

Louisiana Department of Revenue

**Administrative Provisions
Statutes and Regulations**



April 2004

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Foreword

This publication contains the administrative statutes and regulations. This publication is current through the 2003 Regular Session of the Louisiana Legislature.

Louisiana Revised Statutes 47:1501 through 47:1691, define the secretary's authority and responsibility for administering the state's tax laws. They include the secretary's powers to assess taxes, impose interest and penalties, audit books and records, file suit, and seize properties. These statutes also establish the Department's procedures when exercising that authority.

Regulations promulgated under the Louisiana Administrative Procedures Act that relate to the Administrative Provisions are also included in this booklet. Regulations, distinguishable from the statutes by the italics print, are located following the related statute and are designated *LAC 61:1.49XX*.

Additional information concerning the secretary's authority or departmental procedures may be obtained from any office of the Louisiana Department of Revenue.



Chapter 18. Administrative Provisions

Part I. General Powers and Duties of Collector

§ 1501. Definitions

A. The terms “collector,” “collector of revenue,” “secretary,” or “secretary of revenue,” when used in this Title, mean the secretary of the Department of Revenue for the state of Louisiana.

B. The term “Subtitle” means and includes all the Chapters in Subtitle II of this Title 47 and any other Title of the Louisiana Revised Statutes of 1950 except the provisions of Chapter 1 of Subtitle IV of Title 47 of the Louisiana Revised Statutes of 1950 and estate taxes for the assessment, collection, administration, and enforcement of taxes, fees, licenses, penalties, and interest due the state of Louisiana which have been delegated to the Department of Revenue.

C. If any provision of this Chapter is found to be in conflict with the provisions of Chapter 1 of Subtitle IV of Title 47 of the Louisiana Revised Statutes of 1950, the provisions of Chapter 1 of Subtitle IV of said Title 47 shall prevail.

§ 1502. Administration by collector

The collector shall collect and enforce the collection of all taxes, penalties, interest and other charges that may be due under the provisions of Sub-title II of this Title and administer the legislative mandates therein contained. To that end, the collector is vested with all the power and authority conferred by this Title, except such as is specifically conferred upon other officials.

§ 1502.1. Merger and consolidation of state tax collector for the city of New Orleans, into the collector of revenue; transfer of functions, records, money, and equipment; additional powers and functions of collector of revenue; transfer of functions, records, money, equipment and powers to the city of New Orleans

A. By authority of Section 32 of Article III of the constitution of 1921, all of the functions, programs and operations of every kind of the state tax collector for the city of New Orleans are hereby merged and consolidated into the collector of revenue whose duties and functions are of a similar nature or character. The collector of revenue shall exercise the administrative functions of the state tax collector for the city of New Orleans on and after January 1, 1975 as now or hereafter to be authorized to be exercised by the constitution and laws in relation to the administration, management and operations of the functions, programs and operations of the office of state tax collector for the city of New Orleans hereby consolidated and particularly Section 21 of Article XIV and

Section 11 of Article X of the constitution of 1921, and R.S. 47:2051 through 47:2114.

(1) The collector of revenue shall have the authority to use the services, personnel and facilities of the city of New Orleans to assist in performing his duties in the issuance of state tax researches, and to depute one or more employees of the city of New Orleans to certify as to the correctness of said state tax researches.

(2) The city of New Orleans is hereby authorized to charge a fee of six dollars for the services rendered in connection with the issuance of each such tax research.

B. Under the transfer of functions provided for herein, any pending or unfinished business of the state tax collector for the city of New Orleans shall be taken over and be completed by the collector of revenue with the same power and authority as the office from which the functions are transferred, and every act done by the collector of revenue in the exercise of such functions shall be deemed to have the same force and effect under all pertinent provisions of law as if done by the official from whom such functions are transferred.

C. All books, papers, records, money, choses in action and all other property of every kind and description, movable and immovable, real and personal, heretofore possessed, controlled or used by the state tax collector for the city of New Orleans in the exercise of functions hereby transferred, are hereby transferred to the collector of revenue.

D. In addition to the functions, powers and duties otherwise vested in the collector of revenue by the provisions of this section, the collector of revenue shall have and exercise the power and authority to contract with the city of New Orleans to utilize the services and personnel of the city of New Orleans to assist him in the performance of his duties herein transferred including the issuance of tax researches as provided by Section 21 of Article XIV of the constitution of 1921, the handling of tax sales and redemptions of property as provided by Section 11 of Article X of the constitution of 1921 and the performance and/or discharge of such other duties, functions and responsibilities provided by law as the collector of revenue may deem necessary and proper; provided that said contracts shall call for issuance of state tax researches in substantially the same form as that used in 1974, and that the master tax records shall be preserved and kept available for public use.

The contract between the collector of revenue and the city of New Orleans as hereinabove provided for shall contain such terms and provisions as shall be deemed necessary, proper and advisable.

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E. Beginning with the taxes levied for the calendar year 1976 and thereafter, the taxes levied by the Board of Levee Commissioners of the Orleans Levee District under its constitutional authority shall be collected by the city of New Orleans upon certification of the rate of the tax to the council of the city of New Orleans, which shall cause the tax to be entered on the tax rolls of the city and collected in the manner and under the conditions and with the interest and penalties prescribed by law for city taxes. Such tax levied by the Orleans Levee District shall be collected at the same time as the collection of taxes levied by the city of New Orleans. The director of finance for the city of New Orleans is hereby authorized to deduct from the aggregate amount of all such taxes collected, a commission in the amount and upon such terms and provisions as shall be agreed upon by and between the Board of Levee Commissioners of the Orleans Levee District and the city of New Orleans and deposit such amount in the general fund of the city of New Orleans, but in no instance shall the commission agreed upon be less than the actual cost of collection. Except as hereinabove set forth, there will be no further deductions as provided in, but not limited to, those deductions provided for in: R.S. 13:933, R.S. 17:696, R.S. 17:829.1, R.S. 33:1453, R.S. 33:1501, R.S. 33:1504, R.S. 47:1910, R.S. 18:1835, R.S. 47:1915, R.S. 16:1105, and R.S. 47:2057. The money then remaining from the total amount collected shall be paid to said board.

(1) The city of New Orleans, as collector of the taxes levied by the Board of Levee Commissioners of the Orleans Levee District, shall exercise all administrative functions necessarily incidental thereto as now or hereafter to be authorized to be exercised by the constitution and laws in relation to the administration, management and operations of the functions, programs and operations of the former state tax collector for the city of New Orleans as provided in Article XIV, Section 21 and Article X, Section 11 of the constitution of 1921, and R.S. 47:2052 through R.S. 47:2114. Any pending or unfinished business of the state tax collector for the city of New Orleans as begun by the collector of revenue shall be taken over and completed by the city of New Orleans, with the same power and authority as the office from which the functions are transferred, and every act done by the city of New Orleans in the exercise of such functions shall be deemed to have the same force and effect under all pertinent provisions of law, as if done by the official from whom such functions are transferred.

§ 1503. Powers of authorized representatives of collector

Any duly authorized representative of the collector, when acting under his authority and direction, shall have the same power as is conferred upon the collector by this Sub-title.

§ 1504. Organization of Department of Revenue

The collector shall cause to be formulated, and shall prescribe, a definite plan of organization of the Department of Revenue and its procedures to provide for the most effective execution of the purposes of this Sub-title. This plan shall include such elements as unified and systematic procedures, definite allocation of functions to the divisions and other component parts of the department, proper housing and layout of quarters to facilitate supervision, effective routing and flow of work, and coordination of staff efforts in carrying out the procedures prescribed. The collector shall cause to be prepared standard practice instructions for the guidance of all concerned in the operation of the prescribed system, and for placing the prescribed procedures into effect and fitting them to the plan of organization established in accordance with law.

§ 1505. Collector's bond

The collector shall give bond in favor of the governor of the state, or his successor in office, in the sum of seventy-five thousand dollars (\$75,000.00), conditioned on the faithful performance of the duties imposed on him by this Sub-title. The premium on this bond shall be paid out of the appropriation made for the expenses of the department of revenue. The bond shall be approved by the governor, and shall be filed in the office of the state auditor.

§ 1506. Collector's records

The collector shall keep a record of all his official acts and shall preserve copies of all rules, decisions and orders made by him. He shall also keep an accurate record showing the name of remitter, amount and type of all taxes paid to him, reports filed with him, and such other records as are necessary to the proper administration and execution of this Sub-title.

§ 1506.1. Microfilm or microfiche records; electronic digitized records

A. Permission is hereby given to the secretary of the Department of Revenue to use microfilm, microfiche, or electronic data storage in the recordation, filing, and preserva-

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tion of all records, forms, and documents referred to in R.S. 47:1506, in order to conserve storage space where the use of such microfilm, microfiche, or electronic data storage is not otherwise prohibited by law.

B. Such microfilm, microfiche, or electronic copy shall be deemed to be an original record for all purposes, and shall be admissible in evidence in all courts or administrative agencies. A facsimile, exemplification, or certified copy thereof shall, for all purposes, be deemed to be a transcript, exemplification, or certified copy of the original.

§ 1507. Authentication of collector's records

Copies of any rule, decision, or order of the collector, and of any paper or report filed in any office maintained by him in the administration of this Sub- title, may be authenticated under his signature, and when so authenticated, shall be evidence in all courts of this state, with the same force and weight as the originals thereof. For authenticating any such copy, the collector may charge a fee of one dollar (\$1.00) which must be deposited to the operating account of his department.

§ 1508. Confidential character of tax records

A.(1) Except as otherwise provided by law, the records and files of the secretary of the Department of Revenue or the records and files maintained pursuant to a tax ordinance, excluding ad valorem property taxes and ad valorem property tax assessment rolls, of any political subdivision are confidential and privileged, and no person shall divulge or disclose any information obtained from such records and files except in the administration and enforcement of the tax laws of this state or of a political subdivision of this state. Notwithstanding the provisions of this Section, upon the request of the secretary of the Department of Social Services or his designee, the secretary of the Department of Revenue shall provide to the Department of Social Services the address and social security number of the person designated by that department as an absent parent for the purpose of implementing the provisions of R.S. 46:236.1.1 et seq., the family and child support program.

(2) No person shall divulge or disclose any information obtained from any examination or inspection of the premises or property of any person in connection with the administration and enforcement of the tax laws of this state or a political subdivision of this state except to the taxing jurisdiction of his employment or, in the case of an already existing independent contractor arrangement, to the contracting taxing jurisdiction.

(3) Neither the secretary nor any employee engaged in the administration or charged with the custody of any such records or files shall be required to produce any of them for inspection or use in any action or proceeding, except in an action or proceeding in the administration or enforcement of the tax laws of this state or of a political subdivision.

B. Nothing herein contained shall be construed to prevent:

(1) The delivery to a taxpayer or his duly authorized representative of a copy of any return or report or any other paper filed by him pursuant to the provisions of this Title or pursuant to the provision of a tax ordinance of a political subdivision.

(2) The publication of statistics so classified as to prevent the identification of any return or report and the items thereof.

(3) The use of reports filed by a taxpayer under one Chapter of this Title or an ordinance of a political subdivision, in an action against the same taxpayer for a tax due under another Chapter of this Title, or another tax ordinance of the political subdivision.

(4) The inspection by the attorney general or other legal representative of the state of the returns, reports, or files relating to the claim of any taxpayer who has brought an action to review or set aside any tax imposed under this Title or by a political subdivision's tax ordinance or against whom an action or proceeding has been instituted in accordance with the provisions thereof.

(5) The furnishing, in the discretion of the secretary or a political subdivision, of any information disclosed by the records or files to any official person of another department or political subdivision of this state, or any other state, or of the United States who is concerned with the administration of taxes and who in fact furnishes or has agreed with the secretary or political subdivision to furnish information contained in the records and files administered by him to the Department of Revenue or the political subdivision on a reciprocal basis; however, no such exchange of information shall be made in contravention of any provision of state or federal law prohibiting the dissemination of such information, nor shall such information be divulged except as provided by law, nor shall income tax records be divulged to any department, agency, or political subdivision of this state, another state, or the United States, except the Department of Revenue, or equivalent agency of another state, or the Internal Revenue Service of the United

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States and then only on a reciprocal basis. In addition, information divulged under this Subsection shall only be given to an agency which has agreed in advance to respect the confidentiality of such information.

(6) The furnishing or publication of the whole or any part or extract from or a summary of the monthly gasoline tax reports furnished the secretary.

(7) The furnishing or publication of the whole or any part or extract of the motor vehicle license reports, or list of permit holders, or similar information not generally considered confidential.

(8) The secretary from disclosing the name and address of any taxpayer who has filed an income or corporation franchise tax return, but he shall not disclose any tax data whatsoever with respect to any taxpayer, and such information shall be made available to any taxpayer upon his request.

(9) The furnishing, in the discretion of the secretary, of severance tax information to the State Mineral Board and the State Department of Conservation to be used solely for the coordination and verification of revenue and production data relative to mineral resources produced within the state. Any information so furnished shall be considered and held confidential and privileged by the State Mineral Board and the State Department of Conservation to the same extent as heretofore provided.

(10) The secretary or political subdivision from disclosing to the legislative auditor, or any members of his staff designated by him, those papers, books, documents, including tax returns and tax return information, films, tapes, and any other forms of recordation, including but limited to computers and recording devices which the legislative auditor in his discretion, deems necessary for the purpose of making an examination and audit of the books and accounts of the Department of Revenue, as provided in R.S. 24:513.1, or a political subdivision. Any information so furnished shall be considered confidential and privileged by the legislative auditor, and members of his staff, to the same extent as heretofore provided.

(11) The secretary from disclosing to any person upon request the name and address of any registered wholesale tobacco dealer who holds a license or permit to operate within this state, but the secretary shall not disclose any tax data whatsoever with respect to the wholesaler, except for information provided to the tobacco settlement enforcement unit of the Louisiana Department of Justice for the enforce-

ment of Part XIII of Chapter 32 of Title 13 of the Louisiana Revised Statutes of 1950. The Department of Justice shall not disclose or be required to disclose any information obtained under this Paragraph unless the disclosure is ordered by a court of competent jurisdiction or agreed upon in writing by the registered wholesale tobacco dealer.

(12) The furnishing, in the discretion of the secretary, of severance tax information to the Department of Wildlife and Fisheries to be used solely for the coordination and verification of revenue and production data relative to shell, sand, gravel, and fill material resources produced within the state. Any information so furnished shall be considered and held confidential and privileged by the Department of Wildlife and Fisheries to the same extent heretofore provided.

(13) The furnishing, in the discretion of the secretary, of severance tax information to the Department of Agriculture and Forestry, through the office of forestry, to be used solely for the coordination and verification of revenue and production data relative to timber resources produced within the state. Any information so furnished shall be considered and held confidential and privileged by the Department of Agriculture and Forestry to the same extent heretofore provided.

(14) A sales and use tax commission contracting with a political subdivision for the collection of taxes from disclosing to the internal auditor of the political subdivision, or any members of his staff designated by the auditor, those papers, books, documents, including tax returns and tax return information, films, tapes, and any other forms of recordation, including but not limited to computers and recording devices which the internal auditor deems necessary for the purpose of making an examination and audit of the books and accounts of the sales and use tax commission. Any information so furnished shall be considered confidential and privileged by the internal auditor, and members of his staff, to the same extent as heretofore provided.

(15) The secretary of the department, the secretary of labor, or any political subdivision from disclosing to the Louisiana Lottery Corporation information regarding whether or not a lottery vendor or retailer applicant, as defined in R.S. 47:9002, is current in the filing of all applicable tax returns and reports, and in payment of all taxes, interest, and penalties owed to the state of Louisiana or to any taxing political subdivision. Any information so furnished shall be considered and held confidential and privileged by the Louisiana Lottery Corporation to the same extent as heretofore provided.

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(16) The furnishing, in the discretion of the secretary, of oil spill contingency fee information to the office of the Louisiana oil spill coordinator within the office of the governor, such information to be used solely in the exercise of the powers, duties, functions, and responsibilities of that office as provided by law. Any information so furnished shall be considered and held confidential and privileged by the office of the Louisiana oil spill coordinator to the same extent heretofore provided.

(17) The furnishing of a taxpayer's reported federal adjusted gross income as requested by the office of student financial assistance when based on certification by the office that the confidentiality of such information will be respected and that it holds an agreement signed by the taxpayer authorizing the release of this information for the purpose of considering the eligibility of the taxpayer's beneficiary for a tuition assistance grant under the Louisiana Student Tuition Assistance and Revenue Trust Program as provided for by Chapter 22-A of Title 17 of the Louisiana Revised Statutes of 1950 or for the purpose of considering the eligibility of the taxpayer's dependent child for an award under the Louisiana Tuition Opportunity Program for Students as provided for by Chapter 20-G of Title 17 of the Louisiana Revised Statutes of 1950.

(18)(a) The secretary from disclosing the name and address of any taxpayer who is delinquent in the payment of any tax collected by the secretary at such time as all assessments have become final and collectible by distraint and sale.

(b) Any disclosure shall only be made after the secretary provides written notice by registered mail to the taxpayer. The notice shall inform the taxpayer of the secretary's intention to publish the fact of the taxpayer's tax delinquency and other tax information authorized by Subparagraph (c) for failure to pay the amount due. The notice shall give the taxpayer thirty days from the date of the notice to pay the total amount of tax, penalty, and interest due prior to publication or to make arrangements to pay the tax, penalty, and interest due.

(c) At such time as the notice provisions of this Paragraph have been satisfied, the secretary may disclose the name and address of the taxpayer, the type of delinquent taxes due, and the total amount of tax, penalty, and interest due. If the taxpayer is a business entity, the secretary may additionally name any owner who owns at least a fifty percent ownership interest in the entity. No other taxpayer information may be disclosed. The disclosure may be made in any newspaper, magazine, or in electronic media, such as television or the Internet.

(19) The secretary, in order to implement the provisions of R.S. 56:303(E), from disclosing to the Department of Wildlife and Fisheries upon the request of the secretary of the Department of Wildlife and Fisheries or his designee a list of the names and social security numbers of those persons issued a certificate of exemption pursuant to R.S. 47:305.20(B).

C. Whoever violates any provision of this Section by divulging information unlawfully shall be punished by imprisonment for not more than two years or fined not more than ten thousand dollars, or both.

