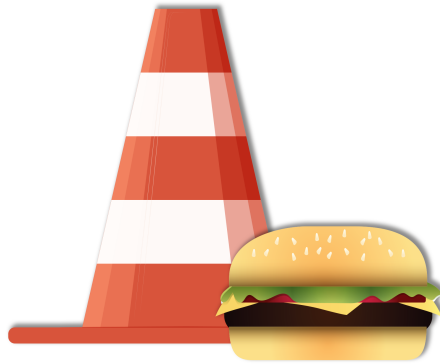




MARDI GRAS MEETS THE RODEO

“Throw Me Something Cowboy”
Presented by: McGlinchey Stafford



**Why “Nickel Pounders” and “Little Macs”
are Dangerous to Your Bottom Line:**

The Hazards of Branding Menu Items

Presented by Andy Cao



Andy Cao

acao@mcglinchey.com

Andy Cao is a member in our Houston office. He represents clients from diverse fields of business including insurance brokerage firms, small businesses, maritime lenders and vehicle manufacturers. Andy has litigation experience in Texas state and federal trial courts, bankruptcy courts, as well as federal and state appellate courts. Andy's representation of business clients in intellectual property disputes covers areas such as patent infringement, trademark infringement, noncompete agreements, no-hire agreement, non-solicitation agreements, and trade secrets. He received his JD from the University of Houston Law Center.

KEY LEGAL PRINCIPLES

- A single restaurant, bar or hotel is, in all likelihood, engaged in “interstate” commerce sufficient to create (and infringe) federal trademark rights
- Rights in a brand arise through the earlier of:
 - (1) first “use” (limited to geographic market), or
 - (2) filing a federal (national in scope) intent to use trademark application prior to anyone’s use



KEY LEGAL PRINCIPLES

- Federally registered marks are presumed valid (rebuttable presumption) and enjoy the benefit of doubt
- “Likelihood of confusion, mistake or deception” is the touchstone for assessing trademark and trade dress infringement liability
 - Exception: “Famous” trademarks, which can be “diluted” through blurring, even when used in association with *completely different* products or services




KEY LEGAL PRINCIPLES

- Trademark owners are obligated to police their marks and trade dress rights, or risk losing them
- Menus are one element of an establishment's overall trade dress, and therefore can provide evidence of trade dress infringement



THE MODERN MENU: PROS & CONS

- What is a menu, and how does it “brand” something?
 - Promote and describe specific goods and services
 - Sets forth the style and format of the establishment, setting the tone and overall commercial impression
 - Informs users/customers of offerings while distinguishing the goods/services from those of others
 - Also electronic and online! Think Urban Spoon, Open Table, owner web sites, etc.
 - Aggregated in third party search engine indexes/apps for easy customer (and competitor) access and analysis, worldwide!
- 

THE MODERN MENU: PROS & CONS

Infringements are now easier to find. Yea Internet!

- Competitor trademark owners can search menus online from their desktop or cell phone, to find infringers!

Hospitality business owners often fail to clear their menus of infringement risk (both copyright and trademark) *in advance*.

- Clearance process poorly understood
- Branding legal issues low priority in the rush to open; often last minute consideration and cost that entrepreneurs don't want to include in budgets



BRANDED EXAMPLES

GENERIC MENU ITEM	BRAND (Fed. Reg' d)	OWNER
Battered, fried onion appetizer	AWESOME BLOSSOM	Brinker International (Chili' s)
Breakfast food combination	McMUFFIN	McDonald' s Corporation
Coffee beverages	FRAPPUCCINO	Starbucks Corporation
Hot sandwich	WHOPPER	Burger King Corporation
Combination Turkey, Duck and Chicken Entree	TURDUCKEN	Magic Season Blends, LLC (Chef K-Paul)
Prepared alcoholic cocktail	NINFARITA	Ninfa' s Holdings

WHAT MENU ITEMS OR FEATURES CAN BE BRANDED?

Every item on a menu! Especially popular are:

- Distinctive and unique food item shapes
 - Hershey's Kisses
- "Signature Dishes"
 - Guy Fieri's Wok & Sauce
- Newly "invented" food items
 - Cronut

Selection of Candidate Brands

- The more fanciful, the better
 - Kit Kat
- Highly descriptive marks are weak and less likely to be protectable
 - 7-layer burrito
- Suggestive marks are more likely to infringe!
 - "Wild" wing sauce



CLEARING NEW MENU ITEM BRANDS

Clearance

Searching pre-existing brands, marks, trade names, domain names, etc. in a given market (e.g., the USA and the Internet), to determine risk of use of a proposed brand or mark, and potential for successful registration and protection of proposed brand or mark.

