

## NOTICE OF INTENT

### Louisiana Uniform Local Sales Tax Board

#### Voluntary Disclosure Agreements

(LAC 72:I.105)

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 Louisiana Uniform Local Sales Tax Board proposes to adopt LAC 72:I.105 regarding a uniform voluntary disclosure program for local sales and use tax.

Act 274 of the 2017 Regular Legislative Session enacted R.S. 47:337.102 to establish the Louisiana Uniform Local Sales Tax Board and to define its powers and authority. Under R.S. 47:337.102(F), the board shall promulgate rules to establish a uniform voluntary disclosure program for taxpayers seeking relief from penalties in cases where a liability to more than one local sales and use tax collector is owed, requires the board to accept applications from taxpayers seeking to participate in the program, and authorizes the board to issue a binding recommendation for the waiver of penalties for taxpayers who have complied with program requirements. The purpose of this proposed regulation is to fulfill the board's obligations under the statute.

### Title 72

#### UNIFORM LOCAL SALES TAX

##### Part I. General Provisions

#### Chapter 1. Administrative Procedures

##### §105. Voluntary Disclosure Agreements

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

*Applicant*—any association, corporation, estate, firm, individual, joint venture, limited liability company, partnership, receiver, syndicate, trust, or any other entity, combination or group that has a local sales tax liability to more than one local sales and use tax authority and submits or arranges through a representative for the submission of an application to request a voluntary disclosure agreement for said undisclosed local sales tax. Applicants may be registered or unregistered with the collectors. If the application is submitted through a representative, anonymity of the applicant can be maintained until the board issues a binding recommendation for waiver of the delinquent penalty by the collectors.

*Application*—a completed “Application to Request Voluntary Disclosure Agreement” form filed with the Board and all supplemental information including, but not limited to, cover letters, schedules, reports, and any other documents that provide evidence the applicant has complied with the requirements for a voluntary disclosure agreement. Supplemental information requested by the board or collectors and timely provided by the applicant shall be considered part of the application.

*Application Date*—the date a fully completed application requesting a voluntary disclosure agreement is received by the board. Supplemental information requested by the board or collectors and timely provided by the applicant shall not extend or delay the application date.

*Binding Recommendation*—a recommendation by the board, authorized under R.S. 47:337.102(F), declaring that an applicant has complied with the requirements of the voluntary disclosure program and for the waiver of delinquent penalties by the collectors upon full payment of taxes and interest. This recommendation shall be binding absent fraud, material misrepresentation, or misrepresentation of the facts by the taxpayer.

*Board*—the Louisiana Uniform Local Sales Tax Board and its duly authorized representatives.

*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.

*Delinquent Penalty*—penalties imposed pursuant to R.S. 47:337.70 or R.S. 47:337.73 as a result of the failure of the taxpayer to timely make any required return or payment.

*Local Sales Tax*—a tax imposed by a local taxing authority under the provisions of Article VI, Section 29 of the Constitution of Louisiana.

*Local Taxing Authority*—a political subdivision of the state authorized to impose sales tax under the provisions of Article VI, Section 29 of the Constitution of Louisiana.

*Look-Back Period*—the period for which the applicant agrees to disclose and pay the tax and interest due.

*Signature Date*—the date when a collector physically or electronically signs the voluntary disclosure agreement. If the collector fails to physically or electronically sign the voluntary disclosure agreement within 30 days of notification by the board that the agreement is available for signature, the signature date shall be the thirtieth day after such notification.

*Undisclosed Liability*—a sales or use tax liability that became due during the look-back period and which has not been determined, calculated, researched, identified by or made known to the collector at the time of disclosure.

*Voluntary Disclosure Agreement*—a contractual agreement between an applicant and a collector wherein the applicant agrees to voluntarily pay the tax and interest due to a local taxing authority on a previously undisclosed liability involving a local sales or use tax and the collector agrees to waive payment of the whole of the delinquent penalty associated with that liability as such is described in R.S. 47:337.71 and to not pursue sales or use tax liabilities prior to the look-back period listed in the agreement.

## B. Program Requirements

1. An undisclosed liability will qualify for a voluntary disclosure agreement if it results from the underpayment or non-payment of sales tax due to an error in the mathematical computation of the tax due on the return, interpretation of the law, or process of reporting the tax due on the return. An undisclosed liability also qualifies if it resulted from the merger or acquisition of a company that previously failed to properly report sales and use taxes to a collector.

a. An error in the mathematical computation of the tax due on the return is an error on the part of the taxpayer in mathematical computation on the face of the return or on any of the supporting documents or the unintentional failure to include all amounts necessary for calculating the correct amount of taxes due on the return.

b. An error in the interpretation of the law is a construction of the law on the part of the taxpayer contrary to the collector's construction of the law that caused the applicant to incorrectly determine that no tax or a smaller amount of tax was due.

c. An error in the process of reporting the tax due on the return is an error, omission, or a mistake of fact of consequence to the determination of the tax liability on the part of the taxpayer.

