



LOUISIANA UNIFORM LOCAL SALES TAX BOARD

Policy Advice No. 20-004

**June 12, 2020
Sales and Use Tax**

Assessment of Interest and Penalty for Local Sales Tax Returns Submitted Subsequent to an Extended Filing Date

Purpose

The purpose of the Louisiana Uniform Local Sales Tax Board is to promote uniformity and efficiency in the imposition, collection, and administration of local sales and use taxes. This policy advice has been issued to clarify the authority of local sales and use tax collectors when assessing interest and penalties on local sales tax returns filed subsequent to an extended filing date.

Question Presented

From what date should a local collector assess interest and delinquent penalty on a liability resulting from the filing of a sales tax return after the date to which an extension has been granted to file?

Analysis & Response

R.S. 47:337.18 (A)(1)(a) states, "... taxes levied by the local ordinance shall be due and shall be payable monthly on the first day of the month. For the purpose of ascertaining the amount of tax payable, all dealers shall transmit, on or before the twentieth day of the month following the month in which this tax becomes effective, to the collector, upon forms prescribed, prepared, and furnished by him ... returns showing ... all taxable transactions during the preceding calendar month." Consequently, taxpayers are not required to report taxes until the twentieth day of the following month even though due on the first day of the following month. It is accepted that if the taxes are reported when required by law, interest is not assessed between the first (due date) and twentieth (reporting date) of the following month. But if a taxpayer files after the date established

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for transmitting the returns and remitting the required tax due, interest is calculated from the first day of the following month until the tax is paid. According to R.S. 47:337.69:

§337.69. Interest on unpaid taxes

A. When any taxpayer fails to pay a tax, or any portion thereof, on or before the day where it is required to be paid under the provisions of this Chapter, interest shall be added to the amount of tax due. Such interest shall be computed from the due date until the tax is paid. The interest shall be an obligation to be collected and accounted for in the same manner as if it were a part of the tax due and can be enforced in a separate action or in the same action for collection of the tax and shall not be waived or remitted.

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As an example, for an April filing period the tax must be reported and paid by the following May 20th so as to not become delinquent. If the taxpayer fails to report and pay by May 20th, interest is assessed from May 1st until the tax is paid. So, if a taxpayer files one day past the filing date (May 21st), interest for the 20 day period from May 1st through May 21st is assessed.

But what if the reporting date of the return is delayed until after May 20th? A collector may delay the filing date under R.S. 47:337.18(A)(4):

§337.18. Returns and payment of tax; penalty for absorption

A. General provisions.

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(4) The collector, for good cause, may extend, for not to exceed thirty days, the time for making any returns required under the provisions of this Chapter.

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How should the collector calculate interest when the time for making the return has been extended by thirty days? An analysis of R.S. 47:337.18 (A)(1)(a) reveals: 1) the interest and filing dates are unique and independent and 2) the interest date, except that interest is assessed when taxes are not filed timely, is unaffected by the date required to file returns. If the taxpayer files on or before the extended due date, interest is not assessed. But, interest for an extended filing deadline, as in a normal deadline, is calculated from the first day of the month subsequent to the period for which the tax is reported. In our previous example, an April filing period with a filing date of May 20th was considered. Let's assume the collector extends the filing period until June 20th. If the return is filed on June 21st, interest is still assessed from the due date, May 1st. According to the statute, interest is charged from the due date. Changing the filing date does not alter the due date.

But, would this model also apply to delinquent penalty? According to R.S. 47:337.70:

337.70. Penalty for failure to make timely return

A.(1) When any taxpayer fails to make and file any return required to be made under the provisions of this Chapter before the time that the return becomes delinquent or when any taxpayer fails to timely remit to the collector the total amount of tax that is due on a return which he has filed, there shall be imposed, in addition to any other penalties provided, a specific penalty to be added to the tax.

(2) In the case of the filing of a return without remittance of the full amount due, the specific penalty imposed by this Paragraph for each thirty-day period shall be calculated only on the additional amount due from the taxpayer after the deduction of payments timely submitted, or submitted during any preceding thirty-day period.

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The penalty provided by this Paragraph shall not be imposed for any thirty-day period for which a penalty for failure to file a tax return or for filing after the return becomes delinquent is assessed.

(3) The penalties provided for in this Subsection shall not be imposed for more than five thirty-day periods in total for each tax return required to be filed.

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The statute shows the penalty is based upon the date the taxpayer fails to make and file any return required before the time that the return becomes delinquent or fails to timely remit to the collector the total amount of tax that is due. Therefore, unlike the interest date, the date for assessing delinquent filing and payment penalties is dependent upon the filing date. If the time for making any returns has been extended, delinquent penalties would be assessed from the new filing deadline. Returning to our example, consider an April filing period with a normal filing date of May 20th. The collector extends the filing period (30 days) until June 20th. If the return is filed on June 21st, unlike interest, delinquent penalty is assessed from the new filing date of June 20th. Changing the filing date does affect the date from which penalty is calculated.

Conclusion

When taxpayers submit returns late for periods with extended filing deadlines, collectors should assess interest from the first day of the month following the reporting period. Delinquent penalty is assessed from the filing date, original or extended, whichever is applicable to the period.

<p>This Policy Advice is written to provide guidance to the public and local tax collectors. It is a written statement issued to apply principles of law to a specific set of facts. This Policy Advice does not have the force and effect of law and is not binding on the public or local tax collectors. It is a statement on the Louisiana Uniform Local Sales Tax Board's position and is binding on the Board until superseded or modified by a subsequent change in statute, regulation, declaratory ruling, or court decision.</p>
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