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Upcoming Deadline to Submit Comments on Proposed Rule Addressing Key Sales and Use Tax Exemption for "Digital Tools"

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Louisiana underwent sweeping tax reform as part of the legislature's 2024 Third Extraordinary Session, specifically enacting Acts **10** and **11**, which among other things significantly broadened the state and local sales and use tax base to include digital products, prewritten computer software access services and information services, effective January 1, 2025. These changes have ushered in a host of interpretative, constitutional and other issues related to the taxability of various transactions, the availability of exclusions and exemptions, the application of state and local sourcing rules to digital transactions, and the treatment of bundled or mixed transactions.

While the Louisiana Department of Revenue ("Department"/"LDR") has provided largely informal guidance on some of these issues so far, a **proposed Rule** that could potentially formalize LDR's position on the critical commercial production exemption for "digital tools"[1] is currently open for comments.[2] Certain changes have already been made to the proposed Rule in response to written comments previously received from stakeholders. Businesses with a stake in the scope of the exemption should take note of the next deadline for submission of written comments which is coming up on August 26, 2026.

In addition, providers and purchasers of digital products and services should also identify whether they are entitled to any tax refunds on digital products, prewritten computer software access services, and information services (particularly for periods prior to January 1, 2025) and timely file the necessary claims with LDR (bearing in mind that the deadline for 2023 taxes generally expires on December 31, 2026).

Legislative Background of the Commercial Production Exemption and its Interpretation

With the expansion of the tax base to cover digital products, prewritten computer software access services and information services, the pre-existing exclusions and exemptions under the statute were extended to cover these newly taxable transactions. Importantly, an additional set of specific statutory exemptions were enacted under La R.S. 47:305.12 for digital products, computer software, prewritten computer software access services, and information services. In order to claim any of the exemptions at La R.S. 47:305.12, the purchaser must provide a completed exemption certificate in Form R-85011 to the seller/provider.

The main exemption under La. R.S. 47:305.12, i.e., the commercial production exemption, is not limited to any industry and applies where three requirements are cumulatively satisfied: (i) the digital products, computer software, prewritten computer software access services, and information services are purchased or licensed exclusively for commercial purposes, (ii) they are used by the business directly in the production of goods or services for sale to its customers, and (iii) the goods or services produced and sold by the business are subject to sales and use tax or to the insurance premium tax.

The exemption specifically excludes computer software or computer software access services that are not directly involved in the production of goods or services for the customers of the business. The statute also provides that digital products that are self-created solely for the business' needs, and which are not the type of digital products that are offered for sale, are not subject to use tax.

In addition to the general commercial production exemption above, two industry-specific exemptions are provided for. The first of these applies to digital products, prewritten computer software access services, and information services purchased and used by a Federal Deposit Insurance Corporation (FDIC)-insured financial institution or its related parties for certain specified operations. The second applies to computer software or prewritten computer software access services, information services, or digital products that are used by licensed healthcare facilities and providers for storing or transmitting healthcare information or for the diagnosis or treatment of a medical condition.

Finally, the statute enables the Department to promulgate rules and regulations for the implementation of the exemptions under La R.S. 47:305.12, with the promulgation process to begin prior to December 31, 2025.

Around the time of its enactment, there was much debate around the scope of the commercial production exemption, particularly the term "used by the business directly in the production of goods or services for sale to its customers" and whether that statutory language should be interpreted broadly or narrowly. Since a necessary condition of the exemption is that the end products or services should be subject to sales and use tax, it would seem that the scope of the exemption ought to be construed broadly to avoid pyramiding of tax (i.e., tax on tax). Nevertheless, the

Department appeared to take a narrower view of the exemption in its informal guidance[3], which also seems to be reflected in the proposed Rule discussed below.

The Proposed Rule and its Evolution

Original Proposed Rule:

Pursuant to the enabling provision under the statute, the Department published a Notice of Intent on December 10, 2025 regarding proposed Rule LAC 61:I.4405 titled "Exemption for digital tools" related to the statutory exemptions under La. R.S. 47:305.12. The stated purpose of the proposed Rule was to clarify those exemptions and to provide definitions, guidance, and illustrative examples to help businesses determine whether their transactions qualify for the exemptions. The proposed Rule used the term "digital tools" which is not used by the statute, and was initially defined to include computer software, prewritten computer software access services or information services (but not digital products).

The original version of the proposed Rule focused on the commercial production exemption and defined the term "used by the business directly in the production of goods and services" to mean the direct application or incorporation of a digital tool into the creation, development or production of a final product or service for sale to a customer. The proposed Rule also provided that a digital tool is used directly when it is an essential component *and* directly contributes to the creation, production process, or functioning of the final product or service, and is not merely supportive, administrative, or ancillary in nature.

Based on the above, the exemption proceeds to exclude from the exemption digital tools used for business management, planning, communication, or analysis that do not directly transform inputs into salable goods or services, digital tools used to manage business operations, and digital tools that improve efficiency or productivity. Further, digital tools used for self-created digital products for the business' needs, such as in-house workflow automation tools, proprietary content management systems, internal brand style guides, and in-house training videos, would not be exempt from tax per the proposed Rule (with the self-created digital products not being taxable).

In addition, the proposed Rule provided a definition of "Licensed Healthcare Facilities and Providers" covering various types of healthcare institutions and individual practitioners that are licensed by the Louisiana Department of Health and or Louisiana State Board of Medical Examiners to deliver medical, dental, behavioral health, or related clinical services to patients, including but not limited to hospitals, clinics, nursing homes, ambulatory surgical centers, rehabilitation facilities, pharmacies, physicians, nurses, dentists, therapists, and other professionals or

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entities required by law to hold a valid license, certification, or registration to provide healthcare services.