§ 1508.1. Unauthorized disclosure of information

A. Any officer, employee, or agent or any former officer, employee, or agent of the state of Louisiana or of any political subdivision of the state who unlawfully discloses any information obtained from a return of a taxpayer or records and files of the secretary of the Department of Revenue, contrary to the provisions of R.S. 47:1508, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than ten thousand dollars or be imprisoned for not more than two years, or both.

B. Nothing contained in this Section shall be construed to prevent such persons from disclosing a return of a taxpayer or the records of the secretary as authorized by law in any judicial proceeding in which the state or any political subdivision thereof is a party.

§ 1509. Publication of tax information

The collector may prepare and publish materials and memoranda concerning Louisiana tax matters as he deems will be of public interest, and may make nominal charges for such materials to defray the costs involved in such preparation and publication.

§ 1510. Preservation of returns and reports

A. All returns and reports filed with the Department of Revenue pursuant to the provisions of this Title, except as otherwise provided for in this Section, may be destroyed by order of the secretary after five years from the last day of December of the year in which the tax to which the records pertain became due, but not less than one year after the receipt of the last payment of tax to which such records pertain.

B. Subsection A of this Section shall not apply to internally generated reports used for the processing of tax in-

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formation. The secretary shall have the authority to establish procedures for the destruction of these reports.

§ 1511. Power to make rules and regulations

In addition to specific authority granted to the secretary elsewhere, the secretary is authorized to prescribe rules and regulations to carry out the purposes of this Title and the purposes of any other statutes or provisions included under the secretary's authority. These rules and regulations shall be promulgated pursuant to the provisions of the Administrative Procedure Act and will have the full force and effect of law.

§ 1512. Power to employ counsel

The collector is authorized to employ private counsel to assist in the collection of any taxes, penalties or interest due under this Sub-title, or to represent him in any proceeding under this Sub-title. If any taxes, penalties or interest due under this title are referred to an attorney at law for collection, an additional charge for attorney fees, in the amount of ten per centum (10%) of the taxes, penalties and interest due, shall be paid by the tax debtor.

§ 1513. Power to administer oaths

The collector or his authorized representatives may take the oath of any person signing any application, deposition, statement or report required by the provisions of this Sub-title, or administer such other oaths as may be necessary for the purpose of enforcing and administering the provisions of this Sub-title; provided however, that any form, affidavit or oath required by the Department of Revenue in connection with the issuance of a motor vehicle license plate may be signed before any revenue deputy or notary public, at the option of the person applying for said license plate.

§ 1514. Power to extend time to file returns and pay tax

Upon the written request of the taxpayer and for good cause shown, the collector may grant reasonable extensions of time for the filing of returns and payment of tax due under this Sub-title; provided that such extensions of time shall not exceed six months in the case of income taxes, thirty calendar days in the case of sales taxes, and sixty calendar days in the case of any other tax due under this Sub-title. Whenever such an extension is granted, the return or tax for which the extension is granted shall not become delinquent until the expiration of the extension period; but interest will accrue on the tax during the period of the exten-

sion, such interest to be computed in all cases from the date the tax would have become delinquent in the absence of an extension.

§ 1515.1. Sales tax refund; new housing construction

A. Any person who restores, renovates, or rehabilitates an existing structure or builds or causes the building of a new house and associated improvements in an approved housing development area pursuant to the provisions of R.S. 40:582.1 through 582.7 shall be entitled to a refund of the amount of local sales tax paid and collected under the provisions of R.S. 47:1515, if any, as a consequence of the purchase of materials used in the construction of such new house upon showing that he has complied with the provisions of R.S. 40:582.7.

B. The secretary of the Department of Revenue is authorized to prescribe the forms and regulations for use in carrying out the provisions of this Section.

§ 1515.2. Authority to collect fees; office of conservation

A. The secretary of the Department of Revenue is hereby authorized to enter into an agreement with the Department of Natural Resources, office of conservation, at the request of the commissioner of conservation, to collect fees assessed by the office of conservation.

B. The agreement between the Department of Revenue and the Department of Natural Resources, office of conservation shall be executed by the secretary of the Department of Revenue and the commissioner of conservation. The agreement shall provide the manner of collection, the fees to be collected, and the costs of collection, if any, to be paid by the office of conservation, and such other terms and conditions necessary to effectuate the agreement.

§ 1516. Out-of-state debt collection

A. To facilitate the collection of taxes, interest, penalties, and fees due to the Department of Revenue under any provision of this Title, the secretary is authorized to enter into contracts with collection contractors for the purpose of debt collection on behalf of the secretary, pursuant to the provisions of R.S. 39:1481 et seq.

B. The secretary shall enter into such contracts only with respect to the collection of obligations that have become collectible by distraint and sale, as provided by this Chapter, from debtors whose identifiable assets subject to distraint in Louisiana, are insufficient to satisfy the obliga-

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tions owed. The contracts shall provide, at the discretion of the secretary, the rate of payment and the manner in which compensation for services shall be paid. The tax debtor shall pay the full amount of any additional charge for collection of any taxes, penalties, or interest which are referred to a collection contractor.

C. The secretary shall provide information to collection contractors concerning the accounts of individual debtors only to the extent necessary for the collection contractor to fulfill his contractual obligation. The information furnished by the secretary shall be considered confidential and privileged by the collection contractor and members of his staff, to the same extent as provided by R.S. 47:1508.

D. Prior to entering into any contract authorized pursuant to this Section, the secretary shall require a performance bond from the collection contractor in an amount not to exceed one hundred thousand dollars.

E. With the approval of the secretary, the collection contractor may file suit, at his expense, in the name of the secretary in the courts of other states for the purpose of collecting tax debt.

F. The provisions of this Section shall not be construed to affect in any manner any rights and remedies available to a tax debtor under this Chapter.

G. For purposes of this Section, "collection contractor" means one or more private persons, companies, associations, or corporations who provide debt collection services outside the state.

§ 1516.1. In-state debt collection

A. (1) To facilitate the collection of taxes, interest, penalties, and fees due to the Department of Revenue under any provision of this Title, the secretary is authorized to enter into contracts with collection contractors for the purpose of debt collection on behalf of the secretary, pursuant to the provisions of R.S. 39:1481 et seq.

(2) The secretary may only enter into such contracts after the requirements of Subsection (B) are met.

(3) The criteria to be considered in selecting collection contractors are as follows:

- (a) Fees charged.
- (b) Organizational structure.
- (c) Governmental accounts experience.

(d) Computer capabilities including the ability to generate reports and formatting.

(e) Collection methodology.

(f) Financial stability.

(g) Personnel resources.

B. Once an obligation has become collectible by distraint and sale, as provided in this Chapter, the secretary shall send a notice to the taxpayer at the address given in the last report filed by said taxpayer, or to any address obtainable from any private entity which will provide such address free of charge or from any federal, state, or local government entity, including but not limited to the United States Postal Service or from United States Postal Service certified software informing him of the following:

(1) That his obligation is a final judgment.

(2) All the actions the secretary is authorized to take in order to collect the debt.

(3) That if the debt is not paid within sixty days of the date of the notice, a collection fee not to exceed twenty-five percent of the total liability will be charged to the account.

C. The tax debtor shall pay the full amount of any additional charge for the collection of any taxes, interest, penalties, or fees. If an account is referred to a collection contractor, the additional charge shall be paid to the collection contractor.

D. The secretary shall provide information to collection contractors concerning the accounts of individual debtors only to the extent necessary for the collection contractor to fulfill his contractual obligation. The information furnished by the secretary shall be considered confidential and privileged by the collection contractor and members of his staff, to the same extent as provided by R.S. 47:1508. Collection contractors may not take any action which exceeds the authority of the secretary and must follow fair debt collection practices as described in Sections 1692 through 1693r of Title 15 of the United States Code.

E. Prior to entering into any contract authorized pursuant to this Section, the secretary shall require a performance bond, cash, or securities from the collection contractor in an amount not to exceed one hundred thousand dollars.

F. With the approval of the secretary, the collection contractor may file suit, at his expense, in the name of the sec-

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retary in the courts of this state for the purpose of collecting tax debt.

G. (1) The provisions of this Section shall not be construed to affect in any manner any rights and remedies available to a tax debtor under this Chapter.

(2) In the case of a spouse who qualifies for liability relief under the innocent spouse provisions in R.S. 47:101(B)(7), the provisions of this Section shall not apply.

H. For purposes of this Section, “collection contractor” means the attorney general or one or more private persons, companies, associations, or corporations who provide debt collection services inside the state.

I. Notwithstanding any other provisions of this Section, the attorney general shall have a right of first refusal for all accounts the secretary decides to send to a collection contractor. A list of such accounts shall be compiled by the secretary and forwarded to the attorney general for the exercise of his right of first refusal. The right of first refusal shall be exercised within thirty days of the date of mailing or electronic transmission of the list. If the attorney general fails to exercise his right of first refusal within thirty days, the secretary may send the accounts to any collection contractor meeting the requirements of Paragraph A(3) of this Section. When the attorney general accepts an account for collection, the collection fee shall not exceed fifteen percent of the total liability. If the attorney general refuses to accept an account, then the secretary may send the accounts to any collection contractor meeting the requirements of Paragraph A(3) of this Section.

LAC 61:I.4913. Collection of In-State Tax Liabilities by Debt Collection Agencies or the Attorney General’s Office

A. Definitions

1. For purposes of this Rule, the following terms shall have the meaning ascribed to them.

Attorney General—the attorney general of the state of Louisiana.

Collection Contractor—the attorney general or one or more private persons, companies, associations, or corporations who provide debt collection services inside the state.

B.1. The secretary is authorized to enter into contracts with collection contractors to facilitate the collection of taxes,

interest, penalties, and fees due the department after an obligation has become collectible by distraint and sale.

2. *The secretary may only enter into a collection contract after notice by regular mail has been transmitted to the taxpayer at the address given in the last report filed by the taxpayer; or to any address obtainable from any private entity that will provide such address free of charge or from any federal, state, or local government entity, including but not limited to the United States Postal Service or from United States Postal Service certified software.*

3. *The taxpayer will be informed of the following:*

a. *that the obligation is a final judgment;*

b. *all the actions the secretary is authorized to take in order to collect the debt; and*

c. *that if the debt is not paid within 60 days of the date of the notice, a collection fee not to exceed 25 percent of the total liability will be charged to the account.*

4. *The taxpayer must pay the full amount of any additional charge for the collection of any taxes, interest, penalties, or fees. If an account is referred to a collection contractor, the additional charge will be paid to the collection contractor.*

C. *The secretary will consider the following criteria in selecting collection contractors:*

1. *fees charged;*

2. *organizational structure;*

3. *experience with government accounts;*

4. *computer capabilities including the ability to generate reports and formatting;*

5. *collection methodology;*

6. *financial stability; and,*

7. *personnel resources.*

D. *Prior to entering into any contract, the secretary will require a performance bond, cash, or securities from the collection contractor in an amount not to exceed \$100,000.*

E. *Once the collection contract is entered into, the secretary will provide information to the collection contractors concerning the accounts of individual taxpayers only to the extent necessary for the collection contractor to fulfill his contractual obligation.*

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a. The information furnished by the secretary will be considered confidential and privileged by the collection contractor and members of his staff, as provided by R.S. 47:1508.

b. Collection contractors may not take any action that exceeds the authority of the secretary and must follow the Fair Debt Collection Practices Act.

F. With the approval of the secretary, the collection contractor may file suit, at his expense, in the name of the secretary in the courts of this state for the purpose of collecting the tax debt.

G.1. Nothing contained in this Rule shall be construed to affect in any manner any rights and remedies available to the taxpayer.

2. This Rule does not apply to a spouse who qualifies for liability relief under the innocent spouse provisions of R.S. 47:101.B(7).

H. The attorney general will have a right of first refusal for all accounts selected to be sent to a collection contractor.

1. A list of accounts selected will be compiled by the secretary and forwarded to the attorney general for the exercise of his right of first refusal.

2. The right of first refusal shall be exercised within 30 days of the date of mailing or electronic transmission of the list.

3. If the attorney general fails to exercise his right of first refusal within 30 days or refuses to accept an account, the secretary may send the account to any collection contractor meeting the requirements of Subsection C.

4. When the attorney general accepts an account for collection, the collection fee may not exceed 15 percent of the total liability.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 47:1516.1.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Revenue, Office of the Secretary, LR 28:2371 (November 2002).

§ 1517. Tax exemption budget

A. No later than the first day of March the secretary of the Department of Revenue shall prepare and submit to the governor and the legislature a tax exemption budget in the manner set forth in this Section.

B. The annual tax exemption budget shall include the following:

(1) Each tax exemption, its statutory citation, and its purpose.

(2) The revenue loss to the state caused by each tax exemption for the three preceding years, the estimated revenue loss to the state caused by each tax exemption for the current fiscal year, and the estimated revenue loss to the state caused by each tax exemption for the ensuing fiscal year.

(3) The estimated cost of administering and implementing each tax exemption for the three preceding fiscal years, the current fiscal year, and the ensuing fiscal year.

C. The annual tax exemption budget shall also include an assessment of each tax exemption based on the following criteria:

(1) Whether or not each tax exemption has been successful in meeting the purpose for which it was enacted, in particular, whether each tax exemption benefits those originally intended to be benefited, and if not, those who do benefit.

(2) Whether each tax exemption is the most fiscally effective means of achieving its purpose.

(3) Unintended or inadvertent effects, benefits, or harm caused by each tax exemption, including whether each tax exemption conflicts with other state laws or regulations.

(4) Whether each tax exemption simplifies or complicates the state tax statutes.

D. The Department of Revenue is authorized to request from any state or local agency or official any information necessary to complete the budget required by this Section. Any such official shall comply with this request.

E. "Tax exemptions" means those revenue losses attributable to provisions of the state tax statutes or rules promulgated pursuant to such statutes, which allow a special exclusion, exemption, or deduction from gross income or sales or which provide a special credit, a preferential rate of tax, or a deferral of tax liability.

§ 1518. Authority to require whole-dollar reporting on tax returns

A. With respect to any tax or fee with which he is charged with administering, the secretary of the Department of Revenue is hereby authorized to revise, publish, and adopt tax

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reporting forms, systems, and procedures which require the reporting of summary tax amounts which have been rounded off to whole dollars.

B. The whole-dollar rounding off procedure required by this Section shall only be employed in reporting periodic summary tax amounts, as directed by the secretary, and shall not be applied to individual transactions or tax applications.

§ 1519. Payment of taxes by electronic funds transfer; credit or debit cards; other

A. In payment of all taxes, penalties, interest, fees, and payments due under any state law for which the authority to collect has been delegated to the secretary of the Department of Revenue, the secretary will accept cash, a bank draft, cashier's check, teller's check, certified check, personal check, money order, electronic funds transfer, or credit or debit card from a nationally recognized institution. At the time of payment, the service fee for the use of a credit or debit card shall be charged to the taxpayer and shall be collectible as part of his liability, but the charge shall not exceed the fee charged by the credit card issuer, including any discount rate.

B. (1) For taxable periods beginning on or after January 1, 2004, and ending on or before December 31, 2005, the secretary of the Department of Revenue may require payments by electronic funds transfer under any of the following circumstances:

(a) The tax due in connection with the filing of any return, report, or other document exceeds fifteen thousand dollars.

(b) A taxpayer files tax returns more frequently than monthly and during the preceding twelve-month period, the average total payments exceed fifteen thousand dollars per month.

(c) A company files withholding tax returns and payments on behalf of other taxpayers and during the preceding twelve-month period, the average total payments for all tax returns filed exceed fifteen thousand dollars per month.

(2) For taxable periods beginning on or after January 1, 2006, and ending on or before December 31, 2007, the secretary of the Department of Revenue may require payments by electronic funds transfer under any of the following circumstances:

(a) The tax due in connection with the filing of any return, report, or other document exceeds ten thousand dollars.

(b) A taxpayer files tax returns more frequently than monthly and during the preceding twelve-month period, the average total payments exceed ten thousand dollars per month.

(c) A company files withholding tax returns and payments on behalf of other taxpayers and during the preceding twelve-month period the average total payments for all tax returns filed exceed ten thousand dollars per month.

(3) For taxable periods beginning on or after January 1, 2008, the secretary of the Department of Revenue may require payments by electronic funds transfer under any of the following circumstances:

(a) The tax due in connection with the filing of any return, report, or other document exceeds five thousand dollars.

(b) A taxpayer files tax returns more frequently than monthly and during the preceding twelve-month period, the average total payments exceed five thousand dollars per month.

(c) A company files withholding tax returns and payments on behalf of other taxpayers, and during the preceding twelve-month period, the average total payments for all tax returns filed exceed five thousand dollars per month.

(4) When a payment is required to be made within a prescribed period or by a prescribed due date and the payment is delivered by electronic means after the period or due date, for the purpose of imposing late payment penalties, the payment date is the date of the transaction's confirmation time and date stamp. However, if the payment is not timely paid, the date of receipt by the secretary shall govern for purposes of determining the amount of any late payment penalties. A separate transfer shall be made for each return.

(5) In lieu of electronic funds transfer, full payment may be made in investible funds delivered in person or by courier to the department on or before the close of business on the date required by law to be paid.

(6) If any taxpayer fails to comply with the electronic funds transfer requirements, the tax payment will be considered delinquent and will be subject to penalties and interest as provided under R.S. 47: 1601 through 1602.

(7) Notwithstanding any provisions of law to the contrary, the provisions of this Section shall not apply to individual income tax returns.

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C. The secretary shall promulgate such rules and regulations as are necessary to implement this Section under the Administrative Procedure Act. These rules and regulations will address, at a minimum, the responsibility of the department to notify taxpayers and others responsible for making payments under this Section, the identification of taxes of which payment is required under this Section, the procedures for making payments, payment alternatives, and proof of timely payment.

LAC 61:I.4910. Electronic Funds Transfer

A. Electronic Funds Transfer Requirements

1. Taxpayers are required to remit their respective tax or taxes electronically or by other immediately investible funds as described in R.S. 47:1519 if any of the following criteria are met:

a. the payments made in connection with the filing of any business tax return or report averaged, during the prior 12-month period, \$20,000 or more per reporting period; or

b. any business tax return or report is filed more frequently than monthly and the average total payments during the prior 12-month period exceed \$20,000 per month; or

c. any company who files withholding tax returns and payments on behalf of other taxpayers and payments during the previous 12-month period averaged \$20,000 or more per month for all tax returns filed.