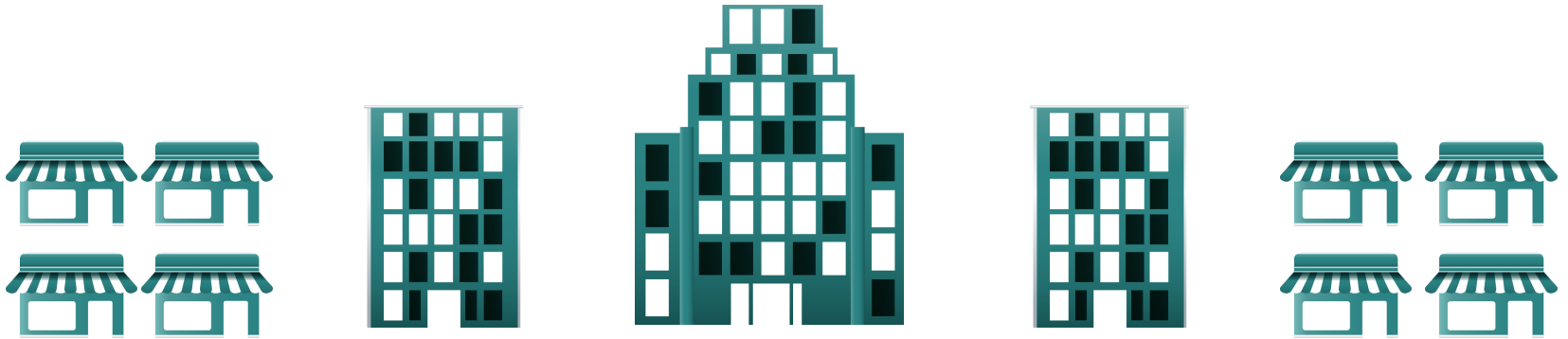
- Not all words on a menu need to be “cleared.” Focus on suggestive or fanciful titles or names.
- Generic food terms (blackened chicken, Caesar salad, etc.) and famous, but now generic, dishes (e.g., Bananas Foster) are unlikely to raise issues



CLEARING NEW MENU ITEM BRANDS

Don't forget trade dress and copyright infringement risk

- Verify originality of menu layout and design
 - No templating or “go-by” menu development from a competitor's
 - This includes not just words, but also look and feel



Franchise Relationship Governance in the Hospitality Industry

Presented by Carlos White



Carlos White

clwhite@mcglinchey.com

Carlos White serves as of counsel in McGlinchey Stafford's Corporate, Banking and Consumer Financial Services sections. With respect to franchise matters, Carlos counsels, advices, and creates documentation for franchisees, franchisors, and other stakeholders in all aspects of franchising, including M&A transactions, offers, sales, compliance, transfers, renewals, and terminations. Prior to joining McGlinchey Stafford, Carlos served as General Counsel and Assistance General Counsel, respectively for two, international IT companies and practiced corporate and franchise law at two global firms. He received his JD from the University of Pennsylvania.

FRANCHISE ELEMENTS

- **Right to Use Trademark**
- **Required Payment**
- **Significant Controls/Marketing Plan**

Please Note: If the above 3 elements are present and there is no applicable federal or state franchise exemption, then the arrangement is a franchise and subject to applicable franchise disclosure and relationship laws.



RELATIONSHIP GOVERNANCE (CONTRACTUAL)

FRANCHISE DISCLOSURE DOCUMENT (Pre-Sales)



- FTC and FTC States
- Franchise Registration States

FRANCHISE AGREEMENT (Post-Sales)



FRANCHISE RELATIONSHIP LAWS



REASONS FOR THESE LAWS

- Perceived lack of bargaining power



SCOPE OF THESE LAWS

- Provisions that preserve Franchisee's investment



RESURGENCE OF THESE LAWS

- Scrutiny of Franchise Business Model

Tax Issues for the Hospitality Industry

Presented by Jaye Calhoun





Jaye Calhoun

jcalhoun@mcglinchey.com

Jaye Calhoun is a member in the firm's New Orleans office and leads the firm's state and local tax practice group while providing full service representation covering federal, state and local issues to meet the unique needs of each client. With over 23 years of experience practicing tax law, she has assisted hospitality clients with tax compliance and planning, offering guidance on the use of tax and business incentives, and representing clients in tax audits and controversies. She is certified by the Louisiana Board of Legal Specialization in both Taxation and in Estate Planning. Jaye teaches state and local tax at Tulane and Loyola Law Schools and is a guest lecturer at Georgetown Law Center in the SALT Certificate Program on Local Taxes.

SALES AND USE TAXES

Tangible Personal Property

The State of Louisiana and the parishes tax the sale of all “tangible personal property” unless exempted and those services that are specifically identified as taxable. La. Rev. Stat. §47:301, et seq.; La. Admin. Code §61:l.4303; Code of the City of New Orleans §150-576(1). The focus under Texas law is slightly different. In general, Texas imposes sales tax on sales (except sales for resale) and the lease, within the state, of “taxable items.” TX Tax Code §§151.005, 151.006, 151.051, 151.302. “Taxable items” include tangible personal property and specific services. TX Tax Code §151.010. Texas imposes a “use tax” on the storage, use, or other consumption in the state of any “taxable item” purchased from a retailer. TX Tax Code §§151.011 and 151.101. See TX Comptroller Ruling 9709284L; *DTWC v. Combs* (Red Lion Hotels)

TAXES ON HOTEL ROOMS

Taxable Services?

