



LOUISIANA UNIFORM LOCAL SALES TAX BOARD

Policy Advice No. 20-002

June 12, 2020
Sales and Use Tax

Abatement or Compromise of Interest for Local Sales Tax

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 to waive or remit interest due on a local sales tax liability. The Request for Policy Advice was submitted to the Louisiana Uniform Local Sales Tax Board (“the Board”) on April 21, 2020.

Question Presented

May a local collector waive or remit the interest due on a liability resulting from the delayed filing of a sales tax return or a sales tax audit of a taxpayer’s records?

Analysis & Response

Since July 1, 2003, local sales and use taxes have been governed by the Uniform Local Sales Tax Code (aka: the “UTC”) in Chapter 2-D of Title 47 of the Louisiana Revised Statutes of 1950, as amended [*R.S. 47:337.1 through R.S. 47:337.102*]. R.S. 47:337.2(B)(1) of the UTC states, “Notwithstanding any other provision of law or local ordinance to the contrary, and **except as provided for in Paragraph (3)** [*emphasis added*] of this Subsection, the provisions of this Chapter shall apply in the assessment, collection, administration, and enforcement of the sales and use tax of any political subdivision.” Paragraph (3) lists the exceptions as follows:

§337.2. Intent; application and interpretation of Chapter

LOUISIANA UNIFORM LOCAL SALES TAX BOARD

* * *

B.

* * *

(3) Other provisions of law or local ordinance shall control and be applicable only with respect to the following:

(a) The rate of the sales and use tax.

(b) The effective date of such tax.

(c) The term of the tax.

(d) The purpose for which the proceeds of the tax shall be used.

(e) Vendor's compensation.

(f) Optional exclusions or exemptions allowed by state sales and use tax law, adopted by the local ordinance pursuant to such state law.

(g) Exclusions and exemptions in the local ordinance which were adopted prior to July 1, 2003, pursuant to state law authorizing such adoption, but not allowed as an exclusion or exemption from state sales and use tax.

(h) Exclusions and exemptions in the local ordinance adopted pursuant to legislation enacted under Article VI, Section 29(D)(1) of the Constitution of Louisiana, but not allowed as an exclusion or exemption from state sales and use tax.

* * *

LOUISIANA UNIFORM LOCAL SALES TAX BOARD

R.S. 47:377.4(B)(1) through (7) restate these exceptions as “requirements” of local ordinances. Paragraph (8) adds that local ordinances shall include the amount (rate) of interest as follows:

§337.4. Levy of sales and use taxes

* * *

B. The local ordinance shall contain the following:

* * *

(8) Penalty, interest, or attorney fees due on the sales and use tax. The amount of such penalty, interest, and attorney fees shall be limited as provided by law, including relevant jurisprudence, until such statute or jurisprudence is changed.

* * *

Part F of the UTC [*R.S. 47:337.24 through R.S. 47:337.86*] comprises the Administrative Provisions that define how local sales and use taxes are collected and enforced. Part F is modelled after Chapter 18 of Title 47, which contains the Administrative Provisions for the Louisiana Department of Revenue. The comparable statutes regarding interest are: R.S. 47:337.69 for local sales tax and R.S. 47:1601 for state taxes administered by the Department of Revenue. Although similar, these laws are not identical. R.S. 47:1601(A)(1), regarding state taxes, reads in part, “The interest provided for herein 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, **unless otherwise provided for in this Title** [*emphasis added*], shall not be waived or remitted.” R.S. 47:1601(A)(2)(c) and (d) contain provisions for the secretary of the Louisiana Department of Revenue to abate and compromise interest on state tax liabilities:

§1601. Interest on unpaid taxes

A.

* * *

2.

* * *

(c) Abatement of interest attributable to unreasonable errors and delays by the department. In the case of any assessment of interest attributable in whole or in part to any unreasonable error or delay by the secretary or her designee (acting in an official capacity) in performing a ministerial or managerial act, the secretary may abate all or any part of such interest for any period. For purposes of the preceding sentence, an error or delay shall be taken into account only if no significant aspect of such error or delay can be attributed to the taxpayer involved and after the department has contacted the taxpayer in writing with respect to such deficiency or payment.

(d) In order to promote the effective administration of the tax laws of this state, the secretary may provide by rules and regulations promulgated pursuant to the Administrative Procedure Act for the compromise of the amount of interest to be added to the amount of the tax due as computed pursuant to this Section. A complete record of all such compromises shall be kept by the secretary, shall be open to public inspection and, notwithstanding the provisions of R.S. 47:1508 and 1508.1, shall be published in the department's annual report.

* * *

But may a parish collector abate, comprise or otherwise waive or remit interest due on a local sales tax audit or late filed return? R.S. 47:337.69(A), which addresses the assessment of interest on local sales tax liabilities, stresses that interest cannot be waived or remitted:

§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** [*emphasis added*].

* * *

The distinction is clear. The Department of Revenue's Administrative Provisions allow for abatement and compromise of interest. The UTC contains no such language. So, statutory authority does not exist for either the abatement or compromise of interest at the local level.

Part F of the UTC is similar to the Department's Administrative Provisions except it contains no authority for local collectors to abate, compromise, waive or remit interest. This should not be misconstrued to mean that local taxing authorities (the government entities for whom the collector works) lack authority to enter into settlement agreements with taxpayers regarding interest (or taxes, penalties, attorney fees or any other payments due). This is an area of law separate from tax administration under the UTC. Such resolution would require involvement of a

LOUISIANA UNIFORM LOCAL SALES TAX BOARD

parish attorney or other legal representative to negotiate the settlement and should be done only under consultation with counsel.

Conclusion

Local collectors may not abate, compromise, waive or remit interest on a sales or use tax liability. This does not prohibit local taxing authorities from negotiating settlements with taxpayers for reductions of liabilities. Local taxing authorities considering such action should consult with legal counsel before doing so.

<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>