2. Notwithstanding the provisions of paragraph 1 of this subsection, an applicant shall fail to comply with the requirements for a voluntary disclosure agreement under the following conditions.

a. The applicant is registered as a dealer that is required to report retail sales or sales at retail, as defined in R.S. 47:301(10), to the collector on the application date and the undisclosed liability results from the applicant's failure to file returns for a local sales tax.

b. The undisclosed liability results from the filing of false, fraudulent, or grossly incorrect returns and the circumstances indicate that the taxpayer had intent to defraud the local taxing authority of the tax due under a local ordinance or the Uniform Local Sales Use Tax Code as provided in R.S. 47:337.1, et seq.

c. The applicant has been contacted by the collector to inquire about a tax matter, including but not limited to nexus, a potential tax liability or an audit of the taxpayer's records provided such contact occurred in writing and prior to the application date of the agreement.

d. The applicant is affiliated, as defined by law, with an entity that has been contacted by the collector for the purpose of performing an audit. An applicant shall be considered in compliance with the requirements of the voluntary disclosure program after the audit of the affiliated entity has been completed, provided the undisclosed liability qualifies under the criteria described in Paragraph 1 of this Subsection and the applicant is not disqualified under the criteria listed in Subparagraphs a, b or c of this Paragraph.

3. Notwithstanding the conditions listed in paragraphs 1 and 2 of this subsection, applicants that applied for a voluntary disclosure agreement with a collector prior to the effective date of this rule and subsequently entered into a voluntary disclosure agreement with the collector shall be deemed to have met the program requirements for that local taxing authority.

## C. Application and Evaluation of Offer to Enter into a Voluntary Disclosure Agreement

1. Applications to enter into voluntary disclosure agreements by taxpayers seeking relief from penalties in cases where a liability to more than one local sales and use tax collector is owed shall be filed on forms provided and in the manner prescribed by the board. The applicant or his authorized representative, acting under the

authority of a power of attorney, shall sign the application, provide a statement of the facts, and include any other information or declarations required to verify that the applicant has complied with program requirements. Taxpayers may apply anonymously or disclose their identity on the application form.

2. If unregistered, the applicant shall apply to the collectors for sales tax accounts within 30 days of the application date.
3. The board shall review the application and, based upon the information included therein, determine if the applicant complies with the requirements for a voluntary disclosure agreement.

- a. If the board determines from the information included in the application that the applicant has complied with program requirements for a voluntary disclosure agreement, notification of the board's finding shall be sent to the applicant. The notification shall include the following statement:

The Louisiana Uniform Local Sales Tax Board has reviewed your application and determined from the information included therein that the requirements to qualify for a voluntary disclosure agreement have been met. Therefore, the Board hereby issues a recommendation for the local sales and use tax collector to enter into a voluntary disclosure agreement and to waive penalties upon full payment of the tax and interest due. As provided in R.S. 47:337.102(F), this recommendation shall be binding on the local sales and use tax collector absent fraud, material misrepresentation, or any such misrepresentation of the facts by the taxpayer.

- b. If the board determines from the information included in the application that the applicant has not complied with program requirements for a voluntary disclosure agreement, the board shall send notice of its finding to the applicant with an explanation for the determination. The applicant may present additional information for consideration by the board within 30 days of the date of the notice. The board shall review the additional information and render a final determination regarding the applicant's compliance with program requirements.

- i. If the board determines that the applicant has complied with program requirements after considering any additional information provided, a notification of binding recommendation shall be sent to the applicant that includes the statement contained in subparagraph a of this paragraph.

- ii. If the board determines that the applicant has not complied with program requirements after considering any additional information provided, the applicant may request the application be sent to the collector for consideration. The agreement may be signed, at the option of the collector, without a binding recommendation from the board.

- c. Anonymous applicants who have complied with program requirements shall reveal their legal identity to the board and, if applicable, provide a copy of the power of attorney for the person who submitted the application on their behalf within five business days of receiving notification of the binding recommendation.

The legal name of the taxpayer shall be used to prepare the voluntary disclosure agreement for signature.

#### D. Determining the Look-back Period and Treatment of Periods prior to the Look-back Period

1. Except for taxes collected and not remitted, the look-back period for existing entities shall include that portion of the current calendar year prior to and including the application date and the three immediately preceding calendar years.

2. Except for taxes collected and not remitted, the look-back period for a discontinued, acquired, or merged entity shall include the last calendar year in which the discontinued, acquired, or merged entity had nexus in a jurisdiction and the three immediately preceding calendar years.

3. For taxes collected and not remitted, the look-back period shall include all filing periods in which tax was collected and not remitted up to and including the application date. This look-back period shall not affect the look-back period described in Subparagraphs a or b of this Paragraph for undisclosed liabilities unrelated to tax collected and not remitted.

4. The board or the collectors, in concurrence with the applicant, may adjust the look-back period to accommodate special circumstances.