2. Any taxpayer whose tax payments for a particular tax averages less than \$20,000 per payment may voluntarily remit amounts due by electronic funds transfer with the approval of the secretary. After requesting to electronically transfer tax payments, the taxpayer must continue to do so for a period of at least 12 months.

B. Definitions. For the purposes of this Section, the following terms are defined.

Automated Clearinghouse Credit—an automated clearinghouse transaction in which taxpayers through their own banks, originate an entry crediting the state's bank account and debiting their own bank account. Banking costs incurred for the automated clearinghouse credit transaction shall be paid by the person originating the credit.

Automated Clearinghouse Debit—an automated clearinghouse transaction in which the state, through its designated

depository bank, originates an automated clearinghouse transaction debiting the taxpayer's bank account and crediting the state's bank account for the amount of tax. Banking costs incurred for the automated clearinghouse debit transaction shall be paid by the state.

Business Tax—any tax, except for individual income tax, collected by the Department of Revenue.

Electronic Funds Transfer—any transfer of funds other than a transaction originated by check, draft, or similar paper instrument, that is initiated electronically so as to order, instruct, or authorize a financial institution to debit or credit an account. Electronic funds transfer shall be accomplished by an automated clearinghouse debit or automated clearinghouse credit. Federal Reserve Wire Transfers (FedWire) may be used only in emergency situations and with prior approval from the department.

FedWire Transfer—any transaction originated by taxpayers utilizing the national electronic payment system to transfer funds through the Federal Reserve banks, when the taxpayers debit their own bank accounts and credit the state's bank account. Electronic funds transfers may be made by FedWire only if payment cannot, for good cause, be made by automated clearinghouse debit or credit and the use of FedWire has the prior approval of the department. Banking costs incurred for the FedWire transaction shall be paid by the person originating the transaction.

Other Immediately Investible Funds—cash, money orders, bank draft, certified check, teller's check, and cashier's checks.

Payment—any amount paid to the Department of Revenue representing a tax, fee, interest, penalty, or other amount.

C. Taxes Required to be Electronically Transferred. Tax payments required to be electronically transferred may include corporation income and franchise taxes including declaration payments; income tax withholding; sales and use taxes; severance taxes; excise taxes; and any other tax or fee administered or collected by the Department of Revenue. A separate transfer shall be made for each return.

D. Taxpayer Notification

1. Those taxpayers required to electronically transfer tax payments will be notified in writing by the department of the electronic funds transfer data format and procedures at least 90 days prior to the required electronic funds transfer effective date. The taxpayer will be given payment

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method options (ACH debit, ACH credit, or other immediately investible funds) from which to select. Depending on the method selected, the taxpayer will be required to submit specific information needed to process electronic payments. Before using ACH debit, the taxpayer must register at least 60 days in advance. Once required to remit taxes by electronic funds transfer, the taxpayer must continue to do so until notified otherwise by the department.

2. After one year, taxpayers whose average payments have decreased below the threshold may request to be relieved of the electronic funds transfer requirement.

3. Taxpayers experiencing a change in business operations that results in the average payments not meeting the requirements, may request to be relieved of the electronic funds transfer requirement. "Change in business operations" shall include changing of pay services for the purpose of filing income tax withholding.

E. Failure to Timely Transfer Electronically

1. Remittances transmitted electronically are considered paid on the date that the remittance is added to the state's bank account. Failure to make payment or remittance in immediately available funds in a timely manner, or failure to provide such evidence of payment or remittance in a timely manner, shall subject the affected taxpayer or obligee to penalty, interest, and loss of applicable discount, as provided by state law for delinquent or deficient tax, fee or obligation payments. If payment is timely made in other than immediately available funds, penalty, interest, and loss of applicable discount shall be added to the amount due from the due date of the tax, fee or obligation payment to the date that funds from the tax, fee, or obligation payment subsequently becomes available to the state.

2. When the statutory filing deadline, without regard to extensions, falls on a Saturday, Sunday, or Federal Reserve holiday, the payments must be electronically transferred in order to be received by the next business day. Transfer must be initiated no later than the last business day prior to the filing deadline. Deadlines for initiating the transfer for ACH credits are determined by the taxpayer's financial institution. Deadlines for ACH debits are established by the payment processor and specified in instructions provided by the department.

3. If a taxpayer has made a good faith attempt and exercises due diligence in initiating a payment under the provisions of R.S. 47:1519 and this rule, but because of unex-

pected problems arising at financial institutions, Federal Reserve facilities, the automated clearinghouse system, or state agencies, the payment is not timely received, the delinquent penalty may be waived as provided by R.S. 47:1603. Before a waiver will be considered, taxpayers must furnish the department with documentation proving that due diligence was exercised and that the delay was clearly beyond their control.

4. Except for the withholding tax return, Form L-1, the filing of a tax return or report is to be made separately from the electronic transmission of the remittance. Failure to timely file a tax return or report shall subject the affected taxpayer or obligee to penalty, interest, and loss of applicable discount, as provided by state law.

5. In situations involving extenuating circumstances as set forth in writing by the taxpayer and deemed reasonable by the secretary of the Department of Revenue, the secretary may grant an exception to the requirement to transmit funds electronically.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1519.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Office of the Secretary, LR 19:1032 (August 1993), repromulgated LR 19:1340 (October 1993), amended LR 20:672 (June 1994), LR 23:448 (April 1997), LR 28:866 (April 2002).

§ 1520. Electronically filed returns; signatures

A. The secretary may require electronic filing of tax returns or reports under the following circumstances:

- (1) The amount due in connection with the return or report exceeds one hundred thousand dollars.
- (2) The gross receipts, gross income, or gross sales reported on the return or report exceeds five million dollars.

B. Failure to comply with the electronic filing requirements will result in the assessment of a penalty of one hundred dollars or five percent of the tax, whichever is greater. If it is determined that the failure to comply is attributable, not to the negligence of the taxpayer, but to other cause set forth in written form and considered reasonable by the secretary, the secretary may remit or waive payment of the whole or any part of the penalty. However, in any case where the penalty exceeds twenty-five thousand dollars, such penalty may be waived by the secretary only after approval by the Board of Tax Appeals.

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C. The secretary may prescribe alternative methods for signing, subscribing, or verifying a return, statement, or other document filed by electronic means that shall have the same validity and consequence as the actual signature and/or written declaration for such a return, statement, or other document. The secretary may promulgate such rules and regulations as are necessary to implement this Section.

D. In cases where the taxpayer can prove the electronic filing of a tax return or report would create an undue hardship, the secretary may exempt the taxpayer from filing the return or report electronically.

LAC 61:I.4905. Signature Alternatives; Electronic Filings

A. As authorized by R.S. 47:1520, the following alternate methods for signing, subscribing, or verifying tax returns, statements, or other documents filed by electronic means are allowed and shall have the same validity and consequence as the actual signature and/or written declaration.

B. The following alternatives are allowed in lieu of submitting a written signature/declaration for tax returns transmitted electronically via any computer, telephone, or internet by the taxpayer or the taxpayer's agent:

1. the taxpayer's signature document maintained by the electronic filer on file and secured for a period of three years from December 31 of the year in which the taxes were due;
2. the taxpayer's signature on a trading partner agreement with the department;
3. a Personal Identification Number (PIN); or
4. an electronic signature as specified in a filing agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1520.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Office of the Secretary, LR 22:35 (January 1996), amended by the Department of Revenue, Office of the Secretary, LR 23:1167 (September 1997), LR 25:3443 (December 1999), LR 27:1017 (July 2001).

§ 1521. Immediate disposition of collections

Notwithstanding any other law to the contrary, all money received by the secretary shall be paid to the state treasurer and shall be deposited immediately upon receipt into the state treasury pursuant to Article VII, Section 9(A) of the Constitution of Louisiana.

§ 1522. Alternative dispute resolution

The secretary of the Department of Revenue may enter into contracts with the approval of the attorney general, with individuals and organizations to conduct alternative dispute resolution to arbitrate any issue in order to assist in the collection of any taxes, penalties, or interest due under Subtitle II of this Title in an aggregate amount not to exceed one million dollars when such procedures are deemed to be in the best interest of the state. The secretary of the Department of Revenue shall have the authority to contract for the allocation of any costs of alternative dispute resolution procedures.

LAC 61:III.301 et seq. Alternative Dispute Resolution Procedures

LAC 61:III.301. Definitions

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

Alternative Dispute Resolution—procedures for settling disputes by means other than litigation.

Arbitration—a binding process in which the department and taxpayer submit disputed issues and evidence to an arbitrator and a decision is rendered by the arbitrator.

Arbitrator—a neutral third party chosen by the department and taxpayer to hear their claims and render a decision.

Enrolled Agent—an individual who has demonstrated technical competence in the field of taxation and is licensed to represent taxpayers before all administrative levels of the Internal Revenue Service.

Hearing—a proceeding in which a neutral third party receives testimony or arguments and reviews documents to determine issues of fact and legal conclusions in order to render a decision based on the evidence presented.

Party—a taxpayer or department representative involved in an alternative dispute resolution process.

Secretary—the Secretary of the Louisiana Department of Revenue.

Session—the period of time during which the arbitrator meets with the parties to discuss the issues and listens to the arguments presented in order to reach a decision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:

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LAC 61:III.303. Type of Alternative Dispute Resolution Process

A. The disputed issue(s) may be resolved by arbitration as agreed upon by the taxpayer and the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:

LAC 61:III.305. Initiation of Arbitration

A. The secretary may select cases whose total value as of the date of selection for binding arbitration is less than \$1 million. Once a case has been selected for arbitration, notice will be sent to the taxpayer regarding the selection within 30 days.

B. The taxpayer may give written notice to the department of the taxpayer's desire to participate in arbitration. The notice must be signed by the taxpayer or representative of the taxpayer and contain the taxpayer's name, tax identification number, address, telephone number, fax number, and e-mail address and the taxpayer's representative e-mail address as well as a brief description of the nature of the dispute and the issues. The notice must also state the relief requested, the reasons supporting the relief, and any other relevant and reliable information supporting the claim.

C. Neither the department nor the taxpayer has the right to mandate or force the opposing party into arbitration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:

LAC 61:III.307. Persons Authorized to Participate in Arbitration

A. Individuals, partnerships, and corporations. Any individual taxpayer participating in arbitration with the department may appear and act for himself or for a partnership of which he is a partner with authority to act on behalf of the partnership's members. A corporation, limited liability company, or limited liability partnership may be represented by a bona fide officer of the corporation upon presentation of a corporate resolution or other documentation evidencing the officer's authority to act on behalf of the organization.

B. Attorneys. Attorneys at law, qualified and licensed under the laws of the state, are entitled to represent any taxpayer participating in arbitration with the department. The arbitrator may permit attorneys at law, qualified and licensed under the laws of the several states or the District of Columbia to represent any taxpayer participating in arbitration with the department, in the same manner as these attorneys are permitted to practice in the courts of Louisiana.

C. Certified Public Accountants. Certified public accountants qualified and licensed under the laws of the state are entitled to represent any taxpayer participating in arbitration with the department. The arbitrator may permit certified public accountants, qualified and licensed under the laws of the several states or the District of Columbia to represent any taxpayer participating in arbitration with the department, in the same manner as these certified public accountants are permitted to practice in Louisiana.

D. Enrolled Agents. Enrolled agents qualified and licensed to practice before the Internal Revenue Service are entitled to represent any taxpayer participating in arbitration with the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:

LAC 61:III.309. Registry of Arbitrators

A. The department will maintain a registry of arbitration companies authorized to participate in the alternative dispute resolution process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:

LAC 61:III.311. Time Delay for Providing Names of Arbitrators

A. As soon as practical, but not more than 30 business days after consent of the parties to participate in arbitration, the department will send to the taxpayer or the taxpayer's representative the names of potential arbitration companies to provide case management services for the arbitration session.

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AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:

LAC 61:III.313. Selection of Arbitration Company

A. The department and taxpayer will select an arbitration company from the Registry maintained by the department. The arbitration company will select the arbitrator to preside over the matter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:

LAC 61:III.315. Disclosure of Conflict of Interest

A. An arbitrator must have no official, financial, or personal conflict of interest with any issue or party in controversy unless the conflict of interest is fully disclosed, in writing, to all parties and all parties agree, in writing, that the person may continue to serve. If an arbitrator is disqualified by either party, another arbitrator will be selected by the arbitration company.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:

LAC 61:III.317. Procedures for Arbitration

A. The arbitrator will take necessary steps to avoid delay and to achieve a just, speedy, and cost-effective resolution. The department and taxpayer will cooperate in the exchange of documents, exhibits, and information within either party's control. In addition, the department and taxpayer may conduct discovery as agreed upon by all parties. However, the arbitrator may provide for or place limitations on the discovery as the arbitrator deems appropriate. At the request of the department or the taxpayer, the arbitrator may require the deposition of any person who may possess information vital to the just resolution of the matter.

B. The arbitrator will select a hearing date. Each party must notify the arbitrator in writing at least 10 business days before the initial arbitration session of the following:

1. the party's intention to present witnesses;

2. whether the party will be represented by counsel; and

3. who will be present at the arbitration.

C. The department and taxpayer must submit a brief statement of facts, law, and issues to be resolved. The statement may not exceed 15 legal-size pages without prior approval from the arbitrator.

D. The arbitrator will distribute to the department and taxpayer the information provided in Subsection B and inform the parties of the arbitration process to be followed at least five business days before the initial arbitration session. Except where specified in the regulation, the arbitrator will determine the process to be followed.

E. The rules of evidence in arbitration will be the rules of evidence followed in the state district courts of Louisiana.

F. Any party desiring a stenographic or other recording of the proceedings must make arrangements directly with a stenographer or the person responsible for recording the proceedings. The party seeking to record the proceeding must notify the arbitrator and all other parties of the arrangements at least five business days before the arbitration hearing. The requesting party or parties shall pay the recording costs and the recording or transcript shall be made available to the arbitrator and the other parties for inspection and copying at a date, time, and place determined by the arbitrator.

G. If an arbitration decision is rendered on a case pending in any state court or the Louisiana Board of Tax Appeals, the decision will be entered in the court records.

H. The decision by the arbitrator will be made promptly and, unless otherwise agreed by the parties or specified by law, no later than 30 business days from the date of the closing of the arbitration hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:

LAC 61:III.319. Discovery

A. The arbitrator will set forth the conditions of discovery. Any extensions of discovery must be in writing and approved by the arbitrator.

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AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:

LAC 61:III.321. Arbitration Hearing

A. In order to facilitate the arbitration process, the selected arbitrator will conduct hearings. Each party will be given an opportunity to present the facts, evidence, and argument that support its position regarding the disputed tax issue at the hearing. Hearings will be private and all matters will remain confidential. The only individuals who may participate in hearings will be the taxpayer, taxpayer representatives, department representatives, and any witnesses to be called.

B. Date, Time and Place of Hearing. Hearings will be held at the LaSalle Building in Baton Rouge or at any other place designated by the arbitrator with consideration given to the location and convenience of the parties and their witnesses. All witnesses will be sequestered prior to giving testimony.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:

LAC 61:III.323. Sequence of the Arbitration Hearing

A. Unless otherwise determined by the arbitrator, the following sequence will be followed at the hearing.

- 1. Introduction. The arbitrator may make an introduction.*
- 2. Opening statements. The taxpayer or his representative will make an opening statement followed by the department's representative.*
- 3. Taxpayer's case. The taxpayer may introduce evidence, examine witnesses, and submit exhibits. The department's attorney or representative may cross-examine the witnesses.*
- 4. Department's case. The department may introduce evidence, examine witnesses, and submit exhibits. The taxpayer or taxpayer's representative may cross-examine the witnesses.*
- 5. Evidence procedure. Each party will have the opportunity to present relevant and credible evidence during the hearing. All statements will be made under oath administered by the arbitrator. The Rules of Evidence followed in*

the state district courts of Louisiana will apply to all evidence presented and objections will be permitted.

6. Rebuttal. Presentation of the evidence of the taxpayer in rebuttal and the argument of the taxpayer followed by the argument of the department, and of the taxpayer in rebuttal.

7. Summation. Each party may present a closing statement.

8. Concluding Remarks. The arbitrator may make closing remarks concerning the case.

9. Judgment. The arbitrator shall render a decision within 30 business days after the date of the close of the hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:

LAC 61:III.325. Ex Parte Communication with the Arbitrator

A. No party or party representative may directly communicate with an arbitrator except at a hearing or during a scheduled conference concerning any issue related to the arbitration matter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:

LAC 61:III.327. Privacy

A. All arbitration sessions are private and confidential. To ensure the privacy of the arbitration sessions, only the parties and their representatives may attend the sessions. All parties participating in or attending a session are required to sign a confidentiality agreement. Any party that violates this confidentiality provision is subject to sanctions at the request of the other party.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:

LAC 61:III.329. Confidentiality

A. Except as authorized or required by law, no one participating in the session may disclose the existence, content,

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or results of the session without the written consent of all parties. Each participant to any process conducted, including the arbitrator, must execute a confidentiality agreement before beginning arbitration. Except as authorized, required, or consented to, no party, arbitrator, or any agent or other representative may make public, offer or introduce as evidence, or otherwise refer to in any administrative, judicial, or other proceeding, any statement made or any document or item of evidence provided during arbitration or any finding, conclusion, order, or result, or lack thereof relating to the process. This prohibition applies but is not limited to the following matters:

1. views expressed or suggestions made by a party with respect to possible settlement of the dispute;
2. admissions made by any party during arbitration;
3. statements made or views expressed by any witnesses, arbitrator, or other persons privy to the arbitration session; or
4. the fact that another party had or had not indicated a willingness to accept a proposal settlement.

B. The arbitrator is subject to the terms and conditions set forth in R.S. 47:1508 regarding the confidential character of tax records.

C. All returns, reports, and other documents presented during the arbitration session may be destroyed by order of the secretary after five years from the last day of December of the year in which the tax to which the records pertain became due, but not less than one year after receipt of the last payment of tax to which the records pertain.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:

LAC 61:III.331. Fees and Expenses

A. Each party will bear the fees and expenses for its own counsel, expert witnesses, travel, and preparation and presentation of its case. Except as otherwise agreed by the parties, the fees and expenses of the arbitrator will be borne equally by the taxpayer and the department in accordance with the arbitration company's fee schedule.

