

NOTICE OF INTENT

Office of the Governor Uniform Local Sales Tax Board

Audit Protocols for Local Sales and Use Taxes (LAC 72:I.119)

Act 274 of the 2017 Regular Legislative Session enacted R.S. 47:337.102 to establish the Uniform Local Sales Tax Board and define its powers and authority. R.S. 47:337.102(C)(2) authorizes the board to promulgate rules and regulations in accordance with Part H of Chapter 2-D of Subtitle II of Title 47 of the Revised Statutes of 1950. Under the authority of the Uniform Local Sales Tax Code, R.S. 47:337.1 et seq., and in accordance with the Uniform Local Sales Tax Administrative Procedure Act, R.S. 47:337.91 et seq., the Uniform Local Sales Tax Board proposes to adopt LAC 72:I.119 to establish protocols in the performance of audits for local sales and use taxes.

R.S. 47:337.35 states, "As soon as practicable after each return or report is filed ... the collector shall cause it to be examined and may make such further audit or investigation as he may deem necessary for the purpose of determining the correct amount of tax." R.S. 47:337.36 adds, "For the purpose of administering the provisions of the local ordinance and this Chapter, the collector, whenever he deems it expedient, may make or cause to be made ... an examination or investigation of the place of business, if any, the tangible personal property, and the books, records, papers, vouchers, accounts, and documents of any taxpayer." These statutes express the authority and obligation for collectors to establish audit programs, or to secure these services, to ensure the proper reporting and payment of sales and use taxes. Audits programs must adhere to specific protocols that comply with statutory requirements and ensures transparency and fairness to taxpayers and local taxing authorities. This proposed regulation identifies audit protocols for local sales and use tax audits.

Title 72

UNIFORM LOCAL SALES TAX

Part I. General Provisions

Chapter 1. Administrative Procedures

§119. Audit Protocols for Local Sales and Use Taxes

A. Definitions. For purposes of this Section, the following terms have the meanings ascribed to them.

Collector—the single collector for a parish as defined in Article VII, Section 3 of the Constitution of Louisiana and the collector's duly authorized representatives.

Confidential information—information involving the reporting and payment of taxes maintained pursuant to a statute or tax ordinance, excluding ad valorem property taxes and ad valorem property tax assessment rolls.

Private auditing firm—a private agency or auditing firm contracted by a collector for the examination or investigation of the place of business, if any; the tangible personal property; and the books, records, papers, vouchers, accounts, and documents of any taxpayer for the purposes of enforcement and collection of any tax imposed by that taxing authority.

Public information—sources of information available to the general public including, but not limited to, public records of an Assessor's Office, Secretary of State, Economic Development, US Census Bureau or any other

governmental agency; industry publications, press releases, news articles, or directories; researchable data of a commercial or nonprofit entity; common knowledge about a taxpayer or industry; and personal observation or experience.

Taxpayer—any person defined in R.S. 47:301(8) who is subject to audit under R.S. 47:337.35.

B. Audit Selection and Assignment

1. Collectors may identify possible accounts for audit by researching public information, confidential information contained in the collector's records, confidential information received from other collectors under written reciprocal exchange agreements in accordance with R.S. 47:1508(B)(5) and recommendations from private auditing firms, individuals, businesses or organizations.

2. Private auditing firms that have entered into agreements with a collector under the provisions of R.S. 47:337.26 may identify potential audits on behalf of that collector by researching public information and reviewing prior audits the private auditing firm performed on behalf of that collector.

3. Private audit firms may not identify leads for or request audit assignments from collectors based on confidential information disclosed by the records of a taxpayer under audit or previously audited for a different collector under the provision of R.S. 47:337.26(C)(2)(a). However, nothing herein shall prohibit a collector from providing confidential information disclosed through an audit of the records of a taxpayer with another collector when the collectors have entered into a written reciprocal exchange agreement in accordance with R.S. 47:1508(B)(5).