First Revised Version of the Proposed Rule:

The first revised version of the proposed Rule was published by Notice dated April 20, 2026 and incorporated certain changes in response to comments received. In this version, "digital products" were included in the definition of "digital tools." A definition of "exclusively for commercial purposes" was included to state that any personal use disqualified the software or product from the exemption. Related to the definition of "used by the business directly in the production of goods and services," the key changes were the removal of the requirement that the digital tool must be an "essential component," and the deletion of the exclusion for digital tools that are "ancillary" in nature. In addition, exempt digital tools for licensed healthcare facilities and providers were stated to include those that monitor and protect the transmission and storage of patient healthcare information.

Current Version of the Proposed Rule:

The current version of the Proposed Rule was published by Notice dated July 20, 2026 and incorporated further changes in response to additional comments received on the first revised version. The definition of "purchased or licensed exclusively for commercial purposes" was modified to cover purchase or license solely for use in connection with a business, trade, or commercial activity and not for personal, household, or consumer purposes. This appears to be a less strict requirement than the previous iteration. The definition of "used by the business directly in the production of goods and services" was revised to require that the "tool is used to produce that product or service" rather than "directly contribute[] to the creation, production process, or functioning of that product or service." It remains to be seen whether this is interpreted as a more, or less, restrictive requirement than the earlier version.

The next public hearing on this latest version of the proposed Rule is scheduled for August 27, 2026, and the deadline for comments is August 26, 2026.

In its current state, the proposed Rule may not align with the usage of different terms under La. R.S. 47:305.12. For instance, the statute appears to exclude only computer software or computer software access services that are not directly involved in the production of goods or services for the customers of the business from the exemption (but does not appear to similarly exclude such digital products or information services). By contrast, the proposed Rule appears to aggregate the various categories (i.e., digital products, computer software, prewritten computer software access services or information services) into a single unified group of "digital tools." To this extent, the proposed Rule may potentially extend beyond the scope of the statute.

Moreover, even in the latest iteration, the proposed Rule appears to take a narrow interpretation of the commercial production exemption that does not appear to be warranted by the statutory language of "used by the business directly in the production of goods or services for sale to its customers." Drawing on LDR's informal guidance, the illustrations indicate that the exemption covers software purchased by a baker that facilitates automated measuring of ingredients, automotive diagnostic software purchased by an automobile dealership to provide car repair services to customers, or software for computer-aided manufacturing purchased by a manufacturer. However, certain other examples, that the LDR treats as ineligible for the exemption, arguably do also fall within the scope of the statutory language, e.g., software used to identify raw materials needed to fulfill future orders, point-of-sale (POS) software purchased by a grocery store, or software that allows customers to schedule services through a website.

The proposed Rule if finalized in its current form may (barring resort to litigation on these issues) provide further support to the Department's narrow reading of the commercial production exemption on audit or otherwise.

Implications and Action Points for Businesses

Louisiana's expansion of the sales and use tax base to capture digital products, computer software, prewritten software access, and information services has no doubt significantly increased the compliance footprint for a wide range of both out-of-state and local businesses that are sellers/providers of these products and services. In addition, purchasers of these products and services are required to accrue and remit state and local use tax where the seller/provider is not required to register in Louisiana or is otherwise not compliant, and is therefore not charging Louisiana state and local sales tax to in-state businesses. Some out-of-state vendors may be charging state but not local taxes if they are unfamiliar with Louisiana's decentralized collection system. Mismatched sourcing rules can also create situations where the seller/provider charges tax in another state but the user in Louisiana is required to accrue and remit use tax (after claiming any available credit of the tax paid to another state).

On both sides of these transactions, the precise scope and applicability of the commercial production exemption will be an important compliance checkpoint and can correspondingly also create audit exposure down the line. Affected businesses should therefore consider submitting comments and proposals to suitably modify the proposed Rule before its final adoption and ahead of the current deadline of August 26, 2026 for written comments.

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In addition, refund opportunities may exist for transactions that were exempt under the commercial production exemption, or were otherwise nontaxable or exempt, but where sales tax was either collected by vendors or use tax was accrued and remitted by purchasers on their end, either incorrectly or in an abundance of caution. Refund claims may also extend to any taxes paid or remitted on digital products or services prior to January 1, 2025 before they became taxable. Those claims will need to be identified and timely filed with the Department. For instance, the deadline for 2023 taxes generally expires on December 31, 2026 and additional deadlines will run at the end of each year. Businesses are therefore well-advised to not only track taxability and related exposure under the post-tax reform law related to digital products and services, but to also explore any available avenues to recoup taxes that were not owed.

For questions or to discuss any of the foregoing, please contact **Jaye Calhoun** at (504) 293-5936, **Divya Jeswant** at (504) 293-5766, or **Melania Smith** at (713) 844-3068.

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[1] "Digital tools" is defined under the proposed Rule to cover digital products, computer software, prewritten computer software access services or information services.

[2] Notice of Public Hearing, Substantive Changes to Proposed Rule Exemptions for Digital Products, Computer Software, Prewritten Computer Software Access Services and Information Services (LAC 61:I.4405) published in the Louisiana Register, Vol. 52, No. 7 (July 20, 2026).

[3] See, for instance, LDR guidance titled **'Sales and Use Tax on Digital Products and Related Services'** (updated November 2025).