

OPINION NUMBER 00-137

Mr. Charles G. Tutt, General Counsel
Caddo-Bossier Parishes Port Commission
900 Pierremont Road, Suite 206
Shreveport, LA 71106

Mr. Joseph Accardo, Executive Director
Port of South Louisiana
P.O. Box 909
LaPlace, LA 70069-0909

Mr. Michael K. Dees, General Counsel
Lake Charles Harbor & Terminal District
P.O. Box 3753
Lake Charles, LA 70602

Gentlemen:

Each of you has requested an opinion of this office on five identical issues regarding the liability of your port commissions (or your contractors) for state and local sales taxes on purchases of materials and supplies which are to be incorporated into a public work, when such purchases are made by the public work contractor who has been designated as an agent of your public body.

As you are aware, this office has issued four opinions which address the issues raised in your current requests. The legislature has also responded to the issues which you raise by adopting at least two acts, Act 1029 of 1991 and Act 1288 of 1999 which sought to make clear the exemption of public entities from sales taxes. Our opinions and the Acts of the Legislature apparently have not satisfied Department of Revenue sales tax collectors as they continue to reject claims of exemption made by duly designated agents of public entities such as your ports.

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This conflict with the Department of Revenue has resulted in the filing of ***Gravity Drainage District No. 4, Ward 3 of Calcasieu Parish and F. Miller & Sons vs. the Secretary of the Department of Revenue***, #468,364 on the docket of the 19th Judicial District Court.

It has long been the policy of this office not to issue opinions on issues which are the subject of pending litigation and, therefore, we will resist the temptation to respond to your requests, other than to affirm Opinion Numbers 96-309, 97-182, 98-284 and 98-356 previously issued.

Sincerely,

RICHARD P. IEYOUNG
Attorney General

By: _____
GLENN R. DUCOTE
Assistant Attorney General
Chief, Public Finance & Contracts Section

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90 -- A -- 1 PUBLIC FUNDS & CONTRACTS
119 TAXATION -- EXEMPTIONS
160 SALES TAX

Affirms Opinion Numbers 96-309, 97-182, 98-284 & 98-356 related to sales tax exemption on purchases of materials and supplies to be incorporated into a public work when made by the public work contractor who is also designated as the agent of the public entity for such purchases.

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GLENN R. DUCOTE, ASSISTANT ATTORNEY
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