4. Requests for audits submitted to a collector by private auditing firms should include the following information:

- a. the legal identity of the taxpayer;
- b. evidence of the taxpayer's nexus within the jurisdiction as such is defined in R.S. 47:301(4);
- c. a statement of assurance that the lead was developed in compliance with R.S. 47:1508 and R.S. 47:337.26(C);
- d. a description of the general nature of the business;
- e. the reason the collector might want to audit this taxpayer;
- f. an address where records are expected to be reviewed;
- g. an estimated timeline for the review of the records provided;
- h. any additional notes on known or anticipated special circumstances; and
 - i. when available:
 - i. the registered account number of the legal entity being requested;
 - ii. the dates of taxable activity to determine if a waiver of prescription is necessary; and
 - iii. any previous audit findings including the audit period, tax liability and issues discovered.

5. Collectors shall establish procedures to ensure that an audit is assigned to only one private auditing firm or staff auditor for a given audit period.

C. Notice of intent to audit to the taxpayer prior to initiating the examination.

1. A notice of intent to audit shall be sent by certified mail from the collector's office. If the audit will be

performed by a private auditing firm, the firm is prohibited from contacting the taxpayer before mailing of the notice of intent to audit.

2. The notice of intent to audit shall be sent in a timely manner so the taxpayer can make preparations for the audit.

3. The notice of intent to audit shall include the following items:

- a. the nature of the audit;
- b. the name, office, address and contact phone number of the auditor or the private auditing firm that will perform the audit;
- c. a summary of the remedies available to the taxpayer should the taxpayer elect to contest the audit findings; and
- d. any interest, penalties, fees or other costs for which the taxpayer may be liable if taxes are determined to be due.

4. If the audit is to be performed by a private auditing firm, the notice of intent to audit shall include the following statements:

- a. that the taxpayer may receive a copy of the audit agreement between the collector and the private auditing firm; and
- b. how the private auditing firm shall be compensated, whether contingent upon the actual collection of tax or in any other way dependent on the outcome of the audit.

D. Protocols for Performing the Examination

1. Under R.S. 47:337.36, the taxpayer shall exhibit to the collector the place of business, tangible personal property, all books, records, papers, vouchers, accounts, and documents. Because the auditor must determine the scope of the audit and the accounts that will be reviewed, the auditor shall have access to all statewide documentation to verify that transactions are sourced to the proper jurisdictions. Statewide information may be restricted to a specific collector provided the taxpayer can substantiate to the auditor that all appropriate transactions have been presented.

2. R.S. 47:337.38 provides, wherever possible, the taxpayer must provide reports and other documents in electronic (i.e., machine-sensible) format to expedite the auditor's selection and review process. The taxpayer must provide the means to access the electronic records when standard programming or hardware to access the records is unavailable. Access may be secured by conversion of the data into a form useable by the auditor, allowing access through the taxpayer's equipment or any other reasonable method of access.

3. Sampling agreements between the collector and the taxpayer

a. Audit sampling methods must be approved by the collector (either on a case-by-case or blanket approval basis) before they are presented to the taxpayer for consideration.

b. The auditor or private auditing firm, under the authority of the collector, and taxpayer may then agree to sampling procedures that comply with the provisions of R.S. 47:337.35.

c. The auditor or private auditing firm, under the authority of the collector, shall send written notice to the taxpayer of the sampling procedure to be used, including how the tax will be computed, the population to be sampled, and the type of tax for which the tax liability will be established.

d. Claims by the taxpayer or auditor regarding non-representative transactions shall be addressed prior to submission of the work papers to the collector. If the auditor and taxpayer disagree regarding transactions disputed as non-representative of the sample, they shall be so noted in the work papers.

4. Unless otherwise agreed, the auditor's schedules shall include credits for overpayment of taxes. However, the auditor and taxpayer may agree in writing prior to the start of the field work that the taxpayer shall identify credit transactions subject to review and inclusion in the preliminary audit findings.

5. In accordance with R.S. 47:337.78, a collector may authorize the tax balance method to prepare audit schedules whenever it is determined that overpayments exist within an audit period that may be offset by a liability. The taxpayer must be notified whenever this method is used.