In Louisiana, unless a service is specifically identified as subject to sales tax then it is not taxable. Both the rental of sleeping space and the rental of tangible personal property are, in fact, identified as taxable services. It is very important that taxable and nontaxable services be separately stated on a customer's invoice because failure to separate out nontaxable transactions may result in the entire amount being subject to tax.

In Texas, the occupancy of hotel rooms or “temporary lodging facilities” is taxed. The state hotel occupancy tax is imposed on the occupant and is collected by the hotel. Local hotel occupancy taxes may be imposed by municipalities, counties, county development districts, and venue districts.



SALES AND USE TAXES


Taxable Sales of Tangible Personal Property

In Louisiana and Texas, sales and use taxes are generally imposed on the sale of food and beverages served in restaurants, hotels and motels as well as any other items of tangible personal property sold to guests (such as in the gift shop). This tax is due from the guest (as the ultimate consumer) unless the vendor fails to charge the tax when the transaction takes place. See TX Comptroller Ruling 200703903L for taxation of caterers and event planners and 200207378L for various charges by hotels including AV equipment.

Exemptions


If a customer or guest claims exemption from tax but is not exempt, the establishment or vendor would ultimately be responsible if the failure to collect is discovered.

Exemption Certificates

- Government employees traveling on government business
 - No general nonprofit exemption in LA
 - Keep copies!
- 

TAXATION OF HOTEL ROOM RENTAL/OCCUPANCY

Taxable Services -

- Hotel room rentals are one of the few services on which sales tax is imposed. La. Rev. Stat. §47:301(14)(a); La. Admin. Code §61:I.4301(C); Code of the City of New Orleans §150-441.
 - Entertainment and Admission to Places of Amusement - La. Rev. Stat. §47:301(14) (b) defines as taxable: “[t]he sale of admissions to places of amusement, to athletic entertainment other than that of schools, colleges, and universities, and recreational events, and the furnishing, for dues, fees, or other consideration of the privilege of access to clubs or the privilege of having access to or the use of amusement, entertainment, athletic, or recreational facilities.”
 - Parking - The furnishing of storage or parking privileges by auto hotels and parking lots is a taxable service.
- 

SALES AND USE TAXES

Everything is Not Amusement or Recreation

La. Rev. Stat. §47:301(14)(b)(ii)-(iii) limits the term “places of amusement” and excludes the typical museum and public parks and zoos and the like. “Museums” are defined to include public institutions organized on a permanent basis for essentially educational or aesthetic purposes. Public outdoor property may be a “museum” under the statutes which says that a “museum” includes, but is not limited to the following institutions: art, history and scientific museums, aquariums, zoological parks, botanical gardens, arboretums, nature centers, and planetariums. Finally, “museums” are further defined as places which use professional staff to (i) own or use tangible objects, whether animate (such as alligators and nutria?) or inanimate, (ii) care for those objects, and (iii) exhibit them to the public on a regular basis, all of which duties are handled by professional staff at Jean Lafitte National Historical Park. The statutory language attempts to describe those places which have a higher educational or aesthetic value than, for example, a nightclub with a live band and a cover charge.

SALES AND USE TAXES

Taxable Furnishing of Sleeping Rooms

A “hotel” is defined as an establishment engaged in the business of furnishing sleeping rooms, cottages, or cabins to transient guests, if the establishment consists of six or more sleeping rooms, cottages or cabins at a single business location. An establishment with fewer than six sleeping rooms, cottages, or cabins for transient guests at a single business location is not a hotel for sales or use tax purposes. La. Rev. Stat. § 47:301(6)(a); La. Admin. Code § 61:I.4301(C). The City of New Orleans has a similar definition. Code of the City of New Orleans, §150-441. The taxable furnishing of sleeping rooms is discussed in more detail in the next section.

SALES AND USE TAXES

Rental of Tangible Personal Property –

Charges for the rental of canopies, awnings, golf carts, tables, chairs and other personal property (AV equipment that is operated by the customer and not a representative of the rental company, for example) would be taxed under the statutes because the lease or rental of tangible personal property is subject to tax. La. Rev. Stat. §§47:302(B), 321(B) and 331(B). See TX Comptroller Ruling 200303785L.

Rental of Meeting Space –

Absent unusual circumstances, charges for the rental of meeting space should not be subject to sales tax because sales tax only applies to room rentals if the following three elements are present: (1) a hotel; (2) there is a "furnishing" activity; and (3) a sleeping room. La. Rev. Stat. sec. 47:301(6) and (14)(a). Even if the guests sleep through the presentation in the meeting room, meeting space would not ordinarily qualify as a "sleeping room." Louisiana Technical Advisory Memorandum No. 97-004 (5/06/1997). If there is no charge for tables or chairs or other equipment (and the cost of the room rental itself does not change no matter how many tables, chairs or other personal property items are used), then there would be no tax. See Texas Comptroller's Ruling 200207378L.

