



AUDITS



What are the responsibilities of the Administrator with respect to audits?



What are the responsibilities of the
Administrator with respect to audits?

Let's start with the Statutes.....

§337.26. Contracts for purposes relating to collection of sales and use taxes

A.the governing authority of any taxing authority may contract with the sheriff, the Louisiana Department of Revenue, any political subdivision of this state, or any other agency, whether public or private, for the examination or investigation of the place of business,of any taxpayer for the purposes of enforcement and collection of any tax imposed by that taxing authority.

B. for the purpose of **auditing** for compliance with local sales and use tax ordinances, any taxing authority or other entity which collects local sales and use taxes **may enter into a contract** with a **private auditing firm** and, when so authorized by such contract, such firm may examine or investigate the place of business, **The rate of compensation shall be on an hourly basis, plus reasonable expenses.** In addition, all such contracts shall be approved by the **majority of the affected taxing authorities.**

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C.(1) Any private agency or auditing firm hired for the purposes of this Section and any employee, contractor, or other agent of such private agency or auditing firm **shall be governed by the provisions of R.S. 47:1508 et seq.**

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C. (2)(a) Audit leads provided by the private agency or auditing firm shall be subject to the taxpayer confidentiality requirements of R.S. 47:1508 et seq.

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Once confidential information has been disclosed by the taxpayer to the private agency or auditing firm, audit leads by such private agency or auditing firm to other local collectors are strictly prohibited under the taxpayer confidentiality requirements of R.S. 47:1508 et seq;

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C.(2)(a)however, the **taxpayer may voluntarily waive confidentiality requirements in writing**, authorizing the examination or audit to be expanded to include additional tax collectors.

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C. (2) (b) Information provided by the private agency or auditing firm to the local collector may be shared by the local collector with other collectors which maintain written reciprocal exchange agreements in accordance with R.S. 47:1508(B)(5).

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C. (3) ...a private agency or auditing firm shall limit its activities to auditing the books and records of the taxpayer and shall not perform any assessment or collection functions, except as otherwise expressly permitted by law.

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- (a) An active certified public accountant license.

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C. (4) A lead auditor of a private agency or 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.

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C. (4) A lead auditor of a private agency or 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.

(c) An active certified tax examiner's certificate issued by the Louisiana Association of Tax Administrators.

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C. (4) A lead auditor of a private agency or 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.
- (c) An active certified tax examiner's certificate issued by the Louisiana Association of Tax Administrators.

(d) A minimum of six years' experience in the field of state or local sales and use tax.

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D.(1) Prior to initiating an examination or audit of a taxpayer, the **local collector shall** provide notice of the intent to audit **which shall** be sent by **certified mail** to the taxpayer at the taxpayer's last known address. **Such notice shall:**

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D.(1) Prior to initiating an examination or audit of a taxpayer, the local collector shall provide notice of the intent to audit which shall be sent by certified mail to the taxpayer at the taxpayer's last known address. Such notice shall:

(a) Reasonably describe the nature of the audit.

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D.(1) Prior to initiating an examination or audit of a taxpayer, the local collector shall provide notice of the intent to audit which shall be sent by certified mail to the taxpayer at the taxpayer's last known address. Such notice shall:

(a) Reasonably describe the nature of the audit.

(b) Identify the name, office, address, and office telephone number of the firm or individual who will initiate the audit.

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D.(1) Prior to initiating an examination or audit of a taxpayer, the local collector shall provide notice of the intent to audit which shall be sent by certified mail to the taxpayer at the taxpayer's last known address. **Such notice shall:**

(a) Reasonably describe the nature of the audit.

(b) Identify the name, office, address, and office telephone number of the firm or individual who will initiate the audit.

(c)(i) Advise the taxpayer of the **right to review and copy the audit contract** if the audit will be conducted by a private auditing firm.

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(a) Reasonably describe the nature of the audit.

(b) Identify the name, office, address, and office telephone number of the firm or individual who will initiate the audit.

(c)(i) Advise the taxpayer of the right to review and copy the audit contract if the audit will be conducted by a private auditing firm.

