

**Policy and Procedure Memorandum**

**PPM No. 50.3**

**Subject: Requests for Board Tax Advisories**

**Effective Date: December 18, 2018**

**This Policy and Procedure Memorandum supersedes any previously issued memoranda that conflict with these directives.**

**A. Purpose:**

The purpose of this policy is to establish the procedures to be followed in order to evaluate and process requests for Board tax advisories that have been submitted to the Louisiana Uniform Local Sales Tax Board by local tax collectors, taxpayers, dealers, Board members, the Executive Director or any other interested party.

**B. Statutory Authority:**

R.S. 47:337.102(C)(1) and R.S. 47:337.102(C)(5)

**C. The following definitions and the definitions provided in PPM 50.1 apply to this PPM.**

*Designated Person*—the person designated by the Board to evaluate a Request for Guidance or prepare a Board Tax Advisory resulting from such a request.

*Interested Party*—a taxpayer, dealer, collector, Board member, the Executive Director or any other party who has an interest in the proper interpretation of a sales tax law or the proper treatment of a transaction as it relates to local sales and use taxes and who submits a Request for Guidance to the Board. This definition shall include the singular and the plural.

*Postmark Date*—the postmark date on the envelope or folder in which a Request for Guidance is mailed in a properly addressed envelope with sufficient postage for delivery by the United States Postal Service to the Board. If the postmark date is illegible or otherwise unavailable, the received date will be considered the postmark date. If the request is submitted by email, the date the email is electronically transmitted to the Board will be considered the postmark date. If the request is delivered by courier or other form of delivery service, the date the request is received by the Board will be considered the postmark date.

*Received Date*—the date a Request for Guidance is physically received by the Board regardless how delivered (e.g., United States Postal Service, private delivery service,

personal courier, etc.). If the request is physically received on a weekend or holiday, the received date shall be the first business day after physical delivery. If the request is sent by email or other electronic means during normal business hours as stated on the Board's website, the received date shall be the first business day after it is electronically transmitted.

*Request for Guidance*—a request submitted by an interested party soliciting legal guidance regarding a local sales and use tax issue in the form of a Board Tax Advisory.

#### **D. General Requirements and Procedures**

1. A request for a Board Tax Advisory must contain the following information:
  - a. the contact name, mailing address, email address, and telephone number of the party that submits the request for the Board Tax Advisory;
  - b. the identity of all local tax collectors that requested the Board Tax Advisory, if the request is submitted on behalf of local collectors;
  - c. the identity of all taxpayers or dealers that requested the Board Tax Advisory, if the request is submitted on behalf of taxpayers or dealers;
  - d. the specific questions to be answered or issues to be addressed;
  - e. a complete statement of all relevant facts;
  - f. citations to or copies of all relevant statutes, regulations, court decisions, advisory opinions, or other authority that are relevant to the issue;
  - g. copies of all relevant documents such as contracts, wills, deeds, account statements, work papers, reports, invoices, etc.; and
  - h. a statement attesting if:
    - i. the issue is under audit, appeal or in litigation with a taxing or revenue authority;
    - ii. a taxing or revenue authority has previously issued an advisory opinion on the same issue (with copy attached); or
    - iii. the Office of the Attorney General has been requested to issue an opinion concerning the issue.
2. Receipt and Recording of Requests for Guidance
  - a. Requests for guidance received by mail, private delivery service or courier shall be stamped with the received date and segregated from other correspondence. Physically delivered correspondence shall be filed in a physical folder for storage in accordance with the Board's record retention policy. Requests submitted by email or other electronic means shall be saved in electronic format in a computer file established for such requests so the request can be retrieved, reviewed or printed at a later time.

- b. All requests will be entered into the tracking system provided by the Board for such information. Information entered into the system should include:
    - i. the postmark and received dates;
    - ii. the name of the person(s) who requested the guidance;
    - iii. the name(s) of the taxpayers, dealers, or local tax collector(s) affected by the Board Tax Advisory; and
    - iv. a short title that describes the issues involved in the Board Tax Advisory.
  - c. Physically submitted requests and supporting documentation will be scanned for electronic storage.
  - d. A letter and/or email will be sent to the interested party informing them that the request has been received.
3. Preliminary Review and Evaluation of Request
- a. All documents will be assembled and delivered to the Designated Person for review and evaluation.
  - b. The Designated Person will review the documents and determine if the following conditions have been met.
    - i. All required documents have been included with the Request for Guidance.
    - ii. The Board is qualified to respond to the Request for Guidance. In making such determination, it should be remembered that R.S. 47:337.102(C)(1) and (5) are permissive and not mandatory. The Board should deny requests for guidance under the following conditions.
      - (a). The guidance would involve a matter not solely related to the imposition, collection, or administration of a local sales tax authorized under the constitution and laws of this state and governed by Chapters 2 and 2D of Title 47 of the Louisiana Revised Statutes of 1950, as amended, or a regulation, court case or policy involving these laws.
      - (b). The issue involves a “common sales tax law” defined in R.S. 47:337.2. The Louisiana Department of Revenue has jurisdiction over matters concerning common sales tax laws and requests for advice on these matters should be directed to that agency.
  - c. The Designated Person will determine if there are reasons a Board Tax Advisory should be issued or denied. A Board Tax Advisory should be issued if the law or regulations are unclear or if there is disagreement among local tax collectors regarding the proper interpretation of the law and the guidance would assist taxpayers and local tax collectors in complying with the law. A Board Tax Advisory might not be issued under the following conditions.
    - i. The Board Tax Advisory involves a single local tax collector and the issue can be resolved by an internal policy from that agency.