6. If a taxpayer fails or refuses to provide some or all of the documents requested for an audit, the following actions will be taken.

a. The collector shall determine which documentation a taxpayer is refusing or failing to provide and determine if the failure or refusal is reasonable.

b. If appropriate, the collector may contact the taxpayer to discuss the taxpayer's refusal or failure before making the determination.

c. The collector may take measures allowed by statute in order to compel the taxpayer to provide the records, including:

i. advise the taxpayer of the requirements to maintain records in accordance with R.S. 47:337.29, the collector's authority to determine the tax in R.S. 47:337.28 and the collector's obligation to perform an audit under R.S. 47:337.35;

ii. subpoena the records and request the appropriate court to compel the taxpayer to provide the records in accordance with R.S. 47:337.41, 42, and 43; or

iii. estimate the assessment in accordance with R.S. 47:337.28.

E. Additional Protocols for Private Auditing Firms

1. The audit staff of private auditing firms and their superiors shall comply with the provisions of Title 42, Chapter 15 of the Revised Statutes, Code of Governmental Ethics.

2. All employees, agents, and contractors of private auditing firms are subject to the provisions of R.S. 47:1508, et seq.

3. In accordance with R.S. 47:337.26(C)(4), a lead auditor of a private auditing firm performing an examination or audit function shall possess or have attained any of the following:

a. an active certified public accountant license;

b. a Bachelor's degree with a minimum of eighteen hours of accounting;

b. an active tax examiner certification issued by the Louisiana Association of Tax Administrators; or

c. a minimum of six years of experience in the field of state or local sales and use tax.

4. An auditor for a private auditing firm who does not possess or has not attained any of the requirements in Subsection E, Paragraph 3 may perform audits under the supervision of a lead auditor, supervisor, manager or director who possesses or has attained any of those criteria.

5. The retention or return of taxpayer records shall occur in accordance with R.S. 47:337.26(D)(3).

a. Upon completion of the audit or examination, all original information obtained by the private auditing firm from the taxpayer in connection with the audit or examination, whether written or in electronic form, shall be returned to the taxpayer, and the private auditing firm shall not retain any copies of such information. All taxpayer related information derived, compiled, or generated by the private auditing firm in any form whatsoever, including audit schedules, working papers, and copies of information received from the taxpayer, shall be delivered to the collector, except to the extent such information may be retained by certified public accountants in accordance with the Louisiana Accountancy Act.

b. No provision of this Section shall prohibit a private auditing firm from retaining the books and records of a taxpayer until the termination of any legal proceedings related to the audit or examination.

c. The collector and the private auditing firm may enter into a written agreement in accordance with this Subparagraph, authorizing such private auditing firm to act as agent for the storage and safekeeping of documents otherwise required to be maintained by the collector. Such documents shall be maintained in accordance with R.S. 47:1508 et seq.

6. In accordance with R.S. 47:337.26(C)(2)(a), if the audit is performed by a private auditing firm, additional collectors cannot be solicited to participate in the audit after confidential information has been disclosed by the taxpayer. Only the taxpayer may initiate an expansion of the audit to another collector. The auditor shall avoid any appearance of soliciting audit assignments from additional collectors.

7. When requested, the private auditing firm is required to provide the taxpayer with either:

a. access to the original contract, which may be reviewed and copied by the taxpayer; or

b. a copy of the audit contract specifying the terms under which the firm was engaged.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:337.102(C)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Uniform Local Sales Tax Board, LR 47:

Public Comments

Interested persons may submit written data, views, arguments or comments by mail to the Louisiana Uniform Local Sales Tax Board at P.O. Box 404, Port Allen, LA 70767 or by email to rogerb@localtaxboard.com. Written comments will be accepted until 4:30 p.m., Friday, May 21, 2021.

Public Hearing

A public hearing will be held on Wednesday, May 26, 2021 at 10:00 a.m. at the offices of the Louisiana Uniform Local Sales Tax Board located in the Municipal Police Employees' Retirement System Building, 7722 Office Park Boulevard, Baton Rouge, LA 70809. Masks and social distancing are required. Members of the public may view the hearing on Zoom and submit comments and questions via the Zoom chat feature. The login to participate in the hearing is: <https://zoom.us/j/93955109963?pwd=WS9vbTRwaW0yUkySDU1aFBic3Q1UT09>