required to be licensed for highway use under state law. Natural gas and electricity covered by this exemption must be separately metered from natural gas and electricity used for any other purpose by the manufacturer. (*Act 548 [HB1828] of 2007*)

Alternative motor fuels derived from non-petroleum sources are not motor fuel, distillate special fuel, or liquefied gas special fuel under Arkansas tax law. (*Act 690 [HB2706] of 2007, effective 90 days after adjournment of the 2007 Legislature*)

An emergency rule has been issued that implements sales and use tax rate reduction for natural gas or electricity used directly in the manufacturing process. The rate is reduced from 6% to 4.5%, plus any local rate, effective July 1, 2007, and further reduced to 4%, plus any local rate, effective July 1, 2008. A manufacturer is a person or entity classified within Sectors 31 through 33 of the North American Industry Classification System, as in effect on Jan. 1, 2007. (*Emergency Rule 2007-5, Dept. of Finance and Administration, effective June 8, 2007*)

CALIFORNIA

For the period July 1, 2007, through June 30, 2008, the tax rate on tobacco products other than cigarettes is 45.13%, which is a decrease from the current rate of 46.76%. Distributors will be required to apply the new rate to all distributions of those tobacco products during that period. (*BOE-851 Rev. 12 [6-07], SBE*)

A regulation regarding interest and penalties is amended to reflect legislation enacted in 2006 that added a 40% penalty for any person who knowingly collects sales tax reimbursement or use tax and fails to timely remit that tax to the State Board of Equalization. The penalty is equal to 40%

of the amount not timely remitted except under certain circumstances. (*Reg. 1703, SBE, effective May 15, 2007*)

The Board Proceedings Div. of the State Board of Equalization has issued a publication on appeal hearings before the elected SBE members. Pre-hearing issues covered relate to response to a notice of hearing, postponement requests, representation, contribution disclosure statements, settlement requests, advance payment and interest charges, and exhibits. Topics covered relating to the hearing itself include how a hearing is conducted, the decision, written information reviewed by SBE members, and transcripts. (*SBE Publication 143, Your Appeal Hearing Before the Board Members, SBE*)

A sales and use tax regulation regarding interstate and foreign commerce is amended to incorporate statutory changes enacted in 2006. A vehicle owner may present documentary evidence to rebut the presumption that a vehicle purchased outside California but brought into the state within 12 months of its purchase is subject to California use tax. To rebut the presumption, the vehicle owner may present documentary evidence that a vehicle purchased out of state was brought into California for the exclusive purpose of warranty or repair service and was used or stored in the state for that purpose for 30 days or less. The 30-day period begins when the vehicle enters the state, includes any time of travel to and from the warranty or repair facility, and ends when the vehicle is returned to a point outside California. The documentary evidence must include a work order that states the dates the vehicle is in the possession of the warranty or repair facility and a statement by the vehicle owner that specifies the dates of travel to and from the warranty or repair facility. (*Reg. 1620, State Board of Equalization, effective April 25, 2007*)

The State Board of Equalization has issued the latest version of its proposed three-year plan to address the "sales and use tax gap," defined as the difference between taxes owed and taxes paid. The draft plan provides an overview of the tax gap and contains specific proposals designed to minimize noncompliance with the state's tax laws. Plan components include requiring additional reporting by individuals and businesses, sharing information with other state agencies, and the implementation of specific enforcement measures. The tax gap does not, according to the SBE, consist solely of tax evasion but includes unpaid taxes that are never reported because taxpayers are unaware of their liabilities. Upon implementation of a plan, the SBE will seek to 1) improve taxpayers' understanding of state laws with improved education and outreach, and 2) reduce the

burden of complex filing and reporting requirements. Once approved, the SBE would review its own operations to ensure that audit selection and collection methods perform as efficiently as possible. (*Executive Director's Report, SBE, April 25, 2007; Addressing the Tax Gap [Fiscal Years 2007-2008 through 2009-2010], SBE, April 13, 2007*)

A sales and use tax regulation is adopted to clarify 1) the general application of tax to transactions that involve discounts, coupons, rebates and other incentives, and 2) the specific application of tax to revenue from discounts, coupons, rebates and other incentives that retailers receive from persons other than purchasers. (*Reg. 1671.1, State Board of Equalization, effective July 4, 2007*)

CONNECTICUT

Guidance is provided by the Dept. of Revenue Services regarding sales and use tax exemptions for certain nonprescription and prescription drugs and medicines, smoking cessation products, and health-related products and equipment. The publication also clarifies that appetite suppressants are exempt from tax as dietary supplements and provides lists of exempt nonprescription and prescription drugs and medicines, common exempt items, taxable items specifically excluded from exemption, and exemptions for certain health and well-being items. This informational publication modifies and supersedes Special Notice 2001(3), Sales and Use Tax Exemptions for Nonprescription Drugs and Medicines and Smoking Cessation Products. (*Informational Publication 2007 [10], DRS*)

IOWA

The Dept. of Revenue has updated the contractor's guide that discusses the applicability of sales and use taxes to repairs, new construction, reconstruction, alteration, expansion and remodeling. (*Publication 78-527, Contractor's Guide, DOR*)