(ii) If the audit is conducted by a private auditing firm, the notice shall also advise the taxpayer whether the payment of compensation to the private auditing firm is contingent upon the actual collection of tax or in any other way dependent on the outcome of the audit.

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(a) Reasonably describe the nature of the audit.

(b) Identify the name, office, address, and office telephone number of the firm or individual who will initiate the audit.

(c)(i) Advise the taxpayer of the right to review and copy the audit contract if the audit will be conducted by a private auditing firm.

(ii) If the audit is conducted by a private auditing firm, the notice shall also advise the taxpayer whether the payment of compensation to the private auditing firm is contingent upon the actual collection of tax or in any other way dependent on the outcome of the audit.

(d) Summarize the remedies available to the taxpayer if the taxpayer should choose to contest the audit findings.

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- (a) Reasonably describe the nature of the audit.
- (b) Identify the name, office, address, and office telephone number of the firm or individual who will initiate the audit.
- (c)(i) Advise the taxpayer of the right to review and copy the audit contract if the audit will be conducted by a private auditing firm.
- (ii) If the audit is conducted by a private auditing firm, the notice shall also advise the taxpayer whether the payment of compensation to the private auditing firm is contingent upon the actual collection of tax or in any other way dependent on the outcome of the audit.
- (d) Summarize the remedies available to the taxpayer if the taxpayer should choose to contest the audit findings.

(e) Describe the interest, penalties, and costs, including audit costs, for which the taxpayer may be liable if taxes are determined to be due.

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D. (2) During the course of the audit, the taxpayer shall be notified of the name, office address, and office telephone number of each auditor assigned to the audit. Private auditing firms shall provide any taxpayer subject to an audit with access to an original or a copy of the audit contract specifying the terms under which the audit firm was engaged, which may be reviewed and copied by the taxpayer.

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D. (3)(a) Upon completion of the audit or examination, all original information obtained by the private agency or 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 agency or auditing firm shall not retain any copies of such information.

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D. (3)(a)All taxpayer related information derived, compiled, or generated by the private agency or auditing firm in any form whatsoever, including audit schedules, working papers, and copies of information received from the taxpayer, **shall be delivered to the tax collector, except** to the extent such information may be retained by **certified public accountants** in accordance with the **Louisiana Accountancy Act**.

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D. (3) (b) No provision of this Section shall prohibit a private agency or auditing firm from retaining books and records of a taxpayer until the termination of any legal proceedings related to the audit or examination.

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D. (3) (c) The tax collector and the private agency or auditing firm may enter into a written agreement in accordance with this Subparagraph, authorizing such private agency or auditing firm to act as agent for the storage and safekeeping of documents otherwise required to be maintained by the tax collector. Such documents shall be maintained in accordance with R.S. 47:1508 et seq.

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E. If the cost of a sales tax compliance audit is to be borne by the taxpayer, pursuant to R.S.

47:337.75, the cost to the taxpayer shall not exceed thirty percent of the amount of the additional taxes determined to be due as the result of the audit.

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F. Each contract entered into pursuant to this Section may be subject to review and oversight by the legislative auditor pursuant to R.S. 13:5529. Contracts entered into after July 1, 2010 shall contain a statement by the local collector and private agency or auditing firm certifying that the terms and conditions of the contract are in compliance with the requirements of the provisions of this Section. Any contract that does not satisfy the requirements of this Section may be declared null and void by a court of competent jurisdiction.

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G. The private agency or auditing firm hired for the purposes of this Section, including any employee, contractor, or other agent of such private agency or auditing firm conducting such examination or audit, shall be subject to the Code of Governmental Ethics as set forth in R.S. 42:1101 et seq.

§337.28. Collector's authority to determine the tax in certain cases

A. In the event any dealer fails to make a report ...ormakes a grossly incorrect report or a report that is false or fraudulent, the collector shall make an **estimate**,

B. In the event the dealer has imported tangible personal property and he fails to produce an invoicethen the collector **shall ascertain in any manner feasible** the true cost price and shall assess and collect the tax.....