B. If an arbitration session has been scheduled and a party fails to appear at the session, the party failing to appear will be responsible for the payment of the reasonable costs and

fees of the arbitrator and the reasonable travel expenses incurred by the other party, unless the party has provided reasonable notice in writing to the arbitrator and all other parties that they will not appear. It will be presumed, subject to a contrary showing under the circumstances, that giving five business days advanced written notice is reasonable notice.

C. If reasonable notice is not provided, the arbitrator shall determine if there was good cause for the failure to appear.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:

LAC 61:III.333. Taxpayer's Duty to Protect Protests and Appeals

A. It is the duty of the taxpayer to protect his right to protest or appeal any assessment or proposed assessment or to pursue any right to refund relating to any issue that may also be subject to the arbitration process. Compliance with all conditions and time limits for perfecting and pursuing any and all administrative and judicial protests and appeals or requests for refund are the sole responsibility of the taxpayer. Any agreement between a taxpayer, taxpayer representative, and a representative of the department to alter the conditions or time limits must be authorized by the secretary of the Department of Revenue and executed in writing by both parties to be effective.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:

LAC 61:III.335. Notice of a Waiver or Extension

A. When required by any party, notice that a written waiver or extension of any and all applicable prescriptive periods must be executed to each party's satisfaction. No party will be required to execute any waiver or extension of a statutory limitation as a condition of participating in an alternative dispute resolution process. Unless otherwise agreed to by the parties, any waiver or extension of prescription will apply to only those issues agreed upon as subject to the alternative dispute resolution process. If a written waiver or extension is required by a party, no alternative dispute resolution process will begin until an agreement has been executed.

B. The department and taxpayer will have 30 business days to resolve the issues and execute the waiver or extension. If

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no agreement is reached during that period of time, the arbitrator will terminate the alternative dispute resolution process. In the event that an alternative dispute resolution process has been terminated, the parties have a right to initiate a new alternative dispute resolution process. If the second attempt to initiate an alternative dispute resolution process fails, any subsequent attempts will not be allowed unless the arbitrator agrees it is in the parties best interest to continue to arrive at an agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:

Chapter 18. Administrative Provisions

Part II. Investigations and Hearings

§ 1541. Secretary's duty to determine correct tax

A. As soon as practicable after each return or report is filed under any of the provisions of this Title the secretary shall cause it to be examined and may make such further audit or investigation as he may deem necessary for the purpose of determining the correct amount of tax.

B. The taxpayer and the secretary or his designee may enter into a binding agreement to use a sampling procedure as a basis for projecting audit findings, which may result in either an underpayment or overpayment of tax.

C. (1) Before using a sampling procedure to project the findings of an audit and establish a tax liability, the secretary or his designee shall notify the taxpayer in writing of the sampling procedure he intends to use, including, but not limited to, how the tax will be computed, the population to be sampled, and the type of tax for which the tax liability will be established.

(2) The sampling procedure used shall produce a sample which shall reflect as nearly as possible the normal conditions under which the business was operated during the period to which the audit applies. If either the taxpayer or the secretary can demonstrate that a transaction in a sample for a particular time period is not representative of the taxpayer's business operations during that time period, the transaction shall be eliminated from the sample and shall be separately determined in the audit.

(3) If the taxpayer demonstrates that any sampling procedure used by the secretary was not developed or applied in accordance with generally recognized sampling techniques, that portion of the audit established by a projection based upon the development or application of the disputed sampling procedure shall be replaced by a projection based upon a new sample that conforms to generally recognized sampling techniques.

(4) Generally recognized sampling techniques and standards set forth by the American Institute of Certified Public Accountants shall be used as guidance in developing audit sampling techniques for purposes of this Section.

§ 1542. Power to examine records and premises of taxpayer

For the purpose of administering the provisions of this Subtitle, the collector, whenever he deems it expedient, may make or cause to be made by any of his authorized assistants, an examination or investigation of the place of busi-

ness, if any, the tangible personal property, and the books, records, papers, vouchers, accounts, and documents of any taxpayer. Every taxpayer and every director, officer, agent, or employee of every taxpayer, shall exhibit to the collector or to any of his authorized assistants, the place of business, the tangible personal property and all of the books, records, papers, vouchers, accounts, and documents of the taxpayer and to facilitate any such examination or investigation so far as it may be in his or their power so to do.

§ 1542.1. Retention of records by taxpayers

Notwithstanding any other provision of this Subtitle, any document or record which a taxpayer is required to maintain in regard to a tax levied pursuant to this Subtitle, shall be retained by the taxpayer until the tax to which they relate have prescribed.

§ 1542.2. Power to request records in machine-sensible format

A. If a taxpayer retains records required to be maintained in regard to a tax levied pursuant to this Subtitle in machine-sensible and hard-copy formats, the taxpayer shall make the records available to the secretary or his designee in the machine-sensible format used by the taxpayer upon request of the secretary or his designee.

B. The secretary may adopt rules and regulations pursuant to the Administrative Procedure Act to administer this Section.

§ 1543. Power to examine the records of third parties

For the purpose of administering the provisions of this Subtitle, the collector whenever he deems it expedient may make or cause to be made by any of his authorized assistants, an examination of the books, records, papers, vouchers, accounts and documents of any individual, firm, co-partnership, joint adventure, association, corporation, estate, trust, business trust, receiver, bank, syndicate or other group or combination, in so far as said books, records papers, vouchers, accounts and documents relate to, bear on, associate with, identify, clarify or disclose, the liability of any person or group made liable for any tax, excise, permit, or license under any Chapter of this Sub-title or assist in the enforcement or collection of any such liability. Every individual, director, officer, agent or employee of such individual, firm, co- partnership, joint adventure, association, corporation, estate, trust, business trust, receiver, bank, syndicate or other group or combination, shall exhibit to the collector or to any of his authorized assistants, the pertinent books, records, papers, vouchers, accounts and docu-

Part II. Investigations and Hearings

ments and to facilitate any such examination and investigation so far as it may be in his or their power so to do.

§ 1544. Power to conduct hearings

The collector or any of his authorized assistants, may conduct hearings, administer oaths to, and examine under oath, any taxpayer, and the directors, officers, agents, and employees of any taxpayer, and any other witnesses, relative to the business of such taxpayer in respect to any matter incident to the administration of this Sub-title.

§ 1545. Power to subpoena witnesses; fees

The collector or any of his authorized assistants may by subpoena compel the attendance of witnesses and production of any books, records, papers, vouchers, or accounts, of any taxpayer or any person who the collector has reason to believe has information pertinent to any matter under investigation by the collector at any hearing held pursuant to the provisions of this Sub-title. The fees of witnesses required to attend any such hearing shall be the same as those allowed to witnesses appearing in the district courts. These fees shall be paid in the manner provided for the payment of other expenses incident to the administration of this Sub-title.

§ 1546. Notice to attend hearings, how given

The notice or subpoena requiring a person to attend a hearing authorized by this Sub-title, to be examined, or to answer any questions or to produce any books, records, papers, vouchers, accounts or documents, shall be given by the collector or any of his authorized assistants, either through personal service on the person and endorsement of such service on the reverse of a copy of such notice, or by sending a notice by registered mail to the last known address of such person. The mailing of the notice shall be presumptive evidence of its receipt by the person to whom it was addressed.

§ 1547. Procedure to compel witnesses to attend and to testify at hearing

If a person subpoenaed to attend any hearing under this Sub-title refuses to appear, be examined, or answer any questions, or produce any books, records, papers, vouchers, accounts or documents, pertinent to the matter of inquiry, when subpoenaed so to do by the collector, or any of his authorized assistants, the collector or such assistant, in term time or vacation, may apply to any district court, upon proof by affidavit of such refusal, to make an order return-

able in not less than two nor more than ten days, directing such person to show cause before the court why he should not obey the demand of the subpoena. Upon the return of such order, the court before whom the matter comes shall examine the person under oath, and the person shall be given an opportunity to be heard, and if the court determines that he has refused, without legal excuse, to obey the command of the subpoena, or to be examined, or to answer any question, or to produce any books, papers, vouchers, records, accounts, or documents, pertinent to the matter of inquiry, which he was by subpoena commanded to answer or produce, the court may order such person to comply forthwith with such subpoena or order, or to submit to such examination or to answer any such question, and any failure to obey such order of the court may be punished by the court as a contempt of the court.

§ 1548. Rule to show cause and examination of judgment debtor

A. Whenever the collector finds that any person has failed to file or refuses to file any return required by any provision of Title 47 of the Louisiana Revised Statutes of 1950, the collector may institute against that person:

- (1) A rule to show cause why the return should not be filed, and
- (2) A rule to examine a judgment debtor, as provided for in Articles 2452 through 2456, Louisiana Code of Civil Procedure where the tax due has been duly and finally assessed as otherwise provided.

The proceedings outlined herein shall be consistent with Article 2592 of Louisiana Code of Civil Procedure.

Chapter 18. Administrative Provisions

Part III. Assessment and Collection Procedures

§ 1561. Alternative remedies for the collection of taxes

In addition to following any of the special remedies provided in the various chapters of this subtitle, the collector may, in his discretion, proceed to enforce the collection of any taxes due under this subtitle by means of any of the following alternative remedies or procedures:

- (1) Assessment and distraint, as provided in R.S. 47:1562 through 47:1573.
- (2) Summary court proceeding, as provided in R.S. 47:1574.
- (3) Ordinary suit under the provisions of the general laws regulating actions for the enforcement of obligations.

The collector may choose which of these procedures he will pursue in each case, and the counter-remedies and delays to which the taxpayer will be entitled will be only those which are not inconsistent with the proceeding initiated by the collector, provided that in every case the taxpayer shall be entitled to proceed under R.S. 47:1576 except (a) after he has filed a petition with the board of tax appeals for a redetermination of the assessment, or (b) when an assessment for the tax in question has become final or (c) when a suit involving the same tax obligation is pending against him; and provided further, that the fact that the collector has initiated proceedings under the assessment and distraint procedure will not preclude him from thereafter proceeding by summary or ordinary court proceedings for the enforcement of the same tax obligation.

§ 1561.1. Special authority to enforce collection of taxes collected or withheld; personal liability

A. Notwithstanding any other provision of law to the contrary, if any corporation, limited liability company, or limited partnership fails to file returns or to remit the income taxes withheld from the wages of its employees under Chapter 1 of Subtitle II of this Title, or if any corporation, limited liability company, or limited partnership fails to file returns or to remit the sales and use taxes collected from purchasers or consumers under Chapters 2, 2-A, and 2-B of Subtitle II of this Title, the secretary is authorized, as an alternative means of enforcing collection, to hold those officers or directors, or those managers or members as defined in R.S. 12:1301(12) and (13), having direct control or supervision of such taxes or charged with the responsibility of filing such returns and remitting such taxes and who willfully fail to remit or account for such taxes withheld or collected, personally liable for the total amount of such taxes withheld or collected, and not accounted for or not remitted, together

with any interest, penalties, and fees accruing thereon. Collection of the total amount due may be made from any one or any combination of such officers or directors, or managers or members as defined in R.S. 12:1301(12) and (13), who willfully fail to remit or account for such taxes withheld or collected, by use of any of the alternative remedies for the collection of taxes as provided in R.S. 47:1561.

B. A corporation, limited liability company, or limited partnership by resolution of the board of directors or members may designate an officer or director, or a manager or member as defined in R.S. 12:1301(12) and (13), having direct control or supervision of such taxes or charged with the responsibility of filing such returns and remitting such taxes, and such resolution shall be filed with the secretary of state.

LAC 61:1.4901. Alternative Remedies for the Collection of Taxes

A. R.S. 47:1561.1 provides an alternative means of enforcing collection of income taxes withheld from wages of employees and sales and use taxes collected from customers, should a corporation fail to file returns or fail to remit such taxes, by holding certain officers or directors of the corporation personally responsible. Three criteria must be met before a corporate officer or director can be held personally liable:

- 1. the corporation must have failed to remit the collected taxes;*
- 2. the officer or director must have direct control over or supervision of such taxes or must be charged with the responsibility for filing returns and remitting the taxes; and*
- 3. the officer or director must have willfully failed to remit or account for such taxes.*

B. Failure to Remit by Corporation

1. A corporation must have actually withheld income taxes from the wages of its employees or must have actually collected sales or use taxes from customers or consumers and failed to account for or remit these taxes to the secretary before a claim can be made against an officer or director. Officers or directors cannot be held personally responsible for sales and use tax amounts determined by audit to be due but not actually collected by the corporation.

2. Taxes Actually Withheld or Collected

a. If a corporation pays net wages to its employees, it will be deemed to have withheld any income taxes required to be withheld.

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b. If a corporation pays wages in property other than money, it will be deemed to have withheld income taxes on such payment.

c. Where a corporation makes sales on credit or on open account and the sales tax is shown on the invoice, some payment on the invoice must be received before the tax will be deemed to have been collected.

i. Any payment on open account will be applied to the oldest invoice first, unless otherwise indicated.

ii. Any partial payment on an invoice will be applied to the sales tax first, unless otherwise indicated.

3. Reasonable efforts must be made to collect the designated taxes from the corporation before proceeding against an officer or director. It will be assumed that collection from the corporation cannot be made if the corporation has filed bankruptcy, has discontinued business and has no unencumbered assets, or has been liquidated.

4. Payments made by a corporation on its tax account will be applied toward any non-trust fund taxes first, unless the taxpayer designates in writing how a particular payment is to be applied at the time the payment is made, or the facts and circumstances indicate otherwise. For example, if a corporation owes, for a particular period, both sales taxes which have been collected and use taxes on purchases, any partial payment will be applied first to the use taxes owed by the corporation.

C. Responsible Officers or Directors

1. *Definition.* A responsible officer or director is one who has the duty to perform or the power to direct the act of collecting, accounting for, and paying over trust fund monies. He or she must be an officer or director of the corporation which failed to remit the taxes and must have sufficient control over funds to direct disbursement of such funds.

2. *Designation of Responsible Officer or Director.* The law provides that a corporation by resolution of the board of directors may designate an officer or director having direct control or supervision of withheld or collected taxes or charged with the responsibility of filing returns and remitting such taxes, and such resolution shall be filed with the Secretary of State. If such a designation has been filed, the named officer or director shall be considered responsible. If no designation has been filed, all acts and circumstances must be considered. No one factor will determine whether the officer or director is responsible. In all cases, there will

be at least one corporate officer with the responsibility for collection and payment of taxes. Some factors to be considered are:

a. what the individual's duties were as outlined by the corporate bylaws;

b. whether the individual had the authority to sign company checks;

c. whether the individual signed the tax returns of the company;

d. whether the individual paid or directed payment to creditors other than the state of Louisiana;

e. whether the individual was a principal stockholder;

f. whether the individual hired and discharged employees;

g. whether the individual controlled the financial affairs of the company in general; or

h. whether an officer or director was designated as responsible for filing returns and remitting taxes even though no resolution was filed with the Secretary of State. An officer or director to whom such responsibility has been delegated cannot avoid his responsibility by delegating it to a subordinate employee.

3. *Multiple Responsible Persons.* There may be instances when more than one officer or director has responsibility for taxes. If such a determination is made, the secretary may assess all responsible officers and directors and may proceed to recover the entire amount from any one officer or director or partial payments from any combination thereof. The total amount of tax collected must not exceed the corporation's total liability. For example, if the corporation pays the liability after an assessment is made against a responsible officer, a corresponding credit should be given to that officer.

D. Willfulness

1. *The term willful means intentional, deliberate, voluntary, and knowing, as distinguished from accidental. Willfulness is construed to be the attitude of a person who, having free will or choice, either intentionally disregards the law or is plainly indifferent to the requirements of the law. Willfulness includes a "reckless disregard for obvious or known risks" or a "failure to investigate or correct mismanagement."*

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2. If an officer or director permits withheld or collected taxes to be used to pay operating expenses of the business, whether by direction or tacit approval, he has willfully failed to account for or remit such taxes.

3. The determination of willfulness does not require a finding of bad motives, such as intent to defraud.

E. *Alternative Remedies for Collection of Taxes.* Any of the methods of collection provided by R.S. 47:1561 may be used to collect taxes from responsible officers or directors.

F. *Prescription and Waivers.* The prescription period of the tax in question will also apply to any assessment under R.S. 47:1561.1. A waiver of prescription executed by the corporation will not be valid for assessments against officers or directors. Separate waivers must be obtained.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1561.1.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Office of the Secretary, LR 15:274 (April 1989).

§ 1561.2. Special authority to recover rebates and refundable tax credits

A. Rebates or refundable tax credits previously granted to a taxpayer, but later disallowed, may be recovered by the secretary through any collection remedy authorized by R.S. 47:1561 and initiated within the latter of any of the following:

(1) Two years from December thirty-first of the year in which the rebate or refundable tax credit was paid.

(2) Three years from December thirty-first of the year in which the taxes for the filing period were due.

(3) The time period for which prescription has been extended, as provided by R.S. 47:1580.

B. The only interest which may be assessed and collected on recovered refundable tax credits amounts is interest at a rate three percentage points above the rate provided in Civil Code Article 2924(B)(1), which shall be computed from the date of issuance to the date payment is received by the secretary.

C. The only interest which may be assessed and collected on recovered rebates is interest at a rate three percentage points above the rate provided in Civil Code Article 2924(B)(1), which shall be computed beginning on the date

one year after the date of issuance of the rebate to the date payment is received by the secretary.

D. The provisions of this Section are in addition to and shall not limit the authority of the secretary to assess or to collect under any other provision of law.

§ 1562. Determination and notice of tax due

A. If a taxpayer fails to make and file any return or report required by the provisions of this Subtitle, the secretary shall determine the tax, penalty, and interest due by estimate or otherwise. Having determined the amount of tax, penalty, and interest due, the secretary shall send by mail a notice to the taxpayer at the address given in the last report filed by him pursuant to the provisions of the Chapter governing the tax involved, or to any address that may be obtainable from any private entity which will provide such address free of charge or from any federal, state, or local government entity, including but not limited to the U.S. Postal Service or from U.S. Postal Service certified software, setting out his determination and informing the person of his purpose to assess the amount so determined against him after fifteen calendar days from the date of the notice.

B. If a return or report made and filed does not correctly compute the liability of the taxpayer, the secretary shall cause an audit, investigation, or examination, as provided for by R.S. 47:1541, to be made to determine the tax, penalty, and interest due. Having determined the amount of tax, penalty, and interest due, the secretary shall send by mail a notice to the taxpayer at the address given in the last report filed by him pursuant to the provisions of the Chapter governing the tax involved, or to any address that may be obtainable from the U.S. Postal Service or from U.S. Postal Service certified software, setting out his determination and informing the person of his purpose to assess the amount so determined against him after thirty calendar days from the date of the notice.