LOUISIANA

When the Secretary of the Dept. of Revenue is confronted with a subpoena to produce confidential documents in accordance with the code of civil procedure, the DOR must refuse to honor the subpoena, pending the outcome of a hearing on a motion to quash. The revised statutes state that the records and files of the DOR are confidential and privileged and that no person can divulge or disclose any information obtained from those records and files except in the administration and enforcement of tax laws of the state or of a political subdivision of the state. However, the code

STATE UPDATES

of civil procedure states that, upon a written motion of the attorney general or district attorney setting forth reasonable grounds, a court may order a court clerk to issue subpoenas directed to the persons named in the motion ordering them to appear at a time and place designated in the order for questioning by the attorney general or district attorney. (*Opinion No. 06-0256, State Attorney General*)

MICHIGAN

The Dept. of Treasury has amended several sales and use tax rules to explain the tax treatment of bakeries, milk and dairy products, vending machines, water, and food for human consumption and to provide examples of nontaxable food items to conform to existing statutory provisions, including provisions of the Streamlined Sales and Use Tax Agreement. (*Rules R205.56, R205.72, R205.126, R205.127, and R205.136, DT, effective March 23, 2007*)

MINNESOTA

The cigarette sales tax rate will decrease from 26.3¢ to 26¢ per pack of 20 cigarettes, effective Aug. 1, 2007. For packs of cigarettes with more or fewer than 20 cigarettes, the rate must be adjusted proportionally. (*Official Notice, Dept. of Revenue, April 23, 2007*)

NEBRASKA

Effective Jan. 1, 2008, changes are made to sales and use tax provisions to reflect amendments made to the Streamlined Sales and Use Tax Agreement through Dec. 14, 2006. The amended laws provide a definition of "bundled transactions," clarify that "sales price" includes consideration received by the seller from third parties if certain requirements are met, and provide definitions concerning telecommunications services and computer systems. Provisions are also amended to include references to model 2 sellers and to provide relief from liability for sellers and certified service providers who rely on product-based classifications that have been reviewed and approved by the state. (*LB223 of 2007*)

NEVADA

Effective Oct. 1, 2007, in addition to a copy of the articles of incorporation, bylaws, amendments, and other information, certain business associations, and foreign corporations, must maintain information concerning ownership at their registered office or principal place of business. Specifically, a current list of the owners of record, or a statement indicating where such a list is maintained, must be kept. The Secretary

of State is authorized to suspend or revoke the right of such business associations to transact business in Nevada if they fail to comply with the new requirements. (*Chap. 325 [AB25] of 2007*)

NEW JERSEY

The Div. of Taxation has revised its list of businesses that qualify for the sales and use tax exemption available for purchases of natural gas and electricity, and the transportation and transmission of both commodities, for use at urban enterprise zone locations, as of June 1, 2007. To document the exemption, a copy of the UZ-6 Exemption Certificate must be provided to the energy vendor by the business. (*Tax Notes—Sales and Use Tax Exemptions—Natural Gas & Electricity/Utility Service, DT, June 2007*)

NEW MEXICO

Subject to voter approval, all water and sanitation districts are authorized to impose a water and sanitation gross receipts tax. The tax would be imposed at the rate of 0.25% on a person engaging in business within the area of the county located within the water and sanitation district for the privilege of engaging in business within that water and sanitation district. The tax would be imposed for six years from the date on which the water and sanitation gross receipts tax goes into effect. (*Chap. 346 [HB1032] of 2007, effective July 1, 2007*)

NORTH DAKOTA

The motor vehicle excise tax exemption for motor carrier vehicles engaged in interstate commerce may be claimed only for vehicles that are titled and registered in North Dakota. (*SB2113 of 2007, effective April 13, 2007*)

OKLAHOMA

Gov. Brad Henry has signed a tax relief bill that includes a three-day sales tax holiday for sales of clothing and footwear costing less than \$100. The holiday grants an exemption from state, county, and municipal sales taxes and runs from 12:01 a.m. Friday, Aug. 3, 2007, through midnight Aug. 5, 2007. The holiday does not apply to the sale of accessories, the rental of clothing or footwear, or the sale of special clothing or footwear primarily designed for protective or athletic use. (*SB861 of 2007, effective July 1, 2007*)

Tax Commission rules relating to the tourism tax levied pursuant to the Oklahoma Tourism Promotion Act have been revoked to reflect the statutory repeal of the tax that takes effect on July 1, 2007. The tourism tax

is levied at a rate of 0.1% on gross receipts derived from the sale of lodging, food and drink for immediate consumption, motor vehicle rentals, tour bus services, and certain tourist attraction admissions. (*Rules 710:75-1-1 through 710:75-1-10, TC*)