C. In the case of the lease or rental of tangible personal property, if the consideration given or reported by the dealer does not, in the judgment of the collector, represent the true or actual consideration, then the collector is authorized to **ascertain in any manner feasible** the true or actual consideration.....

Estimates....

AU Section 342

Auditing Accounting Estimates

Developing Accounting Estimates

.05

Management is responsible for establishing a process for preparing accounting estimates.

Estimates....

AU Section 342

Auditing Accounting Estimates

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.....Although the process may not be documented or formally applied, it normally consists of—Identifying situations for which accounting estimates are required.

Estimates....

AU Section 342

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Management is responsible for establishing a process for preparing accounting estimates. Although the process may not be documented or formally applied, it normally consists of—
Identifying situations for which accounting estimates are required.

Estimates....

AU Section 342

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Identifying the relevant factors that may affect the accounting estimate.

Estimates....

AU Section 342

Auditing Accounting Estimates

Developing Accounting Estimates

.05

Accumulating relevant, sufficient, and reliable data
on which to base the estimate.

Estimates....

AU Section 342

Auditing Accounting Estimates

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Developing assumptions that represent management's judgment of the most likely circumstances and events with respect to the relevant factors.

Estimates....

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Determining the estimated amount based on the assumptions and other relevant factors.

Estimates....

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Determining that the accounting estimate is presented in conformity with applicable accounting principles and that disclosure is adequate.

Estimates....

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The risk of material misstatement of accounting estimates normally varies with the complexity and subjectivity associated with the process, the availability and reliability of relevant data, the number and significance of assumptions that are made, and the degree of uncertainty associated with the assumptions.

§337.28.1. Arbitrary assessments prohibited

A. Notwithstanding any provision of this Chapter to the contrary, the collector shall be prohibited from issuing an arbitrary assessment., the term "arbitrary assessment" shall mean an estimated assessment issued by the local collector which does not comply with R.S. 47:337.28, 337.48(A), or 337.53. However, no provision of this Chapter shall prevent the collector from determining correct tax as provided for in R.S. 47:337.35. An assessment shall not be considered an "arbitrary assessment" **if the taxpayer does not provide records as required by R.S. 47:337.29 and/or R.S. 47:337.36. The taxpayer shall bear the burden of proving that the assessment was not in compliance with the law.**

§337.28.1. Arbitrary assessments prohibited

B. If the assessment by the collector is determined by a court of competent jurisdiction or the Board of Tax Appeals to be an arbitrary assessment, the assessment shall neither interrupt nor suspend prescription, and the dealer shall be reimbursed by the collector for reasonable costs of litigation.

§337.28.1. Arbitrary assessments prohibited

C. No assessment shall be made under this Chapter for the purpose of depriving a taxpayer of his constitutional right to a three-year prescriptive period for the assessment of tax in accordance with Article VII, Section 16 of the Constitution of Louisiana.

Sampling....

§337.35. Collector's duty to determine correct tax

A. As soon as practicable **after each return or report is filed** under any of the provisions of this Chapter, 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.

Sampling....

§337.35. Collector's duty to determine correct tax

B. The **taxpayer** and the **collector** or his designee may enter into a **binding agreement** to use a **sampling procedure** as a basis for **projecting audit findings**, which may result in **either an underpayment or overpayment of tax.**

Sampling....

§337.35. Collector's duty to determine correct tax

C.(1) Before using a sampling procedure to project the findings of an audit and establish a tax liability, **the collector or his designee shall notify the taxpayer in writing** of the sampling procedure he intends to use, including but not limited to how the tax will be computed, the population to be sampled, and the type of tax for which the tax liability will be established.

Sampling....

§337.35. Collector's duty to determine correct tax

C.(2) The sampling procedure used shall produce a sample which shall reflect as nearly as possible the normal conditions under which the business was operated during the period to which the audit applies. If either the taxpayer or the collector can demonstrate that a transaction in a sample for a particular time period is not representative of the taxpayer's business operations during that time period, the transaction shall be eliminated from the sample and shall be separately determined in the audit.