SALES AND USE TAXES

Telephone Revenue

The State of Louisiana taxes the "furnishing of telecommunication services, including telephone, cellular phone, paging, and similar services." It would seem that this tax could be passed along to the customer by separately stating it on the bill. The parishes, however, are generally prohibited from taxing telecommunications services. There is language in the City ordinances that would permit this but it may not be legally enforceable.

Internet Access

Internet access is not usually taxable at all by either the State or the parishes as a result of federal law but internet services can end up being subject to tax if the provider does not keep adequate records or does not separately state charges on the bill. The ITFA prohibits taxes on Internet access but does not apply to a charge for voice over Internet protocol (VOIP) service or similar service utilizing Internet Protocol or any successor protocol unless these services are incidental to Internet access. Combining these charges with other fees can make charges for internet access taxable when they would not otherwise be.

SALES AND USE TAXES

Corkage Fees

These are fees charged to a customer that doesn't use on-site catering. Nonprofit organizations may be charged this fee for charity events to which food and beverage may be donated. Whether it is taxable depends on what the fee compensates the hotel for, that is, the true nature of the fee.

Service Charges

Gratuities, even if retained by the hotel and not the server, will only be subject to sales tax in the unlikely event that the amount retained is to reimburse the hotel for tangible personal property expended (such as food or beverage items) or for the rental of tangible personal property, either of which would be taxable if charged directly to the customer for that purpose. The amount retained by the hotel is likely to be for overhead or other management services and so would not ordinarily be taxable. On the other hand, it is common in Orleans Parish to remit tax on these amounts because auditors have taken the position that these charges are taxable (although this appears to be legally incorrect).

SALES AND USE TAXES

In Room Movies

In the typical situation where the guest merely accesses the movie by using a box in the hotel room, this is not likely to be considered taxable as a lease of tangible personal property. On the other hand, if the guest accesses the movie through a vending machine or is physically handed the movie at a service desk, that would be considered the lease of tangible personal property and subject to tax. Revenue Information Bulletin No. 10-015 repealed by RIB 11-009; TX Comptroller Ruling 200303785L.

Service Charges

Gratuities, even if retained by the hotel and not the server, will only be subject to sales tax in the unlikely event that the amount retained is to reimburse the hotel for tangible personal property expended (such as food or beverage items) or for the rental of tangible personal property, either of which would be taxable if charged directly to the customer for that purpose. The amount retained by the hotel is likely to be for overhead or other management services and so would not ordinarily be taxable.

SALES AND USE TAXES

Dumpsters

Sales tax does not apply to the furnishing of trash dumpster containers for regularly scheduled periodic disposal of customers' trash, whether or not the charges for the dumpsters are billed separately from the charges for the pick-up services. The “true object” of the transactions involving regularly scheduled pick-ups is the furnishing of tax-exempt trash removal services and furnishing dumpsters constitutes an integral part of nontaxable trash removal services, rather than separate taxable leases or rentals of tangible personal property unless trash pick-up is not according to a regular schedule and customers are separately billed for dumpster possession periods. La. Rev. Rul. 06-012 (Aug. 23, 2006).

Plant Services

Furnishing plants and watering and maintaining plants and greenery around the property

Telecommunications Services

Special rate apply

SALES AND USE TAXES

House Checks and Comps

Tangible personal property acquired for re-sale but which is ultimately used by the purchaser (as in the case of a “house check”) would be subject to use tax.

State

The State imposes a use tax on the use, consumption, distribution or storage for use or consumption of tangible personal property. La. Rev. Stat. §47:302.

Parishes

The City of New Orleans, like other parishes, imposes tax on “the cost price of tangible personal property used, consumed, distributed or stored for use or consumption in the city, if the tax was not paid when the item was purchased.” Code of the City of New Orleans §150-576(2).

HOTEL MOTEL TAXES

In General

Tax is imposed on the furnishing of sleeping rooms, cottages, and cabins by hotels.

La. Rev. Stat. §47:301(14)(a); La. Admin. Code §61:1.4301(C). Sales tax is triggered if the following three elements are present: (1) a hotel; (2) a furnishing activity; and, (3) a sleeping room. La. Rev. Stat. §47:301(6); La. Rev. Stat. §47:301(14)(a).

HOTEL MOTEL TAXES

Transient Guests –

- Old Rule (before Feb. 1, 2006)**

A guest was not considered a “transient”) if the bill was paid monthly and the guest actually stayed for two consecutive months or more. All other guests were considered to be transient. La. Admin. Code § 61:I.4301(C), prior to amendment; Louisiana Revenue Ruling 03-007 (12/08/2003).

- New Rule**

Effective since February 1, 2006, the length of stay is no longer relevant unless the room provides the basic elements of a home, including full-sized and integrated kitchen appliances and facilities. Also, the guest must have the intent to permanently remain and to treat this as his or her home. If not, the rental of the room is subject to tax. A lease with a hotel for a period of not less than one year is evidence in support of permanent residency status but only if the basic elements of a home are there at the time of the lease. The Department of Revenue can still require additional evidentiary support of claims of non-transient status. La. Admin. Code § 61:I.4301(C).