§ 1563. Protest to collector's determination of tax due

The taxpayer, within fifteen calendar days from the date of the notice provided in R.S. 47:1562(A) or within thirty calendar days from the date of the notice provided in R.S. 47:1562(B) may protest thereto. This protest must be in writing and should fully disclose the reasons, together with facts and figures in substantiation thereof, for objecting to the secretary's determination. The secretary shall consider the protest and in his discretion may grant a hearing thereon,

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before making a final determination of tax, penalty, and interest due.

§ 1564. Assessment of tax, interest, and penalties

A. At the expiration of fifteen calendar days from the date of the secretary's notice provided in R.S. 47:1562(A), or at the expiration of such time as may be necessary for the secretary to consider any protest filed to such notice, the secretary shall proceed to assess the tax, penalty, and interest that he determines to be due under the provisions of any Chapter of this Subtitle. The assessment shall be evidenced by a writing in any form suitable to the secretary, which sets forth the name of the taxpayer, the amount determined to be due, the kind of tax, and the taxable period for which it is due. This writing shall be retained as a part of the secretary's official records. The assessment may confirm or modify the secretary's originally proposed assessment.

B. At the expiration of thirty calendar days from the date of the secretary's notice provided in R.S. 47:1562(B), or at the expiration of such time as may be necessary for the secretary to consider any protest filed to such notice, the secretary shall proceed to assess the tax, penalty, and interest that he determines to be due under the provisions of any Chapter of this Subtitle. The assessment shall be evidenced by a writing in any form suitable to the secretary, which sets forth the name of the taxpayer, the amount determined to be due, the kind of tax, and the taxable period for which it is due. This writing shall be retained as a part of the secretary's official records. The assessment may confirm or modify the secretary's originally proposed assessment.

§ 1565. Notice of assessment and right to appeal

A. Having assessed the amount determined to be due, the secretary shall send a notice by certified mail to the taxpayer against whom the assessment is imposed at the address given in the last report filed by said taxpayer, or to any address obtainable from any private entity which will provide such address free of charge or from any federal, state, or local government entity, including but not limited to the United States Postal Service or from United States Postal Service certified software. If no report has been timely filed, the secretary shall send a notice by certified mail to the taxpayer against whom the assessment is imposed at any address obtainable from any private entity which will provide such address free of charge or from any federal, state, or local government entity, including but not limited to the United States Postal Service or from United States Postal service certified software. This notice shall

inform the taxpayer of the assessment and that he has sixty calendar days from the date of the notice to either pay the amount of the assessment or to appeal to the Board of Tax Appeals for a redetermination of the assessment. All such appeals shall be made in accordance with the provisions of Chapter 17, Subtitle II of this Title.

B. If the taxpayer has not filed an appeal with the Board of Tax Appeals within the sixty day period, the assessment shall be final and shall be collectible by distraint and sale as hereinafter provided. If an appeal for a redetermination of the assessment has been filed, the assessment shall not be collectible by distraint and sale until such time as the assessment has been redetermined or affirmed by the Board of Tax Appeals or the court which last reviews the matter.

C. (1) No assessment made by the secretary shall be final if it is determined that the assessment was based on an error of fact or of law. An "error of fact" for this purpose means facts material to the assessment assumed by the secretary at the time of the assessment to be true but which subsequently are determined by the secretary to be false. "Error of law" for this purpose means that in making the assessment the secretary applied the law contrary to the construction followed by the secretary in making other assessments.

(2) The determination of an error of fact or of law under this Subsection shall be solely that of the secretary, and no action against the secretary with respect to the determination shall be brought in any court, nor shall any appeal relating thereto be brought before the board of tax appeals, and no court shall have jurisdiction of any such action nor the board of tax appeals of any such appeal, it being the intent of this Subsection only to permit the secretary to correct manifest errors of fact or in the application of the law made by the secretary in making the assessment; however, all reductions of assessments based on such errors, except estimated assessments made due to the failure of the taxpayer to file a proper tax return, must be approved and signed by the secretary, and the assistant secretary or the deputy assistant secretary of the office of legal affairs of the Department of Revenue, and shall then be approved by the board of tax appeals and signed by the chairman thereof. Estimated assessments made due to the failure of the taxpayer to file a proper tax return may be corrected by the acceptance of the proper tax return and must be approved by the secretary or his designee.

(3) The remedies of a taxpayer aggrieved by any action of the secretary are by appeal to the board of tax appeals or by payment of the disputed tax under protest and suit to recover as provided in this Subtitle.

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§ 1565.1. Waiver of restrictions and delays

The taxpayer shall at any time have the right, by a signed notice in writing filed with the collector, to waive the restrictions and delays prescribed in R.S. 47:1562 through 47:1565 which must ordinarily be observed before an assessment may become final. When such a waiver is executed, the assessment is final when made and is immediately collectible by distraint and sale.

§ 1566. Assessment and notice when tax is in jeopardy

A. If the collector finds that a taxpayer designs quickly to depart from the state, or to remove therefrom any property subject to any tax or to any lien for a tax, or to discontinue business, or to do any other act tending to prejudice or render wholly or partly ineffectual any proceedings that might be instituted to collect such tax, whereby it shall have become important that such proceedings be instituted without delay, he may immediately make a determination, from any available information or by estimate or otherwise, of the amount of tax, penalty, and interest such taxpayer is liable to pay under any Chapter of this Sub-title. In addition, if the collector finds or is notified by a law enforcement agency of the seizure of controlled dangerous substances from a taxpayer as enumerated in R.S. 40:964 et seq., he may immediately make a determination, from any available information, or by estimate or otherwise, of the amount of tax, penalty, and interest such taxpayer is liable to pay under any Chapter of this Sub-title. Having made such determination, the collector shall immediately assess said amount, and by a writing to be retained as part of his official records, indicate such assessment has been made, and without any notice, proceed to distraint as is hereinafter provided any property belonging to the taxpayer. This type of assessment may be made whenever a tax becomes due under the provisions of this Sub-title, regardless of whether it is then payable or not.

B. As soon as is feasible after such assessment, and not later than two calendar days thereafter, the secretary shall send by certified mail a notice to the taxpayer against whom the assessment lies, at the address given in the last report filed by said taxpayer, or to any such address as may be obtainable from any private entity which will provide such address free of charge or from any federal, state, or local government entity, including but not limited to the United States Postal Service or from United States Postal Service certified software. Such notice shall inform the taxpayer of the assessment, its basis, and its jeopardous nature; make demand for immediate payment thereof; and give notice that any prop-

erty distrained or to be distrained will be subject to sale, as provided in this Chapter, to satisfy the assessment.

C. The taxpayer against whom the assessment lies can stay distraint of his property, or sale of his property already distrained, as the case may be, only by the immediate payment of the assessment or by posting with the collector a surety bond for twice the amount of such assessment, or of a lower amount acceptable to the collector, with such sureties as the collector deems necessary. The taxpayer shall have sixty calendar days from the date of payment, or the date of posting bond, to appeal to the board of tax appeals in the manner set out in Chapter 17, Sub-title II of this Title, for a redetermination of the assessment. During this period, the collector shall hold any payment made in an escrow account. If the taxpayer does not appeal, the collector shall immediately credit such payment to tax collections or proceed to collect from sureties, if any were given. In the event of an appeal, such payment or demand for payment from sureties given shall be held in abeyance pending the redetermination or affirmation of the assessment by the board of tax appeals or the court which last reviews the matter. Final payment, or collection from sureties, will be for the amount of the affirmed or redetermined assessment.

§ 1567. Assessment and claims in bankruptcy and receivership

Upon the adjudication of bankruptcy of any taxpayer in any bankruptcy proceeding, or the appointment of a receiver for any taxpayer in a receivership proceeding, before any court of this state or of the United States, the collector may immediately make a determination from any available information or by estimate or otherwise, of the amount of tax, penalty and interest the taxpayer is liable to pay under any chapter of this title, and immediately assess said amount, and by a writing to be retained as a part of his official records indicate that such assessment has been made. Such assessment may be made whenever a tax becomes due under the provisions of this Sub-title, regardless of whether it is then payable or not. Claims for such assessments, and additional interest and attorney's fees thereon, shall be presented for adjudication in accordance with law, to the court before which the bankruptcy or receivership proceeding is pending despite the pendency of delays before assessment provided in R.S. 47:1562 through 47:1565, or the pendency of an appeal to the board of tax appeals or the courts for a redetermination. Provided that no petition for the redetermination of an assessment shall be filed with the board of tax appeals after an adjudication of bankruptcy or the appointment of a receiver, unless the petition is ac-

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accompanied by a certified copy of an order of the court before which the bankruptcy or receivership proceedings is pending, authorizing the trustee or receiver to prosecute such appeal.

§ 1568. Assessment of tax shown on face of taxpayer's returns

A. Whenever a taxpayer files returns and computes the amount of any tax due, such tax together with any penalty and interest due or accruing thereon, whether computed or not, shall be considered assessed and shall be entered by the secretary as an assessment in his official records without the necessity of observing the delays or giving the notice ordinarily required prior to assessment.

B. If the taxpayer fails to accompany his return filed with a proper payment, as required by any Chapter of this Sub-title, the secretary shall immediately send a notice by mail to such person, addressed to the address appearing on the return or to any available address, informing him of the amount due, or the balance of the amount due if a partial payment has been made, and demanding payment of such amount within ten calendar days from the date of the notice. If payment has not been received at the expiration of such time, the assessment shall be collectible by distraint and sale as is hereinafter provided.

C. Nothing in this Section shall be construed as denying the right of the taxpayer to pay the assessment under protest or to claim a refund of the assessment after payment, all in a manner as is hereinafter set out in this Chapter.

§ 1569. Collection by distraint and sale authorized

When any taxpayer fails to pay any tax, penalty and interest assessed, as provided in this Sub-title, the collector may proceed to enforce the collection thereof by distraint and sale.

§ 1570. Distraint defined

The words "distraint" or "distrain" as used in this Sub-title, shall be construed to mean the right to levy upon and seize and sell, or the levying upon or seizing and selling, of any property or rights to property of the taxpayer including goods, chattels, effects, stocks, securities, bank accounts, evidences of debt, wages, real estate and other forms of property, by the collector or his authorized assistants, for the purpose of satisfying any assessment of tax, penalty or interest due under the provisions of this Sub- title.

Property exempt from seizure by R.S. 13:3881 is exempt from distraint and sale herein.

§ 1571. Distraint procedure

Whenever the collector or his authorized assistants shall distraint any property of a taxpayer, he shall cause to be made a list of the property or effects distrained, a copy of which, signed by the collector or his authorized assistants shall be sent by registered mail to the taxpayer at his last known residence or business address, or served on the taxpayer in person. This list shall be accompanied with a note of the sum demanded and a notice of the time and place where the property will be sold. Thereafter, the collector shall cause a notice to be published in the official journal of the parish wherein the distraint is made, specifying the property distrained, and the time and place of sale. The sale shall be held not less than fifteen calendar days from the date of the notice mailed or served on the taxpayer or the date of publication in the official journal, whichever is later. The collector may postpone such sale from time to time, if he deems it advisable, but not for a time to exceed thirty calendar days in all. If the sale is continued to a new date it shall be readvertised.

§ 1572. Surrender of property subject to distraint

Any person subject to distraint, or upon whom a levy has been served, shall, upon demand by the collector or his authorized assistants, making such levy, surrender such property, or rights to property of which he is in possession, or which he subsequently comes into possession, until such time as the levy is recalled, subject to distraint, to the collector or his authorized assistant, unless such property or right is, at the time of demand, subject to an attachment or execution under any judicial process. Any such person failing or refusing to surrender any such property or rights shall be liable to the state in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes, penalties, and interest and other costs and charges which are due.

§ 1573. Sale of distrained property

A. After notifying all reasonably ascertainable interested third parties the secretary or his authorized assistants shall sell at public auction for cash to the highest bidder so much of the property distrained by him as may be sufficient to satisfy the tax, penalties, interest, and costs due. The property shall not be sold if the price to the highest bidder is less than two- thirds of the appraised value. In that case, the secretary shall readvertise the sale of the property in the same manner as the original sale, and the same delays must elapse. At the second offering, the property shall be

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sold for cash at whatever price it will bring. He shall give to the purchaser a certificate of sale which will be prima facie evidence of the right of the secretary to make the sale, and conclusive evidence of the regularity of his proceedings in making the sale, and which will transfer to the purchaser merchantable title in and to the property sold.

B. The purchaser shall be liable for nothing beyond the purchase price. He shall pay the full purchase price to the Department of Revenue despite the existence of any mortgage, lien, or privilege on the property inferior in rank to that of the Department of Revenue.

C. The Department of Revenue shall give the purchaser a release from the security interest, mortgage, lien, or privilege of the Department of Revenue and from all inferior security interests, mortgages, liens, and privileges, and shall direct the recorder of mortgages or proper filing officer to cancel their inscriptions insofar as they affect the property sold, and no further. All writings affecting the property which were recorded prior to distraint of the property shall not be affected by the sale of the property by the secretary pursuant to this Subtitle.

D. The Department of Revenue shall pay the inferior security interests, mortgages, liens, and privileges, after payment of the costs and the amount due the Department of Revenue. When the sum remaining after payment of the cost and the amount due the Department of Revenue is insufficient to pay such inferior claims in full, the Department of Revenue shall deposit the remainder with the court and proceed by contradictory motion against the inferior creditors to have their claims referred to in the proceeds of the sale.

§ 1574. Collection by summary court proceeding authorized

In addition to any other procedure provided in this Subtitle or elsewhere in the laws of this state; and for the purpose of facilitating and expediting the determination and trial of all claims for taxes, penalties, interest, attorney fees, or other costs and charges arising under this Sub-title, there is hereby provided a summary proceeding for the hearing and determination of all claims by or on behalf of the state, or by or on behalf of the collector, for taxes, excises, and licenses and for the penalties, interest, attorney fees, costs or other charges due thereon, by preference in all courts, all as follows:

(1) All such proceedings, whether original or by interven-

tion or third opposition, or otherwise, brought by or on behalf of the state, or by or on behalf of the collector, for the determination or collection of any tax, excise, license, interest, penalty, attorney fees, costs or other charge, claimed to be due under any provision of this Sub-title, shall be summary and shall always be tried or heard by preference, in all courts, original and appellate, whether in or out of term time, and either in open court or chambers, at such time as may be fixed by the court, which shall be not less than two nor more than ten days after notice to the defendant or opposing party.

(2) All defenses, whether by exception or to the merits, made or intended to be made to any such claim, must be presented at one time and filed in the court of original jurisdiction prior to the time fixed for the hearing, and no court shall consider any defense unless so presented and filed. This provision shall be construed to deny to any court the right to extend the time for pleading defenses; and no continuance shall be granted by any court to any defendant except for legal grounds set forth in the Louisiana Code of Civil Procedure.

(3) That all matters involving any such claim shall be decided within forty- eight hours after submission, whether in term time or in vacation, and whether in the court of first instance or in an appellate court; and all judgments sustaining any such claim shall be rendered and signed the same day, and shall become final and executory on the fifth calendar day after rendition. No new trial, rehearing or devolutive appeal shall be allowed. Suspensive appeals may be granted, but must be perfected within five calendar days from the rendition of the judgment by giving of bond, with good and solvent security, in a sum double that of the total amount of the judgment, including costs. Such appeals, whether to a court of appeals or to the Supreme Court, shall be made returnable in not more than fifteen calendar days from the rendition of the judgment.

(4) Whenever the pleadings filed on behalf of the state, or on behalf of the collector, shall be accompanied by an affidavit of the collector or of one of his assistants or representatives or of the counsel or attorney filing the same, that the facts as alleged are true to the best of the affiant's knowledge or belief, all of the facts alleged in said pleadings shall be accepted as prima facie true and as constituting a prima facie case, and the burden of proof to establish anything to the contrary shall rest wholly on the defendant or opposing party.

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§ 1574.1. Failure to pay tax collected from others; rule to cease business

A. On motion in a court of competent jurisdiction, the secretary may take a rule on a taxpayer, to show cause in not less than two or more than ten days, exclusive of holidays, why the taxpayer should not be ordered to cease from further pursuit of his business for failure to pay to the state amounts collected from others by his business as sales and use tax or as withholding income tax, along with any interest, penalty, and costs related to such taxes. Such rule may be taken only for amounts due as a result of assessments or judgments which have become final and non-appealable.

B. This rule may be tried out of term and in chambers, and shall always be tried by preference.

C. (1) If the rule is made absolute, the order rendered thereon shall be considered a judgment in favor of the state, and the court shall enjoin and prohibit the taxpayer from the further pursuit of his business until such time as he has paid the delinquent tax, interest, penalties, and all costs or has entered into an agreement with the secretary to do so.

(2) If the secretary files a subsequent motion with the court alleging a violation of the injunction, the court shall hold a hearing in not less than two days or more than ten days, exclusive of holidays, to determine whether such violation has occurred. Upon a showing by the secretary that there has been a violation of the injunction, the court shall consider the violation to be a contempt of the court and shall punish the violator in accordance with law, and every violation of the injunction shall be considered as a contempt of court.

D. Whenever the pleadings filed on behalf of the secretary shall be accompanied by an affidavit of the secretary or of one of his assistants or representatives or of the attorney filing the same, that the facts as alleged are true to the best of the affiant's knowledge or belief, all of the facts alleged in the pleadings shall be accepted as prima facie true and as constituting a prima facie case, and the burden of proof to establish anything to the contrary shall rest wholly on the taxpayer.

E. The collection procedure provided for in this Section shall be in addition to any other collection procedure provided by law.

§ 1575. Injunctions prohibited

No court of this state shall issue any process whatsoever to restrain the collection of any tax, penalty, interest, or other charge imposed in this Sub- title.

§ 1576. Remittance of tax under protest; suits to recover

A. (1)(a) Except as otherwise provided in Subsection B of this Section, any taxpayer protesting the payment of any amount found due by the secretary of the Department of Revenue, or the enforcement of any provision of the tax laws in relation thereto, shall remit to the Department of Revenue the amount due and at that time shall give notice of intention to file suit for the recovery of such tax.