An exemption from sales and use tax is created for sales of tangible personal property or services to a business that is primarily engaged in the repair of consumer electronic goods. Examples of such goods include cell phones, MP3 players, personal computers, and compact disc players. Consumer electronic goods also include digital devices that sort and retrieve information through hard-wired or wireless computer or Internet connections, if the devices are sold to the business by the original manufacturer and are repaired, refitted, or refurbished for sale by the business directly to retail consumers, or if the devices are sold to another business entity for sale to retail consumers. (*HB1544 of 2007, effective July 1, 2007*)

PUERTO RICO

The Treasury Dept. has released Internal Revenue Bulletin No. 07-07, April 13, 2007, to notify every merchant that no Certificate of Provisional Exemption (Modelo SC 2919-A) is effective after Feb. 15, 2007. When a transaction is subject to the sales and use tax, and a merchant has the obligation of collecting the tax, that person will have the principal responsibility for the payment of the tax attributable to the transaction. Therefore, if a merchant vendor fails to comply with his obligation to collect the tax from a merchant who may be the holder of a Certificate of Exemption or a Certificate of Provisional Exemption that may have expired, the former will have the obligation of remitting the tax to the Secretary of the Treasury.

SOUTH CAROLINA

An exemption from sales and use tax has been enacted for sales of gold, silver, or platinum bullion, coins that are or have been legal tender in the United States or another jurisdiction, and currency, effective July 1, 2007. Retailers must maintain sufficient documentation as prescribed by the Dept. of Revenue to identify each exempt sale. (*HB3289 of 2007*)

TENNESSEE

Tennessee has increased its cigarette tax to 3.1¢ per cigarette, which results in a tax of 62¢ per pack of 20 cigarettes. Formerly, the cigarette tax was 10 mills per cigarette, or 20¢ per pack of 20 cigarettes. (*SB2326, HB2354 of 2007, effective July 1, 2007*)

Louisiana *(Continued from page 5)*

Current law phases in an exclusion from the state sales and use tax levied on certain machinery and equipment used by manufacturers over a seven-year period that began July 1, 2004, and ends July 1, 2010.

The phased-in exclusion under HB633 of 2007 is currently scheduled as follows: 54% of the price of eligible manufacturing machinery and equipment is excluded from sales and use tax effective July 1, 2007; 68% on July 1, 2008; 82% on July 1, 2009; and 100% on July 1, 2010.

Effective June 1, 2007, however, an exclusion from sales and use taxes levied by the state or any political subdivision whose boundaries are coterminous with those of the state is enacted for machinery and equipment used by a motor vehicle manufacturer with a North American Industry Classification System (NAICS) Code beginning with 3361. According to the bill's fiscal note, although there are seven establishments in the state with NAICS codes beginning with 3361 that are registered with the Dept. of Labor that are eligible for the benefits of this exclusion, the legislation is intended to provide an accelerated full tax reduction on machinery and equipment purchases to the General Motors facility in Shreveport.

Local tax, compression mold

Additionally, the legislation allows a political subdivision to provide a sales and use tax exemption for the sales, cost, or lease or rental price of manufacturing machinery and equipment, either effective upon adoption or enactment or phased in over a period of time.

Also, tooling in a compression mold process is considered manufacturing machinery and equipment. ♦

■ DEALERSHIP PURCHASES

Michigan resale exemption applies to employee demonstrator vehicles

The Michigan Supreme Court has affirmed a portion of an appellate court judgment holding that an automobile dealership's purchases of vehicles that were used by employees were exempt as purchases for resale.

In *Betten Auto Center Inc. v. Dept. of Treasury*, Order Nos. 132343, 132344, 132345, and 132347, the court determined that autos held in inventory

for resale, used by the dealership's employees, then ultimately resold were exempt from the imposition of use tax under the resale exemption in MCL §205.94(1)(c).

Demo exemption

However, the court vacated the balance of the appellate court's judgment, which had held that any vehicles beyond the 25 allowable under the demonstration exemption that were used by the dealership's employees after March 27, 2002—the date the demonstration exemption was amended—would be subject to the 2.5% use tax and \$30 monthly charge, notwithstanding the resale exemption.

Instead, the court adopted the trial court's opinion and order holding that no use tax was due. The court reasoned that the "exemption for demonstration purposes" and the "purchased for resale" exemptions were independent of one another; and both provided exemptions from use tax upon satisfaction of applicable statutory criteria. Also, the appellate court erred in applying the Black's Law Dictionary definition of "consumer," rather than the statutory definition of that term. ♦

Georgia new owner liable for delinquency as successor in interest

The Georgia Supreme Court held that the purchaser of the real estate and most of the assets of a business was liable as a successor in interest for delinquent sales taxes owed by the seller—even when the Dept. of Revenue had not recorded any liens against the seller's business.

In *JD Design Group Inc. v. Graham*, Dkt. No. S07G0111, the court determined that the DOR's failure to record a lien did not render the purchaser an innocent purchaser for value who was free from liability. The successor liability statute imposes a duty on potential buyers to inquire into a seller's tax liability.

Need not purchase all

The court also noted that the successor liability statute does not by its terms limit its application to purchasers of all of the assets of a business. As a result, the sale came within the statute because the inventory, fixtures, furniture, vehicles, and equipment constituted the sale of the "stock of goods or equipment." ♦