HOTEL MOTEL TAXES

Late Check Out Fees, Cancellation Fees And Early Departure Fees

In order for a charge associated with a hotel room rental to be taxable, it has to actually be a charge for furnishing a sleeping room. There is no requirement that the guest actually sleep in the room. The significant factor is what the charge actually represents (that is, whether the guest is paying to have a sleeping room furnished). The term “furnish,” is not defined in the applicable sales tax laws but has been the subject of a recent Louisiana Department of Revenue ruling (Louisiana Revenue Ruling 04-004, 04/23/2004). A room is said to be “furnished” if the customer that guaranteed the reservation may use the room at any time during the first day and if the room cannot be used by another person. There is no requirement that a specific room be identified for the guest.

HOTEL MOTEL TAXES

Forfeitable Room Deposit or Cancellation Fee

will be considered nontaxable if they are truly in the nature of a penalty and taxable if they are payment for the “furnishing” of a room, whether or not the room is actually furnished. Sales tax does not apply if the charge is for the failure to occupy the room or cancel the reservation, if that charge is less than the agreed upon room occupancy rate and the reserving customer does not occupy the room. However, tax is due on a forfeitable room deposit or cancellation fee equal to the room occupancy rate, unless evidence is provided that the charge is for canceling the reservation before the normal hours of room availability but after the hotel's deadline for canceling the reservation without incurring the fee. If a nontaxable room deposit or cancellation fee is later allowed as a credit against a charge for a hotel room, the state sales tax is calculated on the price of the room before deducting the credit for the deposit or fee.

HOTEL MOTEL TAXES

No-show Charges for Guaranteed Rooms

Sales tax applies to no-show charges billed by hotels for guaranteed rooms (where a hotel charges a customer who reserves a room but fails to arrive or cancel the reservation by a prescribed time). In this case, a room is deemed to have been set aside for, or furnished to, the reserving customer.

Early Cancellation Fee/Early Departure Fee

Sales tax does not apply to charges made to customers for checking out of a hotel one or more days earlier than the agreed upon duration of occupancy. Here, the hotel is not deemed to have set aside or furnished a room to the customer on the days after the customer vacated the room.

Late Check Out Fees

These are not discussed specifically in the Revenue Ruling but will probably be subject to sales tax if these fees are intended to compensate the hotel for the continued use of the room by the guest.

HOTEL MOTEL TAXES

Group Cancellation Charges

If a hotel charges a fee to a tour operator or group of travelers because the group or part of the group fails to occupy the number of rooms that have been reserved at the hotel for the group, but that fee is unrelated to the hotel's setting aside or furnishing rooms on the group's scheduled dates of occupancy, the amounts charged to the operator or group as liquidated damages are not subject to sales tax. The terms of the contract will be very important here. The hotel must be free to rent the unused rooms to any potential guest. On the other hand, if the fee is expressed as a room charge because the tour operator or group ultimately did not occupy the number of rooms that the hotel set aside and furnished to the operator or group on the scheduled date of occupancy, tax will be due.

FLSA MISCLASSIFICATION

Presented by Kyle Ferachi





Kyle Ferachi

kferachi@mcglinchey.com

Kyle Ferachi is the Managing Member of the firm's Houston office and maintains a Louisiana practice as well. Kyle's primary areas of focus include labor and employment law and commercial litigation. Kyle represents employers in responding to allegations brought before the United States Health and Occupational Review Commission, the Equal Employment Opportunity Commission and Louisiana Commission on Human Rights. He also works with clients to prevent employment claims by drafting policy manuals, conducting training seminars for managers and employees, and advising clients on employment decisions, such as hiring and termination. Kyle litigates employment matters at the state and appellate levels. In addition, to his labor and employment practice, Kyle also practices in the firm's commercial litigation section. He has experience handling energy litigation matters, including litigating Outer Continental Shelf Lands Act, Jones Act and land-based oil and gas claims.

FLSA DEFINITIONS

In order for the FLSA's minimum wage and overtime pay provisions to apply, an employment relationship must exist between the "employer" and the worker (the worker must be an "employee").

The FLSA's definition of "employ" includes "to suffer or permit to work."



“Suffer or Permit” Standard

The FLSA definition of employ, which includes “to suffer or permit to work,” was specifically designed to broadly cover as many workers as possible.

Most workers are employees under the FLSA.



The Problem: Misclassification

A common problem arises where employers misclassify workers who are employees under the law as independent contractors.

Studies suggest that 10 to 30 percent of employers may misclassify their employees as independent contractors.



THE PROBLEM: MISCLASSIFICATION

Workers misclassified as independent contractors are wrongfully denied access to important benefits and protections, such as:

1. Minimum wage and overtime pay
2. Workers' compensation
3. Family and medical leave

Misclassified employees may still be eligible for unemployment insurance, but misclassification complicates their ability to collect these benefits.