(b) In the case of sales or use taxes that are required to be collected and remitted by a selling dealer as provided for in R.S. 47:304, the purchaser, in order to avail himself of the alternative remedy provided by this Section, shall remit protested sales or use tax to the selling dealer, and shall retain copies of documentation evidencing the amount of the sales or use tax paid to the dealer on the transactions. On or before the twentieth day of the month following the month of the transactions on which the selling dealer charged the tax, the purchaser shall inform the department by certified mail or other reasonable means of the dates and amounts of the protested taxes that were charged by the selling dealer, and shall give notice of the purchaser's intention to file suit for recovery of the tax.

(2) Upon receipt of this notice, the amount remitted to the Department of Revenue or the amount of protested taxes that have been paid to the selling dealer shall be placed in an escrow account and held by the secretary or his duly authorized representative for a period of thirty days. If suit is filed for recovery of the tax within the thirty-day period, the funds in the escrow account shall be further held pending the outcome of the suit.

(3) If the taxpayer prevails, the secretary shall refund the amount to the claimant, with interest at the rate established pursuant to R.S. 13:4202(B) from the date the funds were received by the Department of Revenue or the due date, determined without regard to extensions, of the tax return, whichever is later, to the date of such refund. Payments of interest authorized by this Section shall be made from funds derived from current collections of the tax to be refunded.

(4) There shall be no penalty for underpayments of estimated tax with regard to amounts paid under protest and

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such amounts paid under protest are not required to be paid until the due date of the return determined without regard to extensions.

B. For income and corporation franchise tax purposes, in instances where the payment of tax under protest is required to be made before the amount of tax due is determinable, the taxpayer shall have thirty days from the due date of the tax return, or the extended due date of such return if applicable, to file suit for the recovery of such tax. If suit is filed within the thirty-day period and the taxpayer prevails, the secretary shall refund the amount to the claimant, with interest at the rate established pursuant to Civil Code Article 2924(B)(3) computed pursuant to R.S. 47:287.657 or R.S. 47:617 in the case of corporation taxes or R.S. 47:115 in the case of individual income tax.

C. This Section shall afford a legal remedy and right of action in any state court having jurisdiction of the parties and subject matter, for a full and complete adjudication of any and all questions arising in the enforcement of this Subtitle as to the legality of any tax accrued or accruing or the method of enforcement thereof. In such action, service of process upon the secretary shall be sufficient service, and he shall be the sole necessary and proper party defendant in any such suit.

D. This Section shall be construed to provide a legal remedy in the state courts in case such taxes are claimed to be an unlawful burden upon interstate commerce, or the collection thereof, in violation of any Act of Congress or the United States Constitution, or the Constitution of Louisiana.

E. Upon request of a taxpayer and upon proper showing by such taxpayer that the principle of law involved in an additional assessment is already pending before the courts for judicial determination, the taxpayer, upon agreement to abide by the decision of the courts, may remit the additional assessment under protest, but need not file an additional suit. In such cases, the tax so paid under protest shall be placed in an escrow account and held by the secretary until the question of law involved has been determined by the courts and shall then be disposed of as therein provided.

LAC 61:1.4907. Remittance of Tax Under Protest; Suits to Recover

A. For the purposes of this Section, estimated taxes shall include any amounts paid on account of a tax prior to the due date or extended due date of the return required for such tax. Estimated taxes shall also include overpayments

of income tax designated on the prior year's return as an amount of overpayment to be credited to the next year's return. The term shall not include any other credits, including, but not limited to, enterprise zone credits or inventory tax credits.

B. R.S. 47:1576(B) makes specific provisions for income and corporation franchise taxes paid under protest. This regulation addresses the ambiguities not directly addressed by R.S. 47:1576(B) by expressly providing three options for giving notification of amounts of income tax or corporation franchise tax paid under protest and the intent to file suit for recovery.

1. Under the first option a taxpayer may make payments of estimated income and franchise taxes under protest and at that time give notice of intent to file suit for recovery. The amount paid under protest will be placed in an escrow account upon receipt of the notice. This is the method that has generally been required prior to this regulation. It is not the intent of this regulation to change any procedures that existed prior to this regulation if the taxpayer chooses to follow this option.

2. Under the second option a taxpayer may consider, for purposes of this option only, payments of estimated taxes and, in the case of individual income tax, withholding taxes as required deposits that do not become payments of the income or franchise taxes until they are so designated on the income or franchise tax return filed for the taxable period. Under this option the taxpayer must make notification of the amount of tax being paid under protest and the intent to file suit for recovery at the time the return for the taxable period is filed. This notification should be in duplicate, once with the return and again as a separate notification to the secretary. The amount designated as paid under protest will be placed in an escrow account upon receipt of the notice. This regulation does not extend or modify the time within which the taxpayer must file suit as provided by R.S. 47:1576(B).

3. The third option available to a taxpayer is to use a combination of the first two options. The fact that a taxpayer designates some estimated payments as payments under protest and makes the appropriate notification at the time of the estimated payment under the first option listed above will not preclude use of the second option with regard to additional amounts the taxpayer wishes to pay under protest.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1576.

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HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Division, LR 22:1230 (December 1996).

LAC 61:1.4908. Insufficient Funds Checks

A. *In the event a check used to make a remittance of tax under protest pursuant to R.S. 47:1576 is returned unpaid by the bank on which it is drawn for any reason related to the account on which the check is written, such shall constitute a failure to remit taxes.*

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1576.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 28:346 (February 2002).

§ 1577. Tax obligation to constitute a lien, privilege and mortgage

A. Except as is specifically provided in the laws regulating building and loan associations, any tax, penalty, interest or attorney fee due under the provisions of this Sub-title, shall operate as a lien, privilege and mortgage on all of the property, rights to property, or after-acquired property of the tax debtor, both movable and immovable, which said lien, privilege and mortgage shall be enforceable in any court of competent jurisdiction in an action, at law, or may be enforced as otherwise provided by this Subtitle. The lien, privilege, and mortgage shall arise at the time the tax is assessed or at the time a return thereof is filed, whichever occurs first. The lien, privilege, and mortgage created herein shall continue upon all property, rights to property, or after-acquired property, both movable and immovable, belonging to the tax debtor until the liability for the amount assessed or a judgment against the tax debtor arising out of such liability is satisfied or becomes unenforceable by reason of lapse of time.

B. The secretary may cause notice of such lien, privilege, and mortgage to be recorded at any time after the tax becomes due or the assessment is made, and regardless of whether or not then payable, according to the following:

(1) Notices of liens, privileges, and mortgages upon immovable property shall be filed in the office of the parish recorder of mortgages of any parish wherein the secretary has reason to believe the tax debtor owns immovable property.

(2)(a) Notices affecting movable property, including titled motor vehicles subject to R.S. 32:701 et seq. not held as inventory for sale or lease, shall be filed with the clerk of

court of any parish or in the case of Orleans Parish, with the recorder of mortgages thereof (the "filing officer"), for inclusion in the master index of information maintained by the secretary of state.

(b) The notice herein provided shall be on a form prescribed by the secretary and shall be accepted by all filing officers. Nonstandard form penalties shall not be applicable to such filings presented pursuant to this Section.

(3) All costs associated with filing the notices provided for herein shall be assessed against the taxpayer. The amount of such costs shall be an obligation to be collected and accounted for in the same manner as if it were a part of the tax due.

C. The lien, privilege, and mortgage shall not be valid against any mortgagee, purchaser, secured party, judgment lien creditor, or person holding a repairman's or vendor's privilege whose interest in any property of the tax debtor is perfected prior to the time notice of the lien, privilege, and mortgage is recorded in the mortgage records of any parish wherein the secretary has reason to believe the tax debtor owns property or filed in the office of the clerk of court of the parish of East Baton Rouge, or both. The lien, privilege, and mortgage shall affect the rights of all other third parties from the date the assessment is made or a return thereof is filed, whichever occurs first, and shall take their respective ranks by virtue of such.

D. The secretary shall promulgate rules and regulations as necessary to implement this Section under the Administrative Procedure Act.

LAC 61:1.5302. Issuance and Cancellation of a Lien; Fees

A. *A tax lien shall be filed on liabilities when the tax due involves a jeopardy assessment pursuant to R.S. 47:1566.*

B. *A tax lien may be filed on liabilities when any of the following conditions exist:*

- 1. when liabilities reach warrant for distraint status;*
- 2. information is received indicating the taxpayer is on the verge of bankruptcy;*
- 3. a corporation is in the process of dissolving or withdrawing from the state;*
- 4. the filing history of the taxpayer indicates an effort to avoid the payment of taxes;*

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5. information indicates that the taxpayer is in the process of selling movable or immovable property;

6. warrants are determined currently not collectible; or

7. a formal installment agreement has been negotiated with the taxpayer.

C. The secretary may authorize the release of a lien subject to the following terms and conditions:

1. when the tax, penalty, fees, or interest secured by a recorded lien have been paid;

2. when the taxpayer executes a surety bond in favor of the secretary in an amount not less than one and one-half times the amount of the obligation due, including penalties, interest, and other costs incurred. The surety bond must be issued by a surety company qualified to do business in Louisiana;

3. when the lien on the taxpayer's remaining real property is valued at not less than the amount of the remaining tax obligation, including all penalties, interest, and other costs incurred, plus the amount of all prior liens on the released property. This provision is subject to approval by the Board of Tax Appeals;

4. when the amount paid to the secretary in partial satisfaction of the liability is not less than the value of the state of Louisiana's interest in the part of the property released. This provision is subject to approval by the Board of Tax Appeals.

D. The secretary with the approval of two assistant secretaries and the Board of Tax Appeals may compromise any judgments for taxes of five hundred thousand dollars or less exclusive of interest and penalty, including assessments for such amounts that are equivalent to judgments, when any of the following conditions exist:

1. there is serious doubt as to the collectibility of the outstanding judgment.

2. there is serious doubt as to the taxpayer's liability for the outstanding judgment.

3. the administration and collection costs involved would exceed the amount of the outstanding liability.

E. The secretary may, with the approval of the Board of Tax Appeals, upon making a record of his reasons, waive, reduce, or compromise individual income tax, penalties, interest, or other amounts.

F. The department shall assess a fee against the taxpayer for the filing of a tax lien and the cancellation of a lien. The amount of the fee to be assessed against the taxpayer shall be determined according to the amount charged the department by the parish in which the lien is filed. In the event a lien is filed in more than one parish for the same taxes, each lien shall be treated separately and the total charges per parish for the liens shall be assessed against the taxpayer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511, R.S. 47:1577, and R.S. 47: 1578.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 28:347 (February 2002).

§ 1578. Cancellation of lien, privilege, and mortgage; compromises

A. In any case where the tax, penalty, or interest secured by a recorded lien, privilege, and mortgage have been paid, the secretary or his authorized assistants or attorneys may authorize the cancellation thereof.

B. In other cases, the secretary may authorize the cancellation or release of a lien, privilege, or mortgage subject to the following terms and conditions:

(1) The secretary, upon application of a taxpayer, may authorize the cancellation of any lien, privilege, or mortgage or other encumbrance recorded by virtue of this Subtitle, provided the taxpayer furnishes a surety bond in favor of the secretary executed by a surety company duly qualified to do business in this state in an amount of not less than one and one-half times the amount of the obligation due, including penalties, interest, and other costs incurred.

(2) Subject to approval by the Board of Tax Appeals, the secretary may authorize the release of any real property from the effect and operation of any lien, privilege, mortgage, or other encumbrance, recorded by virtue of this Subtitle, provided, that the secretary is satisfied that the remaining real property belonging to the tax debtor and upon which said lien, privilege, and mortgage bears, is valued at not less than the amount of the remaining tax obligation, including all penalties, interest and other costs incurred, and the amount of all prior liens upon such property. In determining the value of the remaining property, due consideration shall be given to prior ranking encumbrances, if any exist on said property.

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(3) Subject to the approval of the Board of Tax Appeals, the secretary may issue a certificate of release of any part of the property subject to any lien, privilege, mortgage, or other encumbrance recorded by virtue of this Subtitle, if there is paid over to the secretary in part satisfaction of liability an amount determined by the secretary, which shall not be less than the value of the interest of the state of Louisiana in the part to be so released.

(4)(a) Notwithstanding any other provision of this Chapter, the secretary, with the approval of two assistant secretaries and the Board of Tax Appeals, may compromise any judgments for taxes of five hundred thousand dollars or less exclusive of interest and penalty, including assessments for such amounts which are equivalent to judgments upon a determination that any of the following apply:

(i) There is serious doubt as to the collectibility of the outstanding judgment.

(ii) There is serious doubt as to the taxpayer's liability for the outstanding judgment.

(iii) The administration and collection costs involved would exceed the amount of the outstanding liability.

(b) This authority is wholly discretionary, and no taxpayer shall have a right to a compromise under the provisions of this Paragraph.

(c) 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, each such compromise shall be published in the department's annual report.

§ 1579. Prescription of taxes, interest, and penalties

There shall be no prescription running against any state tax, license, excise, interest, penalty or other charge levied under this Sub-title, except that ordained in the Constitution of Louisiana

§ 1580. Suspension and interruption of prescription

A. The prescription running against any state tax, license, excise, interest, penalty, or other charge shall be suspended by any of the following:

(1) The secretary's action in assessing any such amounts in the manner provided by law.

(2) The filing of a summary proceeding in court.

(3) The filing of any pleading, either by the secretary or by a taxpayer, with the board of tax appeals or any state or federal court.

(4) The filing of a false or fraudulent return, as defined in R.S. 47:1605(B)(2), provided that suspended prescription shall begin to run again upon notice to the secretary of the filing of the false or fraudulent return or upon the subsequent filing of a return which is not false or fraudulent.

(5) Repealed by Acts 1997, No. 1348, § 2, eff. July 15, 1997.

B. The running of such prescription shall also be suspended prior to the lapse of the prescriptive period set out in the Constitution of Louisiana as hereinafter provided:

(1) For any period by means of a written agreement between the taxpayer and the secretary of the Department of Revenue; or

(2) With respect to income tax, for any period by means of a written agreement entered into between a taxpayer and the United States Internal Revenue Service suspending the prescription of federal income tax; or

(3) With respect to income tax, for any period from the time of the commencement of an audit of a taxpayer by the United States Internal Revenue Service until one year from the time the secretary of the Department of Revenue is notified by said taxpayer or the federal government of an agreed change to the taxpayer's United States income tax return.

(4) With respect to bankruptcy, for any period from the time the taxpayer files for bankruptcy until six months after the bankruptcy case is closed.

C.(1) The failure to file any return required to be filed by this Subtitle shall interrupt the running of prescription, and prescription shall not commence to run again until the subsequent filing of such return. Once prescription commences to run, the tax, license, excise, interest, penalty, or other charge which is reported on such return shall prescribe in three years after the thirty-first day of December of the year of the filing of the return. However, if a taxpayer who does not file a tax return required to be filed by this Subtitle later becomes responsible for the filing of such a return due to a final court decision rendering a transaction or other

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activity as taxable, and the laws, regulation, or jurisprudence of this state previously classified that transaction, or other activity as nontaxable, this provision shall not apply and prescription shall run as if the taxpayer had timely filed the return.

(2) The interruption of the running of prescription due to the failure to file a return reporting a state tax shall not apply to any state tax periods for which the secretary and the taxpayer have entered into a valid and enforceable voluntary disclosure agreement.

(3) The provisions of this Subsection shall apply to use tax returns only when the amount due exceeds five hundred dollars for the tax levied.

§ 1581. Prescription of assessments as judgments

Any tax, penalty, interest, or other charges duly assessed under this Sub- title, being the equivalent of a judgment, shall not be subject to the running of any prescription other than such prescription as would run against a judgment in favor of the State of Louisiana in accordance with the Constitution and laws of this state; and the recordation of such assessment shall have the same effect as the recordation of a judgment.

§ 1582. Failure to remit tax collected on behalf of the state; rule to cease business

A. Failure by any person obligated to collect any tax from taxpayers on behalf of the state to remit such taxes collected shall, without demand or putting in default, cause the tax, interest, penalties, and costs to become immediately delinquent and the secretary has the authority, on motion in a court of competent jurisdiction, to take a rule on such person, to show cause in not less than two or more than ten days, exclusive of holidays, why such person should not be ordered to cease from further pursuit of business. This rule may be tried out of term and in chambers and shall always be tried by preference. If the rule is made absolute, the order rendered thereon shall be considered a judgment in favor of the state, prohibiting the person from the further pursuit of said business until he has paid the delinquent tax, interest, penalties, and costs, and every violation of the injunction shall be considered as a contempt of court and punished according to law.

B. The provisions of this Section shall not apply if the taxpayer has entered into an installment agreement for the payment of delinquent taxes with the department and is in compliance with the terms of the agreement.

§ 1583. Federal tax refund offset fees

At such times as monies are received as a result of an offset of a federal income tax refund under the provisions of Section 6402(e) of the Internal Revenue Code, the taxpayer shall be given a credit for the amount of the offset less a deduction for the offset fee imposed by the Internal Revenue Service.

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§ 1601. Interest on unpaid taxes

<Text of subsec. A effective until January 1, 2006>

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 Subtitle, interest at the rate of one and one-quarter percent per month shall be added to the amount of tax due and such interest shall be computed from the due date until the tax is paid. However, in the case of a waiver of restrictions and delays as provided for in R.S. 47:1565.1, if the taxpayer pays the tax due within ten days after the notice of assessment is mailed to him, the one and one-quarter percent per month interest shall be computed to the thirtieth day after the filing of such waiver or to the date the deficiency is paid, whichever is earlier. 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 shall not be waived or remitted.

<Text of subsec. A effective January 1, 2006>

A. (1) 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 Subtitle, interest shall be added to the amount of tax due and such interest shall be computed from the due date until the tax is paid. The rate of interest shall be as provided for in Paragraph (A)(2) of this Subsection. However, in the case of a waiver of restrictions and delays as provided for in R.S. 47:1565.1, if the taxpayer pays the tax due within ten days after the notice of assessment is mailed to him, the interest shall be computed to the thirtieth day after the filing of such waiver or to the date the deficiency is paid, whichever is earlier. 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 shall not be waived or remitted.

(2)(a) Interest shall accrue at the rate of one and one-quarter percent per month on any unpaid tax from the date the tax obligation becomes final and nonappealable until paid.

(b) With respect to tax obligations that have not become final and nonappealable, interest shall be determined as follows:

(i) Prior to January 1, 2006, interest shall accrue at the rate of one and one-quarter percent per month.

