

The Louisville Municipal Code (LMC) defines “purchase” or “sale” to mean the acquisition for any consideration by any person of tangible personal property, other taxable products, or taxable services that are purchased, leased, rented, sold, used, stored, distributed, or consumed. Purchase or sale includes capital leases, installment and credit sales, and property and services acquired by lease, lease-purchase, rental, grant of a license, and royalty agreements to use tangible personal property or taxable services.

The transfer, either conditionally or absolutely, of title or possession of almost any item of tangible personal property or taxable service, is of little value unless such possession is accompanied by the intangible right to use that item for a useful purpose. These rights are often in the form of license agreements, subscriptions or royalty agreements.

The City may evaluate on a case-by-case basis, the goal or “true object” of the item or service to the user. If the goal is to obtain a finished product or the use of tangible personal property or taxable services, and when it is impossible to separate the use, lease or rental of tangible personal property or taxable services from the agreement instrument (license, subscription, royalty agreement), the entire transaction is subject to sales or use tax.

Licenses or royalty agreements for the use of intangible personal property, thoughts, ideas, and processes, for example, are not taxable.

Examples

A photographer sells royalty agreements to advertising companies allowing them the use of his photographs for advertising purposes. The purchase price paid for the royalty agreements are subject to Louisville sales tax, or if no sales tax is charged or paid, use tax is due to the City by the user of the photographs.

A motion picture theater regularly enters into agreements with various motion picture distributors to obtain copies of films and a license to exhibit those films to the public. The theater would owe use tax to the City on the entire purchase price of the transaction to provide the license and the rental of the films.

A manufacturing company pays a license or subscription fee to a software manufacturer for the right to use its software in the quality control testing of its equipment. The purchase price for the license or subscription is subject to Louisville sales or use tax.

A manufacturing company pays a royalty to another company that owns a manufacturing process patent which is used in their manufacturing line. The royalty agreement is not subject to City sales or use tax because it is for the use of intangible personal property, the process.

Also see “Internet Sales and Purchases,” “Professional Services,” and “Software” publications in this Tax Guide.

The information contained in the Tax Guide publications is intended to offer general guidance in layman’s terms, for this topic, industry or business segment, and is not intended for legal purposes to be substituted for the full text of the Louisville Municipal Code rules and regulations. This guide does not constitute a city tax policy.