

# LEGAL ALERT

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## ***BUSINESS NOTES***

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- **Movable or Immovable: Louisiana's Developing Property Law Impacts Tax Issues.** The Louisiana Legislature rewrote Louisiana's property law in 1978. Although much of the rewrite was not supposed to change the law, uncertainty as to the proper classification of property continues to exist. Adding to the confusion is the Legislature's decision to continue to use the terms "movable" and "immovable" as terms of law in classifying property. It is not uncommon under Louisiana's property law for things that can be and are moved to be classified as immovable and for things that practically cannot or will not be moved to be classified as movable.

The Louisiana Civil Code controls the classification of property, and the Louisiana courts have recognized that the Civil Code controls the classification of property for tax purposes. See *Exxon Corp. v Traigle*, 353 So.2d 314 (La. App. 1 Cir. 977). In general, if property does not meet the definition of immovable property, it is movable by default. La. Civ. Code Art. 495. Tracts of land and their component parts are immovables. Buildings and standing timber are classified as separate immovables when they are owned by someone other than the owner of the ground. Other constructions permanently attached to the ground are movables when they are owned by someone other than the owner of the ground. See for example *Guzzetta v. Texas Pipe Line Company*, 485 So.2d 508 (La. 1986) (underground pipeline is movable property). Thus, the classification as movable or immovable of permanent structures that are not buildings is controlled by the ownership of the underlying land.

Three recent rulings by the Louisiana Department of Revenue are providing some guidance with respect to the movable/immovable issue and should be considered by taxpayers and their advisers in analyzing the tax implications of transactions involving the construction, transfer, or lease of property.

In Private Letter Ruling No. 01-007, the Department considered the status of "large molding presses" located within a manufacturing building and which would be sold to a leasing company for lease-back by the manufacturing company. The presses were to be installed in a deep pit within the building, bolted to the floor, and permanently connected to the electrical, cooling, water, and compressed air systems of the facility. They were due to be sold to the leasing company after their installation in the building. The Department ruled that the presses would become an integral part of the electrical, cooling, and compressed air systems and a permanent component of the building. According to the Department, the presses would be tangible personal property (i.e. movable

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property) and subject to sales tax prior to installation, but would become immovable upon installation, precluding the imposition of a tax on the lease payments. {Note: Louisiana imposes a sales tax on leases of tangible personal property. Sales tax is not due on leases of immovable property.}

In Revenue Ruling No. 02-003, the Department did a similar analysis to determine that magnetic resonance imaging scanners (MRIs) permanently installed in special lead-shielded rooms in hospitals become component parts of the hospital buildings and are therefore immovable after installation. Portable MRIs are not considered immovable under the ruling.

The Department has also determined that a co-generation power plant that will be located on property leased from a manufacturing facility will be immovable. See PLR 01-011. The central issue was whether the facility should be classified as an other construction located on ground not owned by the owner of the other construction, and therefore movable, or as a component part of a building that housed substantial critical components of the co-generation plant, and therefore immovable. The Department determined that because the power plant “is to be used for manufacturing, has a roof and walls” and would be a permanent structure, the power plant should be classified as an immovable building. Thus, sale/leaseback transactions undertaken after the construction of the power plant would not be subject to sales tax.

To the extent the Louisiana courts agree with the Department’s analysis of Louisiana’s property laws, the Department’s rulings provide some level of reassurance in determining the status of property and the tax consequences that flow therefrom. However, decisions of the Louisiana Supreme Court call into question the right of taxpayers to rely on representations of the Department. In *Showboat Star Partnership v. Slaughter*, 789 So.2d 554 (La. 2001), the Louisiana Supreme Court determined that certain gaming equipment installed on a gaming boat was subject to tax, although the taxpayer had reasonably relied on the Department’s representations that the gaming equipment qualified for a sales tax exemption. In *South Central Bell v. Barthelemy*, 643 So.2d 1240 (La. 10/17/94), the Louisiana Supreme Court invalidated regulations of the Louisiana Department of Revenue that treated custom designed computer software as intellectual property rather than taxable tangible personal property. {Note: The Department by rule has attempted to make its formal rulings binding on the Department at least with respect to the particular taxpayer who was the recipient of the ruling.}

The classification of property as movable or immovable controls many legal issues associated with the ownership and use of property and can play a particularly important role in determining tax issues. The Department’s rulings, which are designed to assist taxpayers in the classification of their property as movable or immovable, may be helpful in tax planning concerning permanently installed structures and equipment. However, considering the decisions of the Louisiana Supreme Court noted above, the Department’s rulings should be considered with caution and should be supported by an independent analysis of Louisiana’s property laws.

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