(ii) Effective January 1, 2006, interest shall accrue at an

annual rate of six percentage points above the rate provided for in Civil Code Article 2924(B)(1).

(iii) Effective January 1, 2007, interest shall accrue at an annual rate of five percentage points above the rate provided for in Civil Code Article 2924(B)(1).

(iv) Effective January 1, 2008, interest shall accrue at an annual rate of four percentage points above the rate provided for in Civil Code Article 2924(B)(1).

(v) Effective January 1, 2009, interest shall accrue at an annual rate of three percentage points above the rate provided for in Civil Code Article 2924(B)(1).

(c) In no event shall the interest rate provided for in Subparagraph (b) of this Paragraph exceed one and one-quarter percent per month.

<For text of subsec. A effective until January 1, 2006, see above>

B. Notwithstanding any provision of this Section or of any other Section of this Subtitle, the interest on any amount of tax outstanding on a specific date shall be computed at the rate applicable on such date.

C. Interest at the rate established by R.S. 47:1624 shall be paid by a corporation on any underpayment of tax determined in accordance with R.S. 47:287.445.

D. (1) When an individual income taxpayer files a tax return as required by Chapter 1 of this Subtitle on or before the tax return's due date, including extensions, and the secretary does not notify the taxpayer of any additional amounts owed within eighteen months of the tax return's due date, without regard to extensions, or date of filing, whichever is later, the interest imposition shall be suspended for the period beginning eighteen months after the tax return's due date, without regard to extensions, or date of filing, whichever is later, and shall not begin again until twenty-one days after the date of the secretary's notice to the taxpayer of any additional amounts due.

(2) The suspension of interest shall not apply if the tax return was not filed by the due date, including extensions, or in any case for which fraud or criminal penalties are assessed.

(3) The suspension of interest shall not apply when a taxpayer whose federal income tax return has been adjusted fails to furnish a statement to the secretary disclosing the nature and amounts of such adjustments within the prescribed period of time pursuant to R.S. 47:103(C). If the

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taxpayer timely furnishes such a statement and the taxpayer did not receive notice of additional amounts owed to the Internal Revenue Service within eighteen months of the tax return's due date, without regard to extensions, or date of filing, whichever is later, the provisions of Paragraph (1) of this Subsection shall apply.

LAC 61:I.4903. Timely Filing When the Due Date Falls on Saturday, Sunday, or Legal Holiday

A. Unless otherwise specifically provided, when the due date of any report or return prescribed under the laws administered by the Department of Revenue and Taxation, falls on a Saturday, Sunday, or a legal holiday, the report or return shall be considered timely if it is filed on the next business day.

B. Definitions. For the purposes of this Section, the following term is defined:

Legal Holiday— any legal holiday observed by the state of Louisiana or the United States Post Office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 9:188, 26:453, 45:1179, 47:1511, and 47:2425.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Office of the Secretary, LR 19:1594 (December 1993).

LAC 61:I.4911. File Date of Returns and Other Documents; Payment Dates

A. Definitions. For the purposes of these rules, the following terms shall have the meanings ascribed to them in this section:

Courier— messenger other than the United States Postal Service that delivers parcels, packages and the like containing returns, reports, other documents or payments.

Electronically— by computer, telephone or internet.

Postage— the amount of money paid for the delivery of a piece of mail by the United States Postal Service.

Postage Meter— the postage printing die and postage registering mechanism of a mailing machine which must meet postal service test specifications and is subject to inspection by the United States Postal Service.

Postmark— an official mark made by the United States postal service on a piece of mail to cancel the stamp and to indicate the place and date of sending.

B. File Date of a Return, Report and Other Document

1. *Delivery by the United States Postal Service.* A return, report or other document in a properly addressed envelope with sufficient postage delivered by the United States Postal Service is deemed filed on the date postmarked by the United States Postal Service. The postmark must bear a date on or before the last date prescribed for filing the return, report or other document in order to be considered timely filed. If the postmark on the envelope is not legible, the taxpayer has the burden of proving the date that the postmark was made. If the return, report or other document is sent by United States registered or certified mail, the date of registration is treated as the date of postmark. A postage meter date is considered a valid postmark date provided it does not conflict with a legible United States Postal Service postmark date. If the dates conflict, the United States Postal Service date shall override the meter date.

2. *Delivery by Courier.* A return, report or other document delivered by courier is deemed filed on the date it is delivered to the department's headquarters or a regional office.

3. *Delivery by the Taxpayer.* A return, report or other document delivered by the taxpayer or a representative of the taxpayer is deemed filed on the date it is delivered to the department's headquarters or a regional office.

4. *Electronically Filed.* A return, report or other document filed electronically is deemed filed on the date transmitted to the department or to a third party acting as the department's agent.

5. *Electronic Payment as a Substitute.* In the case where a taxpayer is allowed to and has elected to have an electronic payment represent his return, the return shall be considered filed on the date the transmitted funds are posted to the State of Louisiana's bank account.

C. Payment Dates

1. Delivery by the United States Postal Service

a. A payment made in conjunction with the filing of a tax return and submitted in a properly addressed envelope with sufficient postage delivered by the United States Postal Service is deemed paid on the date it is postmarked. If the postmark on the envelope is not legible, the taxpayer has the burden of proving the date that the postmark was made. If the payment is sent by United States registered or certified mail, the date of registration is treated as the date of postmark. A postage meter date is considered a valid post-

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mark date provided it does not conflict with a legible United States Postal Service postmark date. If the dates conflict, the United States Postal Service date shall override the meter date.

b. Any payment other than that described in paragraph (C)(1)(a) above including but not limited to payments of billing notices and unidentified payments is deemed paid on the date it is delivered to the department's headquarters or a regional office.

2. *Delivery by Courier.* A payment delivered by courier is deemed paid on the date it is delivered to the department's headquarters or a regional office.

3. *Delivery by the Taxpayer.* A payment delivered by the taxpayer or a representative of the taxpayer is deemed paid on the date it is delivered to the department's headquarters or a regional office.

4. *Electronic Remittance.* A payment remitted electronically is deemed paid on the date the transmitted funds are posted to the State of Louisiana's bank account. A taxpayer required by the provisions of R.S. 47:1519 (B) and LAC 61:I.4910 to pay by electronic funds transfer must comply with the statutes and regulations governing electronic funds transfers, as well as written procedures prescribed by the department, in order to have the payment deemed timely paid.

5. *Dishonored Payment.* A payment remitted to the department that is later dishonored by the taxpayer's financial institution or the taxpayer's representative's financial institution is not deemed paid until the date the replacement funds are posted to the State of Louisiana's bank account or guaranteed money is delivered to the department's headquarters or a regional office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Revenue, Office of the Secretary, LR 27:1242 (August 2001).

§ 1602. Penalty for failure to make timely return

A. When any taxpayer fails to make and file any return required to be made under the provisions of this Subtitle before the time that the return becomes delinquent or when any taxpayer fails to timely remit to the secretary of the Department of Revenue 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.

(1) In the case of a failure to file a tax return or of the filing of a return after the return becomes delinquent, the specific penalty shall be five percent of the total tax due on the return if the failure or delinquency is for not more than thirty days, with an additional five percent for each additional thirty days or fraction thereof during which the failure or delinquency continues, not to exceed twenty-five percent of the tax in the aggregate.

(2) Except as provided in Paragraph (3), in the case of the filing of a return without remittance of the full amount due, the specific penalty shall be five percent of the unremitted tax if the failure to remit continues for not more than thirty days, with an additional five percent for each additional thirty days or fraction during which the failure to remit continues. The penalty imposed by the 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. The penalty provided by this Paragraph shall not be imposed for any thirty-day period for which the penalty provided by Paragraph (1) is due. The penalties provided for by Paragraph (1) of this Subsection and this Paragraph shall not be imposed for more than five thirty-day periods in total for each tax return required to be filed.

(3)(a) In the case of individual income tax, if the full amount of tax due on the return is not paid on or before the due date prescribed for payment of such tax, the specific penalty shall be one-half of one percent of the unremitted tax if the failure to remit continues for not more than thirty days, with an additional one-half of one percent for each additional thirty days or fraction during which the failure to remit continues. The penalty imposed by this Paragraph for each thirty-day period shall be calculated only on the additional amount due from the taxpayer, when:

(i) At least ninety percent of the total tax due on the return is not previously paid through employer withholdings, estimated tax payments, or any other payments made on or before the due date of the return, or

(ii) The return and payments are not received within the time prescribed determined with regard to any extension of time.

(b) The penalty provided by this Paragraph shall not be imposed for any thirty-day period for which the penalty provided by Paragraph (1) is due.

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(4) The penalties provided for by this Subsection shall not exceed twenty-five percent of the tax in the aggregate.

B. The penalties provided for by this Section shall be an obligation to be collected and accounted for in the same manner as if it were part of the tax due, and can be enforced either in a separate action or in the same action for the collection of the tax.

C. The penalty for failure to make application and pay any registration fee levied under Chapter 4, Subtitle II of this Title, shall be three dollars or an amount as computed as otherwise provided in this Section, whichever is greater.

D. (1) Notwithstanding any other provision of the law to the contrary, any exemption granted to a taxpayer under a tax incentive contract except a contract granted pursuant to Article VII, Section 21(F) of the Constitution of Louisiana shall be suspended if at any time during the contract there is a final, non-appealable judgment against the taxpayer for nonpayment of taxes.

(2) The secretary shall send a notice by certified mail to the taxpayer at the address given in the last report filed by the taxpayer, or to any address obtainable from any private entity which will provide such address free of charge or from any federal, state, or local government entity, including but not limited to the United States Postal Service or from United States Postal Service certified software informing him of the following:

(a) That there is a final, non-appealable judgment against him for non-payment of taxes.

(b) That he has thirty days from the date of the notice to pay the tax, penalty, and interest due or the exemptions granted under the tax incentive contract will be suspended.

(c) That the suspension will continue until the tax, penalty, and interest due under the final, non-appealable judgment are paid in full.

(3) The provisions of this Section shall not apply if the taxpayer has paid the amount due under protest in accordance with R.S. 47:1576 or has entered into an installment agreement with the department for the payment of the amount due and is in compliance with the terms of the agreement.

(4) For the purposes of this Subsection, during the period of suspension, the exemptions granted under the tax incentive contract are inoperable and of no effect.

§ 1602.1. Penalty for failure to timely remit schedules and payments required to administer the Sports Facility Assistance Fund

A. In the case of failure to timely make and file any return or schedule required by the secretary to administer the provisions of the Sports Facility Assistance Fund, the penalty shall be five hundred dollars for the first such failure, one thousand dollars for the second such failure within the three-year period beginning on the due date of the first delinquent return or schedule, and two thousand five hundred dollars for each subsequent failure within the three-year period beginning on the due date of the first delinquent return or schedule.

B. In the case of failure to timely remit any payment required by the secretary to administer the provisions of the Sports Facility Assistance Fund, the penalty shall be five percent of the total payment due if the delinquency is for not more than thirty days, with an additional five percent for each additional thirty days or fraction thereof during which the delinquency continues, not to exceed fifty percent of the amount due.

§ 1603. Waiver of penalty for delinquent filing or delinquent payment

A. If the failure to make any return at the time such return becomes due or the filing of a return without remittance of the full amount due, is attributable, not to the negligence of the taxpayer, but to other cause set forth in written form and considered reasonable by the secretary of the Department of Revenue, the secretary may remit or waive payment of the whole or any part of the specific penalty provided for such failure; but in any case when the penalty exceeds five thousand dollars, it can be waived by the secretary only after approval by the board of tax appeals.

B. With the exception of those situations when, in the opinion of the secretary, the taxpayer has acted in bad faith or with intentional disregard for the laws of the state or the regulations of the department, for any taxable year ending on or after December 31, 1996, a reasonable cause for purposes of Subsection A of this Section shall be presumed to exist by the secretary of the Department of Revenue under the following circumstances:

(1) An individual taxpayer or corporate taxpayer that is not a large corporation satisfies the requirements of R.S. 47:103(D), relative to extensions for filing of an individual or corporate tax return and the excess of the amount of tax

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shown on the taxpayer's individual or corporate income tax return, over the amount of tax paid on or before the regular due date of the return by virtue of taxes withheld by the taxpayer, payments made pursuant to the declaration of estimated tax, and the payment in full of estimated tax liability, is no greater than ten percent of the amount of tax shown on the individual's applicable Louisiana income tax return. Any balance due shown on the taxpayer's individual or corporate income tax return is remitted with the return.

(2) Any individual taxpayer or corporate taxpayer that is not a large corporation satisfies any of the requirements as provided by law, relative to notice to the secretary of federal tax adjustments, and the taxpayer files an amended Louisiana individual income tax return based upon the adjustments to the federal income tax return, and pays the additional tax shown thereon, plus applicable interest accrued thereon pursuant to R.S. 47:1601 within ninety days after the federal adjustments have been made and accepted by the taxpayer, provided that if the taxpayer does not receive a statement of the federal adjustments until after he accepts the adjustments, he shall have ninety days from the receipt of such statement within which to file the amended Louisiana income tax return and pay the tax shown thereon, plus applicable interest.

(3) The Louisiana income tax return of any individual taxpayer or any corporation that is not a large corporation is adjusted as the result of an audit by the Department of Revenue if within sixty days after the Louisiana audit adjustments have been made and accepted by the taxpayer, the taxpayer pays the additional tax due, plus applicable accrued interest thereon pursuant to R.S. 47:1601.

C. For purposes of this Section, the term "large corporation" means any corporation, or predecessor corporation, which had taxable income of one million dollars or more for any taxable year in the three taxable years immediately preceding the taxable year involved.

LAC 61:III.2101. Penalty Waiver

A. The secretary may waive a penalty in whole or in part for the failure to file a return on time or the failure to timely remit the full amount due when the failure is not due to the taxpayer's negligence and is considered reasonable. All penalty waiver requests must be in writing and be accompanied by supporting documentation. If the combined penalties for a tax period exceed one hundred dollars, all of the facts alleged as a basis for reasonable cause must be fully disclosed in an affidavit sworn before a notary public in the presence of two witnesses and accompanied by any supporting docu-

mentation. The affidavit must be signed by the taxpayer, or in the case of a corporation, by an officer of the corporation. Where the taxpayer or officer does not have personal knowledge of such facts, the sworn affidavit may be signed on the taxpayer's or officer's behalf by a responsible individual with personal knowledge of such facts.

B. Before a taxpayer's request for penalty waiver will be considered, the taxpayer must be current in filing all tax returns and all tax, penalties not being considered for waiver, fees and interest due for any taxes/fees administered by the Department of Revenue must be paid.

C. In determining whether or not to waive the penalty in whole or in part, the department will take in account both the facts submitted by the taxpayer and the taxpayer's previous compliance record with respect to all of the taxes/fees administered by the Department of Revenue. Prior penalty waivers will be a significant factor in assessing the taxpayer's compliance record. Each waiver request submitted by the taxpayer will be considered on an individual basis. Each tax period or audit liability will be considered separately in determining whether the penalty amount mandates approval of the waiver by the Board of Tax Appeals. The delinquent filing and delinquent payment penalties will also be considered separately in making this determination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1603 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of the Secretary, LR 27:866 (June 2001).

§ 1604. Penalty for false or fraudulent return

When the taxpayer files a return that is false or fraudulent or grossly incorrect and the circumstances indicate that the taxpayer had intent to defraud the State of Louisiana of any tax due under this Sub-title, there shall be imposed, in addition to any other penalties provided, a specific penalty of fifty per centum (50%) of the tax found to be due. This specific penalty 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 either in a separate action or in the same action for the collection of the tax.

§ 1604.1. Negligence penalty

If any taxpayer fails to make any return required by this Sub-title or makes an incorrect return, and the circumstances indicate wilful negligence or intentional disregard of rules

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and regulations, but no intent to defraud, there shall be imposed, in addition to any other penalties provided, a specific penalty of 5% of the tax or deficiency found to be due, or ten dollars whichever is the greater. This specific penalty 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 either in a separate action or in the same action for the collection of the tax.

§ 1604.2. Insufficient funds check in payment of taxes; penalty

In the event a check used to make payment of a tax, interest, penalty, or fee due under this Subtitle is returned unpaid by the bank on which it is drawn for any reason related to the account on which the check is written, such shall constitute a failure to pay the tax, interest, penalty, or fee due and a specific penalty shall be imposed on the taxpayer in addition to all other penalties provided by law; provided however, upon sufficient proof being furnished to the secretary by the bank that the bank was at fault for the nonpayment of the check, the secretary shall waive the penalty provided for in this Section. This specific penalty shall be an obligation to be collected and accounted for in the same manner as if it were part of the tax, interest, penalty, or fee that is due in payment of which the check was given and may be enforced in a separate action or in any action instituted for the collection of the tax, interest, penalty, or fee. The specific penalty imposed under this Section shall be an amount equal to the greater of one percent of the check or twenty dollars. After receipt of three insufficient fund checks during any two-year period, the secretary of the Department of Revenue may require payment of the taxes, interest, penalties, or fees due by the taxpayer to be paid by certified check, money order, or cash.

§ 1605. Examination and hearing costs

A. If any taxpayer fails to make any return required by this Subtitle, or makes a grossly incorrect report, or a false or fraudulent report, and the secretary, in performance of his duty to ascertain the amount of tax due, makes an examination of books, records, or documents, or an audit thereof, or conducts a hearing, or subpoenas witnesses, then there may be added to the amount of tax found to be due, a specific penalty, in addition to any other penalty provided, in an amount as itemized by the secretary to compensate for all costs incurred in making such examination or audit, or in holding such hearing, or in subpoenaing and compensating witnesses. This specific penalty shall be an obligation to be collected and accounted for in the same manner

as if it were part of the tax due and can be enforced either in a separate action or in the same action for the collection of the tax.

B. For the purposes of this Section, the following terms shall have the following meanings:

(1) "Grossly incorrect report" means any report filed where there is a substantial understatement of tax for any taxable period. The understatement is substantial if it exceeds the greater of:

(a) Ten percent of the tax required to be shown on the return for the taxable period.

(b) Ten thousand dollars.

(2) "False or fraudulent report" means any report filed with the intent to evade taxes, or a willful attempt to defraud or evade taxes that are due.

C. Notwithstanding any other provision of law to the contrary, no penalty shall be imposed under this Section with respect to any portion of an underpayment when a taxpayer has made a grossly incorrect report if the taxpayer shows that there was a reasonable cause for the underpayment of such portion and that the taxpayer acted in good faith with respect to such portion.

