STATE OF LOUISIANA
DEPARTMENT OF REVENUE

M. J. "MIKE" FOSTER, JR.
Governor

CYNTHIA BRIDGES
Secretary

Private Letter Ruling No. 01-007

Redacted Version

October 10, 2001

A Private Letter Ruling based on the following scenario was requested:

A company plans to construct a production facility in a building that will require the installation of large molding presses within the building. A leasing company (hereafter referred to as "lessor") will purchase the presses from the manufacturer after they have been installed in the building and lease them to the company that plans to build the facility (hereafter referred to as "lessee"). The lessor will retain title to the presses and will have the right to reclaim them if the lessee defaults on the lease. The lessor will also depreciate the equipment for income tax purposes. The lease is an arm's length transaction and the lessee will be allowed to purchase the equipment at fair market value after the lease. The lessee will pay for shipping the presses from another country to Louisiana and for installing and integrating them into the facility. The presses, which are extremely large pieces of equipment will be installed in a deep pit within the building and bolted to the floor. Each press will be permanently connected to the electrical, cooling water, and compressed air systems of the facility. A special doorway that will allow future access to an expansion of the facility will be utilized during the installation process. After the installation, a mezzanine or gallery will be constructed around the presses to allow access to the upper portions.

Louisiana Revised Statutes 47:302(B), 321(B), and 331(B) impose sales tax on the lease of "tangible personal property." Although these statutes specifically refer to tangible personal property, this term is not defined in Louisiana's Civil Code. Instead, Article 448 of the Louisiana Civil Code describes "things" as movable and immovable or corporeal and incorporeal. Jurisprudence has defined tangible personal property to be "corporeal movable" property as defined in Article 471 of the Louisiana Civil Code (S*outh Central Bell Telephone Co. v. Barthelemy,* 94-0499 (La. 10/17/94), 643 So.2d 1240). Civil Code Article 471 states, "Corporeal movables are things, whether animate or inanimate, that normally move or can be moved from one place to another." The presses must be distinguished from tangible personal property (i.e., corporeal movable property) for the lease to be excluded from sales tax.

Louisiana Civil Code Article 475 states that, "All things, corporeal or incorporeal, that the law does not consider as immovables, are movables." If the presses are immovable property under the Civil Code, the lease will not be subject to sales tax. Civil Code Articles 463 and 464 state that buildings are immovables even if owned by someone other than the owner of the land upon which they are constructed. Civil Code Article 466 adds that, "Things permanently attached to a building or other construction, such as plumbing, heating, cooling, electrical or other installations, are its component parts." The Article continues, "Things are considered permanently attached if they cannot be removed without substantial damage to themselves or to

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the immovable to which they are attached." The installation of the molding presses as previously described would make them an integral part of the electrical, cooling, and compressed air systems and a permanent component of the building. To remove them would require dismantling the mezzanine, the presses, and parts of the building, which would cause substantial damage to the presses and the structure. Therefore, the presses, after installation, would be considered immovable property and the lease would not be subject to sales or use tax.

However, prior to the installation, the presses remain tangible personal property and are subject to sales or use tax. The owner of tangible personal property at the time it is rendered immovable must pay sales or use tax on their material cost of the property (*City of New Orleans v. Baumer Foods, Inc.,* 532 So.2d 1381, (La. 1988), rehearing denied). Although Louisiana provides a credit for sales or use tax paid to other states, it is unlikely that tax will be paid or due to another state in this scenario since the presses are being shipped from another country.

Questions or comments about this matter should be directed to the Policy Services Division at (225) 925-6047.

Sincerely,

Cynthia Bridges
Secretary

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By: J. A. Cline, Jr.
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This correspondence constitutes a private letter ruling (PLR) by the Louisiana Department of Revenue, as provided for by section 61:III.101 of the Louisiana Administrative Code. A PLR provides guidance to a specific taxpayer at the taxpayer's request. It is a written statement that applies principles of law to a specific set of facts or a particular tax situation. A PLR does not have the force and effect of law, and is not binding on the person who requested it or on any other taxpayer. This PLR is binding on the department only as to the taxpayer to whom it is addressed, and only if the facts presented were truthful and complete and the transaction was carried out as proposed. It continues as authority for the department's position unless a subsequent declaratory ruling, rule, court case, or statute supersedes it.