EMPLOYEE OR INDEPENDENT CONTRACTOR?

There is no single test for determining whether a worker is an employee (like most workers) or an independent contractor under the FLSA.

A worker is an employee if he or she is economically dependent on the employer, whereas a worker is an independent contractor if he or she is in business for himself or herself.



EMPLOYEE OR INDEPENDENT CONTRACTOR?

The *economic reality* of the worker's relationship with the employer determines whether the worker is economically dependent on the employer (and therefore, an employee) or is in business for himself or herself (and therefore, an independent contractor).

Courts generally apply a number of “economic realities” factors as guides when making the determination, but the factors applied can vary and no one set of factors is exclusive.

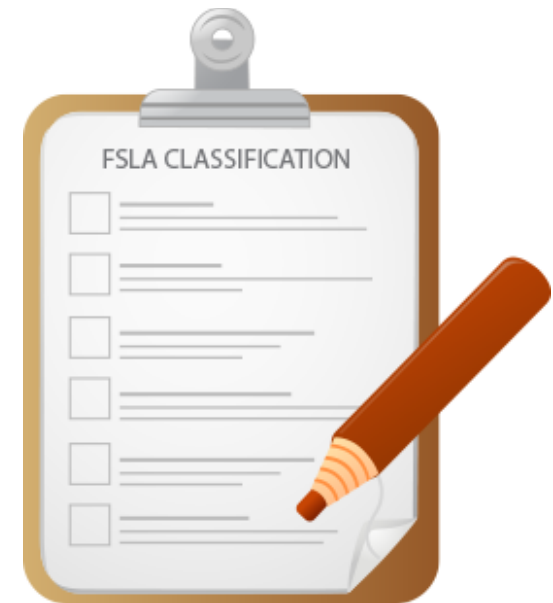


OVERARCHING CONSIDERATIONS

No single “economic realities” factor determines whether a worker is an employee or an independent contractor.

The six factors discussed in this presentation are not exclusive.

Courts may consider additional factors that shed light on whether a worker is an employee or an independent contractor.



OVERARCHING CONSIDERATIONS


The factors should not be applied as a checklist or scorecard.

What matters is whether the totality of the circumstances indicates the worker is an employee or independent contractor.



“ECONOMIC REALITIES” FACTORS

We generally consider the following factors when determining if a worker is an employee or independent contractor:

1. Is the work an integral part of the employer's business?
 2. Does the worker's managerial skill affect his or her opportunity for profit and loss?
 3. Relative investments of the worker and the employer
 4. The worker's skill and initiative
 5. The permanency of the worker's relationship with the employer
 6. Employer control of employment relationship
- 

Getting the Best Bang for Your Buck:

Economic Development Incentives available to the Texas and Louisiana Hospitality Industry

Presented by Amanda Butler and Deborah Harkins



Deborah Harkins

dharkins@mcglinchey.com

Deborah is a member in McGlinchey Stafford's New Orleans office where she chairs the firm's government relations section. She assists clients within in the hospitality, healthcare, education and gaming industries. Deborah focuses her practice on regulatory and legislative efforts on behalf of special interest groups and organizations. Her approach is to incorporate her clients into the process at the necessary level (national, state, local) in order to establish their presence and create an environment to incorporate their needs.





Amanda Butler

abutler@mcglinchey.com

Amanda Butler is an associate in our New Orleans office. Her experience handling transactional matters ranges from real estate acquisitions, mineral acquisitions and finance, maritime finance, to municipal finance. She has also helped to close several new market tax credits transactions representing investment funds and leveraged lenders. She received her J.D. from Loyola University New Orleans College of Law.

IS YOUR HOSPITALITY COMPANY:



Building a new facility



Relocating to a new facility



Renovating an existing facility

WILL THIS PROJECT CREATE AT LEAST 5 NEW JOBS?

EVALUATING STATE TAX/FINANCING INCENTIVES

- 1.. Start at the Economic Development websites for Texas or Louisiana

www.texaswideopenforbusiness.com

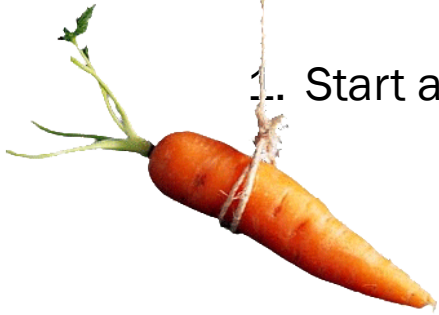
www.opportunitylouisiana.com

2. In **Louisiana** - the Incentive Evaluator tool is incredibly helpful in identifying which incentives might be a potential fit for your business or project:

<http://incentiveevaluator.louisianaeconomicdevelopment.com/>

3. In **Texas** – fill out submit a Project Initiation Form:

<https://texaswideopenforbusiness.com/services/quickstart-your-project-now>



POTENTIAL HOSPITALITY INCENTIVES IN TX & LA



LOUISIANA

1. Enterprise Zone*
2. Quality Jobs*
3. Restoration Tax Abatement
4. TIF/PILOT

**Businesses cannot apply for both Quality Jobs and Enterprise Zone job incentives (analyze the benefits under both programs to see which is best fit)*



TEXAS

1. Enterprise Zone
2. Property Taxes
3. State Financing- working capital, or the purchase, construction or lease of capital assets, including building and equipment

ENTERPRISE ZONE OVERVIEW

Both Texas and Louisiana offer Enterprise Zone Incentives for businesses that will assist economically distressed areas of the state by creating new jobs.