Sampling....

§337.35. Collector's duty to determine correct tax

C.(3) If the **taxpayer demonstrates** that any **sampling procedure** used by the collector **was not developed** or applied in accordance with **generally recognized sampling techniques**, that **portion** of the audit established by a projection based upon the development or application of the disputed sampling procedure **shall be replaced** by a projection based upon a **new sample** that **conforms** to generally recognized sampling techniques.

Sampling....

§337.35. Collector's duty to determine correct tax

C. (4) Generally recognized sampling techniques and standards set forth by the American Institute of Certified Public Accountants shall be used as guidance in developing audit sampling techniques for purposes of this Section.

Types of Sampling.....

Block Sampling

Stratified Random Sampling

Simple Random Sampling

Cluster Random Sampling

Systematic Random Sampling

Types of Sampling.....

Block Sampling

Monthly
Quarterly

Auditor picks by filing period; either monthly or quarterly. Can pull by high, low, etc...

Types of Sampling.....

Stratified Random Sampling

Put data into sampling system like IDEA or MTC software

Provides

Stratums

Floor

Ceiling

Below Floor - Not reviewed

Above Ceiling - All reviewed

Types of Sampling.....

Simple Random Sampling

Every transaction has the same equal chance of being picked

Types of Sampling.....

Cluster Random Sampling

Auditor and Taxpayer agree to separate data into specific groups;
then certain groups are reviewed in whole.

Types of Sampling.....

Systematic Random Sampling

Population is put into an order and then the n th item is selected for review.

YESTERDAYS OF LAKE CHARLES, INC. VERSUS CALCASIEU PARISH SALES AND USE TAX
DEPARTMENT CONSOLIDATED WITH COWBOY'S NIGHTLIFE, INC. VERSUS CALCASIEU
PARISH SALES AND USE TAX DEPT

NO. 2015-C-1676

SUPREME COURT OF LOUISIANA

May 13, 2016

"We further hold the **trial court erred** in finding **"the Collector's arbitrary tax calculation methodology was improper."** First, we hold La. Rev. Stat. 47:337.28.1 applies in this case because **the clubs failed to provide "suitable records"** as required by La. Rev. Stat. 47:337.29. Therefore, **the Collector's assessment could not be deemed "arbitrary,"** and **the clubs bore the burden of proving the assessment was not in compliance with the law.** La. Rev. Stat. 47:337.28.1(A).

YESTERDAYS OF LAKE CHARLES, INC. VERSUS CALCASIEU PARISH SALES AND USE TAX
DEPARTMENT CONSOLIDATED WITH COWBOY'S NIGHTLIFE, INC.

VERSUS CALCASIEU PARISH SALES AND USE TAX DEPT

NO. 2015-C-1676

SUPREME COURT OF LOUISIANA

May 13,

2016

*Next, we hold there is no requirement in La. Rev. Stat. 47:337.35(B) that the agreement between the taxpayer and the collector to use a particular sampling procedure must be in writing to be binding. Furthermore, we find the audit package and the notice of intent to assess, along with the accompanying letter, were sufficient to inform the taxpayer in writing of the sampling procedure the Collector intended to use to project the findings of the audit and establish a tax liability. Thus, under both La. Rev. Stat. 47:337.28.1(A) and La. Rev. Stat. 47:337.35(C), **the clubs bore the burden of demonstrating any sampling procedure used by the Collector was not developed or applied in accordance with generally recognized sampling techniques. La. Rev. Stat. 47:337.35(C)(3).**"*

§337.48. Determination and notice of tax due

A.(1)the collector shall determine the tax, penalty, and interest due by estimate or otherwise.

B.the collector shall cause an audit, investigation, or examination, as provided for by R.S. 47:337.35, to be made to determine the tax, penalty, and interest due.....

Understand the Audit.....

Audit Report

Exhibits

Sample Findings

Working Papers

Schedules

Sampling Projection

Exceptions:

Prescription

Extraordinary Transactions



QUESTIONS

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