

RULE

**Department of Revenue
Policy Services Division**

**Collector's Authority to Determine Tax
(LAC 61:I.4355)**

Under the authority of R.S. 47:307, R.S. 47:337.28, and R.S. 47:1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, has amended LAC 61:I.4355 to provide for uniform state and local sales tax definitions in accordance with the provisions of Act 73 of the 2003 Regular Legislative Session.

Act 73 enacted the Uniform Local Sales and Use Tax Code, R.S. 47:337.1 et seq., to promote uniformity in the administration of state and local sales and use taxes by compiling the local sales and use tax laws in the revised statutes. Revised Statute 47:337.2(C)(2), which provides for the development of uniform state and local sales and use tax regulations, allowed local sales tax collectors until January 1, 2004, to file written requests with the Secretary of Revenue for amendments to any Department of Revenue regulation in effect on July 1, 2003, so that the regulation applies to both state and local sales and use taxes. Local collectors, through the Louisiana Association of Tax Administrators, filed a request with the Secretary of Revenue in December 2003 for amendments to several regulations. Requested amendments to the sales tax definitions are included in this Rule.

Title 61

REVENUE AND TAXATION

**Part I. Taxes Collected and Administered
by the Secretary of Revenue**

Chapter 43. Sales and Use Tax

**§4355. Collector's Authority to Determine the Tax
in Certain Cases**

A. R.S. 47:307 and 47:337.28 impose a direct burden and responsibility upon the collector to determine that the taxable amount reported by any taxpayer is correct and further empowers the collector to assess and collect any tax, penalties or interest which might be due based on correct figures. In the case of a dealer who makes a report that is grossly incorrect, false or fraudulent, the collector is directed by the statute to make an estimate of the retail sales of the dealer, his gross proceeds from rentals or leases of tangible personal property, the cost of any articles of tangible personal property imported by the dealer for use or consumption or distribution or storage to be used or consumed in the

taxing jurisdiction, and the gross amount paid for taxable services. Upon having made the estimate, the collector is further directed to assess all taxes, penalties and interest and the amount assessed is considered to be prima facie correct with the burden on the dealer to prove to the contrary.

B. 1. Solely for state sales or use tax purposes, whenever the secretary has determined that the amount reported by a dealer is incorrect and is required to make an estimate or an assessment in accordance with the provisions of R.S. 47:307, if an examination of any books, records, or documents or an audit thereof is necessary in order to make such assessment, then the secretary shall add to the assessment of the tax, the cost of the examination together with penalties accruing on the cost. The cost and penalties assessed will be collected in the same manner in which the tax is collected.

2. Solely for local sales or use tax purposes, whenever the collector has determined that the amount reported by a dealer is incorrect and must make an estimate or assessment in accordance with the provisions of R.S. 47:337.28(D) or R.S. 47:337.75, if an examination of any books, records, or documents or an audit thereof is necessary in order to make such assessment, then the collector may add to the assessment of the tax, the cost of the examination together with penalties accruing on the cost. The cost and penalties assessed will be collected in the same manner in which the tax is collected.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:307, R.S. 47:337.28, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987), amended by the Department of Revenue, Policy Services Division, LR 31:88 (January 2005).

Raymond E. Tangney
Senior Policy Consultant

0501#014