The amount of incentives are related to the capital investment and jobs created by the business.



ENTERPRISE ZONE BENEFITS IN LA

Provides a one-time \$2,500 credit per net new job and rebates a portion of sales/use tax on materials, machinery, furniture, or equipment.

•You can receive the job tax credit combined with your choice of the following:

➤ A sales/use tax rebate.*

OR

➤ A 1.5% refundable investment tax credit can be earned.

**A portion of the local sales/use tax is available for rebate with an Endorsement Resolution from the local governing authority.*

ENTERPRISE ZONE REQUIREMENTS IN LA

LA Job incentives program for businesses hiring at least 35% of “net new jobs” from one of four targeted groups. Employees are:

- domiciled in an Enterprise Zone or Economic Development Zone(economically distressed area); or
- receiving some form of public assistance;
- lack basic skills – below 9th grade proficiency
- unemployable by traditional standards



LA INVESTMENT CREDIT VS. SALES AND USE TAX REBATE

Sales and Use Tax Rebate = 4% rebate of sales and use taxes paid on qualifying materials, machinery, furniture and/or equipment purchased

Investment tax credit = 1.5% refundable state tax credit on the total capital investment, excluding tax exempted items




DETERMINE ELIGIBILITY

Question	Answer
Is any part of this project engaged in or owned by someone engaged in gaming activities?	NO
Is any part of this project involved with religious organizations?	NO
Is any part of this project involved with residential property?	NO
Will the project create at least 5 net, new permanent full-time jobs within the first two years?	YES
Will the project increase your current nationwide workforce by 10%?	YES/NO
Will the project have at least 35% of the net new jobs created meeting one of the four job certification requirements?	YES


ELIGIBILITY ANALYSIS:

Create a minimum of five permanent net new full-time jobs within 24 months of their project start date or increase their current nationwide workforce by 10% within the first 12 months.


Hire 50% of the net new jobs created from one or more of the certification requirements from these targeted groups:

1. Residency: someone living in Enterprise Zone within the state. Best way to determine is by speaking with someone at the LED.
 2. People receiving an approved form of public assistance.
 3. People lacking basic skills. A person performing below a ninth grade proficiency in reading, writing or mathematics.
 4. People unemployable by traditional standards.
- 

PROCESS OVERVIEW:

1. Submit Advance Notification with fee either online or by mail, then begin your project.
 2. Apply for local benefits with local governing authority.
 3. File for a Sales Tax Registration Certificate with the Louisiana Department of Revenue and an Unemployment Insurance ID number with the Louisiana Workforce Commission.
 4. Complete the application online and submit any required addendum material to LED to review within 90 days after project completion.
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PROCESS OVERVIEW (CONT.)

5. LED reviews application and submits it to the Board of Commerce and Industry.
 6. If approved, the Board issues contract through LED.
 7. Submit Project Completion Report and Affidavit of Final Cost to LED.
 8. File for sales and use tax rebate or refundable investment tax credit with the Louisiana Department of Revenue.
 9. File Employee Certification Report with LED.
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SAMPLE OF HOSPITALITY ENTERPRISE ZONE RECIPIENTS FROM 2013

Name of Company/ Project Description	Jobs Created	Benefit/ Amount
Popeye' s – Jefferson Parish	40	\$100,000 – Jobs Tax Credit \$12,000 – EZ Investment
Taco Bell – Orleans	7	\$17,500 – Jobs Tax Credit \$18,000 – EZ Investment
Amelia Extended Stay – St. Mary	5	\$12,500 – Jobs Tax Credit \$75,000 – EZ Investment
Monteleone Expansion/ Renovation	73	\$182,500 – Jobs Tax Credit \$304,291 – EZ Investment
St. Charles Ave. Hotel (new)	10	\$25,000 – Jobs Tax Credit \$252,000 – EZ Investment

TX ENTERPRISE ZONE BENEFITS:

A Sales and Use Tax refunds on qualified expenditures

Sample of Texas Enterprise Zone Program Sales Tax Refunds:

Level of Capital Investment (\$)	Maximum Number of Jobs Allocated	Maximum Total Refund (\$)	Maximum Refund per Job Allocation (\$)
40,000 – 399,999	10	25,000	2,500
400,000 – 999,999	25	62,000	2,500
1,000,000 – 4,999,999	125	312,500	2,500
5,000,000 – 149,999,999	500	1,250,000	2,500
Double Jumbo Project 150,000,000 – 249,999,999	500	2,500,000	5,000
Triple Jumbo Project 250,000,000 or more	500	3,750,000	7,500

TX ENTERPRISE ZONE ELIGIBILITY

A local community must nominate a company as an Enterprise Project to be eligible for EZP.