- ii. The law and regulations are clear.
  - iii. A rule would be more appropriate.
  - iv. The issues involved in the request concern alternative treatments or purely hypothetical situations.
  - v. The issues involved in the request concern matters scheduled for audit or are currently in an audit, appeal, or protest.
  - vi. The issues involved in the request concern a dispute that is being litigated or is likely to be litigated in the near future.
  - vii. The request can be better handled by other means.
  - viii. The local collectors are in disagreement on the facts.
  - ix. The interested party withdraws the request at any point prior to issuance of the Board Tax Advisory.
  - x. The Board, in its sole discretion, declines the request.
- d. The Designated Person will prepare a summary of the issues in the request, an analysis of the Board's authority to issue advice on the matter, and if there are reasons for or for not issuing a Board Tax Advisory. The Executive Director will submit the report, redacted to remove all taxpayer identifying information to protect taxpayer confidentiality, to the Board during a Board meeting. The Board will determine if the request qualifies for consideration. All discussion of the Request for Guidance in a Board meeting will proceed in a manner so as not to reveal taxpayer identifying information and protect taxpayer confidentiality.
4. Determination of the Board
- a. If the Board denies the request, the Executive Director shall send a notice to the interested party informing them that a Board Tax Advisory will not be issued and the reasons for the denial. The file will be closed.
  - b. If the Board approves the request, the Designated Person will research the matter and, if appropriate, prepare a preliminary ruling.
- 5 Researching and Preparing the Board Tax Advisory
- a. The Designated Person may solicit additional information from taxpayers, the affected local tax collectors, or any other resource provided that information received from taxpayers will be treated as confidential in accordance with R.S. 47:1508. The Designated Person will consult with the Executive Director and determine if a Board Tax Advisory is still appropriate. The Executive Director will notify the Board if at any time he determines that a Board Tax Advisory is not appropriate. The Board will consider the matter in a Board meeting in a manner so as not to reveal taxpayer identifying information and protect taxpayer confidentiality and advise the Executive Director.

- b. The Designated Person will prepare a “draft” Board Tax Advisory and submit it to the Executive Director. The Executive Director may order changes to the draft or approve it without changes. Once the draft is approved by the Executive Director, it shall be forwarded to the Board’s legal counsel for review and recommendation. Upon completion of legal counsel’s review and recommendation, the Designated Person will revise the draft in accordance with the recommendations and return it to the Executive Director so that a copy can be provided to the Board for comment.
- c. The Designated Person will coordinate with the Executive Director to incorporate any changes approved by the Board. If the draft is materially amended, it shall be returned to the Board’s legal counsel for review and recommendation. Upon completion of the legal counsel’s review and recommendation and after the draft is approved for distribution by the Executive Director, it will be sent for review to the interested party that requested the Board Tax Advisory. The interested party may:
  - i. accept the final draft as prepared;
  - ii. submit additional information for consideration; or
  - iii. withdraw the request.
- d. The Designated Person will consult with the Executive Director and determine if any additional information submitted is relevant to the issues. Relevant information will be incorporated into the final draft. If the draft is materially amended due to the additional information, the final draft shall be referred to the Board’s legal counsel for review and recommendation. Upon completion of the legal counsel’s review and recommendation, and the final draft approved by the Executive Director, it will be submitted to the Board for acceptance.
- e. If the Board approves the final draft as prepared, the Board Tax Advisory will be placed in final form, delivered to the interested party and posted to the Board’s website. Before posting to the Board’s website, the Board Tax Advisory shall be redacted to remove any information that would identify any taxpayer involved in the issue.
- f. All Board tax advisories shall include the following disclaimer:

A Board Tax Advisory is issued under the authority of R.S. 47:337.102(C)(1) and (5) to provide guidance to the public and local sales and use tax collectors on matters concerning the imposition, collection, and administration of local sales and use taxes authorized under the constitution and laws of this state. It applies principles of law to a specific set of facts and is an expression of the position of the Louisiana Uniform Local Sales Tax Board regarding particular issues. A Board Tax Advisory does not have the force and effect of law, is not binding on the public or local collectors and is not subject to appeal to the Louisiana Board of Tax Appeals.

The Board, in its sole discretion, may authorize exceptions to this policy by unanimous approval of its members.

Revision History: December 18, 2018 (new document).

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