5. Look-back periods shall be established from the application date, unless the liability results from a merged or acquired entity as described in Paragraph 2 of this Subsection or there is mutual agreement to adjust a look-back period as provided in Paragraph 4 of this Subsection.

6. Periods prior to the look-back period shall be considered part of the voluntary disclosure agreement. However, payment is not required for any taxes due for these periods.

#### E. Post Approval Procedures and Conditions

1. Once the board determines an applicant has complied with the qualifications for a voluntary disclosure agreement and issues a binding recommendation, the legal name of the taxpayer, which shall appear on the voluntary disclosure agreement, shall be provided to the board. The agreement shall be made available to the collector and the applicant for signature. Each party shall be notified when the agreement has been sent to the other party for signature.

2. The applicant and the collector shall sign the agreement within 30 days of its delivery by the board. The agreement shall become effective upon the signature of both parties. If the collector fails to sign the agreement within 30 days, the thirtieth day after notification by the board shall be the signature date of the agreement for the collector and that date shall be considered the date of the collector's signature. If the applicant fails to sign the agreement within 30 days, the collector may terminate the agreement. However, the collector may grant an extension beyond the 30 days for the applicant to sign the agreement.

3. After the collector and the applicant sign the agreement, the board shall forward a signed copy to each party.

4. Under the agreement, the applicant and the collector agree to suspend prescription for the look-back period as follows:

a. through June 30 of the calendar year subsequent to the signature date when that date occurs on or after January 1 and on or before June 30; and

b. through December 31 of the calendar year subsequent to the signature date when that date occurs on or after July 1 and on or before December 31.

F. Payment of Tax, Interest, and Penalty Due

1. All tax due for the look-back period shall be paid within 60 calendar days of the signature date or within any extension of time granted by the collector beyond 60 calendar days of the signature date. The taxpayer shall include with this payment documentation detailing the local sales tax due by month and year.

2. The collector shall compute the interest and delinquent penalty due for the tax disclosed and prepare a schedule detailing the tax, interest and delinquent penalty. The schedule may be sent by mail, email, or any other appropriate method of delivery to the applicant or his authorized representative. The applicant shall submit payment for the full amount of interest within 30 calendar days from receipt of the schedule or within any extension of time granted by the collector to submit the payment. If payment of the full amount due has not been received at the expiration of such time, the collector may void the agreement. Once full payment of tax and interest has been received, the collector shall waive any delinquent penalty due.

G. Discovery of Fraud, Material Misrepresentation, or any such Misrepresentation

1. If a collector discovers evidence of fraud, material misrepresentation, or any such misrepresentation of the facts by the taxpayer that were relied upon by the board to determine the applicant met the qualifications for a voluntary disclosure agreement, the collector may:

a. void the agreement and take such administrative, judicial or other legal or equitable action available as if the agreement had never existed; or

b. agree to be bound by the terms of the voluntary disclosure agreement notwithstanding the existence of evidence that indicates the applicant engaged in fraud, material misrepresentation, or any such misrepresentation of the facts.

2. If a collector elects to void the agreement and pursue administrative, judicial or other legal or equitable action available as if the agreement had never existed, the taxpayer may, under rights granted to him by statute, dispute additional liabilities resulting from the collector's determination of fraud, material misrepresentation, or any such misrepresentation of the facts.

H. Information furnished to local taxing authorities under a voluntary disclosure agreement shall be considered and held confidential and privileged by the political subdivisions to the extent provided by R.S. 47:1508.

I. A collector may conduct an audit of the look-back period to confirm that the correct amount of tax has been paid. Interest and penalty may be assessed on tax found due in excess of the amounts reported under the voluntary disclosure agreement. The collector shall not assess additional interest or penalty for amounts reported and paid under the voluntary disclosure agreement except in cases of fraud, material misrepresentation, or any such misrepresentation of the facts by the taxpayer.

J. The terms of the voluntary disclosure agreement shall be valid, binding, and enforceable by and against all parties, including their transferees, successors, and assignees.

K. The board reserves the right to develop policies and procedures to accumulate and monitor information for evaluating the effectiveness of the voluntary disclosure agreement program.

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

HISTORICAL NOTE: Promulgated by the Louisiana Uniform Local Sales Tax Board, LR 45: ().

**Public Comments**

Interested persons may submit written data, views, arguments or comments to J. A. Cline, Jr., Sales Tax Analyst, Louisiana Uniform Local Sales Tax Board, P.O. Box 404, Port Allen, LA 70767. Written comments shall be accepted until 4:30 p.m., January 21, 2019.

**Public Hearing**

A public hearing shall be held on January 28, 2019, at 10:00 a.m. in Meeting Room 3 on the 1<sup>st</sup> floor of the Louisiana Municipal Association Building, 700 N. 10th Street, Baton Rouge, LA 70802.

Roger Bergeron

Executive Director

Louisiana Uniform Local Sales Tax Board