Communities must have local incentives to offer the project for EZP qualification. Typical local incentives include tax abatement, tax increment financing, and one-stop permitting.

Communities may nominate projects for a designation period up to five years. Employment and capital investment commitments must be made and implemented within this timeframe.

Projects may be physically located in or outside of an Enterprise Zone.



TX ENTERPRISE ZONE ELIGIBILITY (CONT.)

If located within a zone, the company commits that at least 25 percent of their new employees will meet economically disadvantaged or enterprise zone residence requirements.

If located outside of a zone, the company commits that at least 35 percent of their new employees will meet economically disadvantaged or enterprise zone residency requirements.

Projects must meet or exceed county weekly wage averages to be eligible.



TX PROCESS OVERVIEW:

The target community will file the TEZP application. Community representatives will complete some of the application requirements and the company will provide information as needed. Download and review the following documents:

- [Enterprise Project Application](#)
- [Additional Participating Entities Form](#)
- [Participating Consultant Form](#)
- [Sample Nominating Ordinance or Order](#)
- [Sample Nominating Resolution](#)
- [Sample Corporate Resolution](#)
- [Request for Verification of Deposit Form](#)
- [Enterprise Project Assignment Application Form](#)
- [Enterprise Project Name Change Application Form](#)
- [2014 EZ Mandatory Participating Community Annual Report Form](#)

TX ENTERPRISE ZONES:

What is an enterprise zone?

Any block group within the State of Texas that has a poverty rate of 20% or more, as determined by the U.S. Census Bureau during each decennial census is a state enterprise zone.

Any distressed county in Texas is an enterprise zone. A county is considered to be a distressed county if it has a poverty rate above 15.4 percent based on the most recent decennial census; in which at least 25.4 percent of the adult population does not hold a high school diploma or high school equivalency certificate based on the most recent decennial census; and that has an unemployment rate that has remained above 4.9 percent during the preceding five years, based on Texas Workforce Commission data.



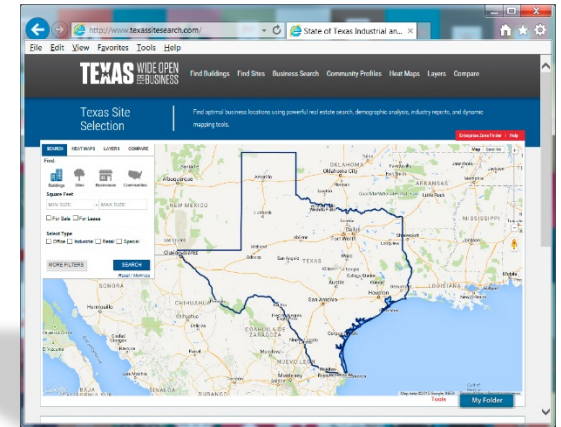
TX ENTERPRISE ZONES (CONT.)

Any federally designated empowerment zone, enterprise community or renewal community is also a State enterprise zone, for the duration of the federal designation.

Enterprise projects may be designated outside of an enterprise zone, with a higher threshold of hiring economically disadvantaged or enterprise zone residents.


Easiest way to determine if you are located in an Enterprise Zone/ EZ:

<http://www.texassitesearch.com/>



RESTORATION TAX ABATEMENT

The Restoration Tax Abatement, or RTA, program provides a five-year abatement of ad valorem property taxes on the renovations and improvements of existing commercial structures and owner-occupied residences.

- Equipment that becomes an integral part of that structure can qualify for this exemption
 - Acquisition cost of the structure or the land cannot qualify for this exemption
 - Option for a five-year renewal with local governing authority approval (NOT CURRENTLY ALLOWED IN ORLEANS)
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RTA ELIGIBILITY

This incentive is open to all Louisiana businesses and homeowners with existing structures to be expanded, restored, improved or developed in qualifying locations, and as approved by the local governing authority.

Qualifying locations for properties include:

- Economic Development Districts*
- Downtown Development Districts
- Historic Districts
- Listed on the National Register of Historic Places

**Different from Enterprise Zones and Economic Development Zones*



ELIGIBLE VS. NONELIGIBLE EXPENSES (RTAS):

Eligible Expenses	Non Eligible Expenses
<ol style="list-style-type: none">1. Actual building and materials investment2. Machinery and equipment investment3. Labor and engineering expenses	<ol style="list-style-type: none">1. Acquisition costs2. Movable/ Personal Property
<p>*Property taxes paid on project improvements disqualify eligibility to apply. For this reason it is critical to begin the application process BEFORE construction commences</p>	

SAMPLE OF RTA PROJECTS FROM 2013

Company/Project	New Jobs	Estimated Exemption
The Saint Hotel – rehab of former Audubon Building into a 166 room hotel and restaurant	45	\$1,888,425



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New Orleans Style!