§ 1606. Distraint cost penalty

Whenever the collector uses the distraint procedure to enforce the collection of any tax, there shall be imposed with respect to the tax for the collection of which the distraint procedure is used, a specific penalty of ten dollars to compensate for the costs of the distraint procedure. This specific penalty shall be in addition to any penalty assessed as provided by law and shall be an obligation to be collected and accounted for in the same manner as if it were part of the tax due, and may be enforced either in a separate action or in the same action for the collection of the tax.

§ 1607. Interest on erroneous refunds

The secretary shall remove interest which has accrued on an erroneous refund which has accrued up to the date the taxpayer is requested to repay a refund issued in error if the taxpayer did not cause the erroneous refund in any way and the refund does not exceed fifty thousand dollars. The secretary may remove or reduce interest on all other erroneous refunds or on refunds issued in error due to a ministerial act of the department, based on the facts and circum-

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stances of each case. If the interest that was reduced or removed was reported as a deduction on the tax return of the taxpayer, the taxpayer must report the reduction or removal of interest as income on his tax return for the year the interest was reduced or removed.

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Part V. Refunds of Overpayments

§ 1621. Refunds of overpayments authorized

A. For the purpose of this Chapter, “overpayment” means a payment of tax, penalty, or interest when none was due; the excess of the amount of tax, penalty, or interest paid over the amount due; or the payment of a penalty that is later waived or remitted by the secretary, provided that the power of the secretary to refund overpayments shall be as prescribed and limited in this Section.

B. The secretary shall make a refund of each overpayment where it is determined that:

(1) The tax was overpaid because of an error on the part of the taxpayer in mathematical computation on the face of the return or on any of the supporting documents.

(2) The tax was overpaid because of a construction of the law on the part of the taxpayer contrary to the secretary’s construction of the law at the time of payment.

(3) The overpayment was the result of an error, omission, or a mistake of fact of consequence to the determination of the tax liability, whether on the part of the taxpayer or the secretary.

(4) The overpayment resulted from a change made by the secretary in an assessment, notice, or billing issued under the provisions of Chapter 18 of Subtitle II of this Title.

(5) With regard to a Louisiana income tax overpayment, the overpayment resulted from a change in federal income tax data which formed the basis for calculation of the Louisiana income tax.

(6) With regard to any Louisiana tax overpayment, the overpayment resulted from an overpayment of estimated Louisiana tax.

(7) With regard to a Louisiana income tax overpayment, the overpayment resulted from application of a Louisiana net operating loss carryback or carryover.

(8) The overpayment resulted from a subsequent determination that the taxpayer was entitled to pay a tax at a reduced tax rate.

(9) The overpayment was the result of a payment that exceeded either the amount shown on the face of the return or voucher, or which would have been shown on the face of the return or voucher if a return or voucher were required.

C. Notwithstanding the provisions of Subsection B, where it is determined that there is clear and convincing evidence that

an overpayment has been made, the secretary shall make a refund, subject to conditions or limitations provided by law.

D. (1) Such refunds shall be made out of any current collections of the particular tax which was overpaid.

(2) If a taxpayer has overpaid a particular tax for more than one taxable year and seeks a refund of the total amount, the secretary may issue the refund incrementally. The number of increments shall not exceed the total number of years the tax was overpaid.

E. The secretary may recover any refunded amount determined not to be an overpayment through any collection remedy authorized by R.S. 47:1561 within two years from December thirty-first of the year in which the refund was paid. Any refunded amount determined not to be an overpayment shall bear interest at the rate provided in R.S. 47:1601, which shall be computed from the date the refund was issued to the date payment is received by the secretary.

F. This Section shall not be construed to authorize any refund of tax overpaid through a mistake of law arising from the misinterpretation by the secretary of the provisions of any law or of the rules and regulations promulgated thereunder. In the event a taxpayer believes that the secretary has misinterpreted the law or promulgated rules and regulations contrary therewith, his remedy is by payment under protest and suit to recover, or by appeal to the board of tax appeals in instances where such appeals lie.

G. Upon application by a corporation, the secretary shall pay interest to the corporation required by R.S. 47:287.445. Such interest shall be paid within ninety days after receipt of application and shall be paid out of any current collections of Louisiana corporate income tax.

H. The secretary shall report monthly to the commissioner of administration the total amount of refunds made each month. The secretary shall also report quarterly to the Joint Legislative Committee on the Budget the total amount of refunds made each quarter.

I. The secretary is authorized to promulgate regulations pursuant to the Administrative Procedure Act for the purpose of administration and enforcement of this Section. Such regulations will have the full force and effect of law.

LAC 61:1.4909. Refund Claims

A. Taxpayers filing claims for refunds or credits of overpayments of tax, penalty or interest as authorized by R.S. 47:1621 and in accordance with R.S. 47:1623 must comply with the following procedures.

Part V. Refunds of Overpayments

1. A claim for refund or credit shall be written in the English language, and be:

a. submitted on claims for refund/credit forms provided by the secretary; or

b. written in a format substantially the same as that provided by the secretary; or

c. submitted by timely filing an amended return.

2. A claim for refund shall be signed and dated by the taxpayer or his authorized representative, and shall:

a. contain a clear statement detailing the reason for the claim;

b. indicate the appropriate tax and tax amount by tax period; and

c. be submitted to an appropriate office, division, or representative of the Department of Revenue. An “appropriate office, division, or representative of the Department of Revenue” means:

i. a Regional Service Center or Regional Audit Office;

ii. the appropriate division located at the department’s headquarters in Baton Rouge;

iii. the Office of Alcohol and Tobacco Control for taxes or fees collected by that office;

iv. the tax collection officer assigned responsibility for the taxpayer’s account for the period and tax related to the refund claim;

v. the field or office auditor that is examining the taxpayer’s account for the period and tax related to the refund claim;

vi. the audit reviewer responsible for reviewing the audit file relating to the tax and tax period of the refund claim.

B. Claims for refund shall be approved or denied by the Secretary or his designee in accordance with written Departmental policy and procedures.

C. Claims for refunds that have not been approved within one year of the date received or that have been denied may be appealed by taxpayer to the board of tax appeals in accordance with R.S. 47:1625.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1621, 1623, and 1625.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of the Secretary, LR 26:95 (January 2000).

§ 1621.1. Satisfaction of rulings or judgments of the Board of Tax Appeals

A. A final ruling or judgment of the Board of Tax Appeals concerning the overpayment of severance taxes, issued pursuant to Part 5 of Chapter 17 of Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950 may be applied, with the consent of the parties involved, as a credit against any state tax liability of the taxpayer for whom the judgment or ruling was rendered. Such credit may be applied to the income tax, corporate franchise tax, or any other state tax liability of the taxpayer.

B. The credit may be applied to any tax liability for the taxable year or taxable period in which the ruling or judgment becomes final. Any amount of the credit unused in any taxable year may be carried forward for the succeeding three taxable years.

C. For purposes of this Section, “parties involved” shall mean only the taxpayer and the Department of Revenue.

§ 1622. Crediting or offset of overpayments against other obligations

A. Before refunding any overpayment, the secretary may first determine whether the taxpayer who made the overpayment owes any other liability under any law administered by him. If such be the case, the secretary may credit the overpayment against such liability and notify the taxpayer of the action taken.

B. No refund of income or franchise tax shall be paid by the secretary until any claim of offset filed by the administrator of the Louisiana Employment Security Law under R.S. 23:1733 has been satisfied.

§ 1623. Prescription of refunds or credits

A. After three years from the 31st day of December of the year in which the tax became due or after one year from the date the tax was paid, whichever is the later, no refund or credit for an overpayment shall be made unless a claim for credit or refund has been filed with the secretary by the taxpayer claiming such credit or refund before the expiration of said three-year or one-year period. The maximum amount which shall be refunded or credited shall be the amount paid within said three-year or one-year period. The secretary shall prescribe the manner of filing claims for refund or credit.

Part V. Refunds of Overpayments

B. Provided that in any case where a taxpayer and the secretary have consented in writing to an extension of the period during which an assessment of tax may be made, the period of prescription for refunding or crediting overpayments as provided in this Section shall be extended in accordance with the terms of the agreement between the taxpayer and the secretary.

C. Provided that in any case where a refund relates to an overpayment attributable to a net operating loss deduction carry-back election made pursuant to R.S. 47:246(E) or 287.86, for taxable periods ending on or after December 31, 1983, in lieu of the three-year period of limitation prescribed in Subsection A of this Section, the period shall be the period which ends three years from the thirty-first day of December of the year in which the tax for the loss year would become due or the period prescribed in Subsection B or E of this Section with respect to such taxable year, whichever expires later.

D. Provided that in any case where a refund of taxes imposed by R.S. 47:295 relates to an overpayment attributable to a net operating loss deduction carry-back election, in lieu of the three-year period of limitation prescribed in Subsection A of this Section, the period shall be the period which ends three years from the thirty-first day of December of the year in which the tax for the loss year would become due, or the period prescribed in Subsection B or E of this Section with respect to such taxable year, whichever expires later. The provisions of this Subsection would be effective for net operating loss deduction carry-back elections made for taxable periods ending on or after December 31, 1987.

E. Provided that where a refund or credit relates to an overpayment of income tax, the running of prescription shall be suspended by means of:

(1) A written agreement entered into between a taxpayer and the United States Internal Revenue Service suspending the prescription of federal income tax; or

(2) For any period from the time of the commencement of an audit of a taxpayer by the United States Internal Revenue Service until one year from the time the secretary of the Department of Revenue is notified by said taxpayer or the federal government of an agreed change to the taxpayer's United States income tax return.

§ 1624. Interest on refunds or credits

A. Notwithstanding any other provision of law to the contrary, on all refunds or credits the secretary shall compute and allow as part of the refund or credit, interest at the rate established pursuant to Civil Code Article 2924(B)(1) per year from the date the return was due or the date the tax was paid, whichever is later. No interest on refunds or credits shall be allowed if, in the discretion of the secretary, it is determined that a person has deliberately overpaid a tax in order to derive the benefit of the interest allowed by this Section. Payments of interest authorized by this Section shall be made from funds derived from current collections of the tax to be refunded or credited.

B. As of the date a person files a petition for relief under the uniform bankruptcy laws of the United States as provided in Title 11 USC 101 et seq., no interest shall be allowed to accrue as a part of any refund or credit which relates to a pre-petition tax period. A person filing a petition for relief prior to June 17, 1988 shall be entitled to the accrual of interest prior to the effective date of this Subsection.

§ 1625. Appeals from the collector's disallowance of refund claim

If the collector fails to act on a properly filed claim for refund or credit within one year from the date received by him or if the collector denies the claim in whole or in part, the taxpayer claiming such refund or credit may appeal to the board of tax appeals for a hearing on the claim filed. No appeal may be filed before the expiration of one year from the date of filing such claim unless the collector renders a decision thereon within that time, nor after the expiration of sixty days from the date of mailing by registered mail by the collector to the taxpayer of a notice of the disallowance of the part of the claim to which such appeal relates.

Any consideration, reconsideration, or action by the collector with respect to such claim following the mailing of a notice by registered mail of disallowance shall not operate to extend the period within which an appeal may be taken.

In answering any such appeal, the collector is authorized to assert a demand for any tax and additions thereto that he may deem is due for the period involved in the claim for refund or credit, and the board of tax appeals shall have jurisdiction to determine the correct amount of tax for the period in controversy and to render judgment ordering the refunding or crediting or any overpayment or the payment of any additional tax, interest and penalty found to be due.

Part V. Refunds of Overpayments

§ 1626. Board's finding of overpayment upon appeal from assessment

Whenever the board of tax appeals, pursuant to a hearing of an appeal from an assessment of the collector in accordance with R.S. 47:1564, 47:1566, or 47:1567, finds that there is no tax due and further finds that the taxpayer has made a refundable overpayment of the tax for the period for which the collector asserted the claim for additional tax, the board shall have jurisdiction to determine the amount of such overpayment, and order that such amount be refunded or credited to the taxpayer; provided, that the Board shall order no such refund or credit unless, as part of its decision, it determines that the petition of appeal in which the refund or credit was requested was filed within the period set out in R.S. 47:1563 or that a claim for the refund or credit had been filed with the collector within that period.

§ 1627. Limitation on right of refund when petition is filed with board of tax appeals

Whenever a taxpayer has timely filed a petition with the board of tax appeals pursuant to the provisions of R.S. 47:1565, 47:1566, and 47:1567 no credit or refund, in respect of the tax for the taxable period involved in the proceedings before the board, shall be allowed or made except:

- (1) As to overpayment determined by a decision of the board, which has become final; and
- (2) As to any amount collected in excess of an amount computed in accordance with the decision of the board which has become final.

Chapter 18. Administrative Provisions

Part VI. Criminal Penalties

§ 1641. Criminal penalty for failing to account for state tax moneys

Any person required under this subtitle to collect, account for, or pay over any tax, penalty, or interest imposed by this subtitle, who willfully fails to collect or truthfully account for or pay over such tax, penalty, or interest, shall in addition to other penalties provided by law, be fined not more than ten thousand dollars or imprisoned, with or without hard labor, for not more than five years, or both.

§ 1642. Criminal penalty for evasion of tax

Any person who willfully fails to file any return or report required to be filed by the provisions of this Sub-title, or who willfully files or causes to be filed with the secretary any false or fraudulent return, report, or statement, or who willfully fails to pay such tax, penalty, or interest, or who willfully aids or abets another in the filing with the secretary of any false or fraudulent return, report, or statement, with the intent to defraud the state or evade the payment of any tax, fee, penalty or interest, or any part thereof, which shall be due pursuant to the provisions of this Subtitle, shall be punished as follows:

- (1) Fined not more than two thousand dollars or imprisoned, with or without hard labor, for not more than two years, or both, when the total actual tax exceeds one thousand dollars.
- (2) Fined not more than one thousand dollars or imprisoned for not more than one year, or both, for all other violations under this Section.

§ 1643. Running of time limitations

No person shall be prosecuted, tried or punished for an offense under this chapter unless the prosecution is instituted within a period of four years after the offense has been committed.

Chapter 18. Administrative Provisions

Part VII. Miscellaneous Provisions

§ 1672. Payment of taxes by receivers, referees, trustees or liquidators

A. All receivers, referees, trustees or other officers appointed by any court, both state and federal, to administer or conduct any business in this state, or liquidators, whether judicial or extrajudicial, shall be subject to all state and local taxes applicable to such business the same as if such business were conducted by an individual or corporation, and before deducting or paying any salaries, fees or compensation to themselves or to any employees or agents, they shall pay all taxes owed by the said individual, partnership, association or corporation for whom they act, to the State of Louisiana or its subdivisions or municipalities.

B. Such receivers, referees, trustees or liquidators, upon assuming their official duties, shall immediately ascertain from the proper authority the amount of taxes owed by said individual, partnership, association or corporation, whose estate they are administering, and in the event of their failure to so ascertain or pay all such taxes, shall be personally responsible for the unpaid taxes.

C. If the assets of any partnership, association or corporation are disposed of through liquidation by the officers or directors thereof without clearance from the collector of revenue of all unpaid taxes first being obtained, such officers or directors who disposed of such assets shall be personally liable, in solido, for the full amount of such taxes and any penalty and interest due thereon.

§ 1673. Application of provisions of this Chapter

A. The provisions of this Chapter shall be applicable in the assessment, collection, administration, and enforcement of all taxes, licenses, fees, penalties, and interest due the state of Louisiana under any Title of the Louisiana Revised Statutes of 1950, except the provisions of Chapter 1 of Subtitle IV of Title 47 of the Louisiana Revised Statutes of 1950 relative to inheritance and estate taxes, that have been delegated to the Department of Revenue, and the remedies and procedures prescribed herein shall be in addition to and supplementary to any special remedies and procedures prescribed in any other Title of the Louisiana Revised Statutes of 1950.

B. In the event that any provision of this Chapter is found to be in conflict with the provisions of Chapter 1 of Subtitle IV of Title 47 of the Louisiana Revised Statutes of 1950 or of any other Title, the provision of such Chapter 1 of Subtitle IV of said Title 47 or other Title shall prevail over that herein contained, but the general validity or

applicability of such provision of this Chapter in the assessment, collection, administration, or enforcement of other Titles shall not be affected by such conflict.

§ 1674. Exemption from claim for taxes on retirement benefits by another state

A. All property in this state is exempt from attachment, execution, and seizure for the satisfaction of a judgment or claim in favor of another state or political subdivision of another state for failure to pay that state's or that political subdivision's income tax on benefits received from a pension or other retirement plan.

B. A claim or judgment in favor of another state or political subdivision of another state for failure to pay that state's or that political subdivision's income tax on benefits received from a pension or other retirement plan shall not be a lien on any property in this state owned by a resident of this state.

C. For the purposes of this Section, "pension or other retirement plan" includes:

- (1) An annuity, pension, or profit-sharing or stock bonus or similar plan established to provide retirement benefits for an officer or employee of a public or private employer or for a self-employed individual.
- (2) An annuity, pension, or military retirement pay plan or other retirement plan administered by the United States.
- (3) An individual retirement account.

Chapter 18. Administrative Provisions

Part VIII. Refunds of Gasoline Taxes

§ 1681. Necessity for compliance with requirements

The secretary of the Department of Revenue shall make refunds of gasoline taxes on gasoline used for operating or propelling aircraft or used for operating or propelling any commercial fishing boat, any vehicle used by a licensed commercial fisherman in the administration of business associated with commercial fishing, any boat used to transport children to or from public or parochial schools, any farm tractor or any farm machinery, including any stationary motor, used in the actual tilling of the soil and production of crops, only when the requirements of this Part have been fully complied with.

§ 1682. Claims to be supported by special invoices

Refunds of such taxes shall be made only when the claim therefor is supported by special invoices issued by dealers who have obtained special permits pursuant to R.S. 47:1683, and only when the claim therefor is supported by a certificate setting forth that the claimant has used the gasoline for a refundable purpose, together with a seller's invoice. The invoices must have been paid by the claimants and marked paid by dealers and shall be on invoice forms prescribed by the collector of revenue. Claims for refunds must be filed with the collector within six months after the date of the purchase. Amounts refunded shall bear interest at the rate of six percent per annum commencing ninety days after the claim for refund in full compliance with this Part is received by the collector of revenue.

§ 1683. Special permit as refund gasoline distributor

Every dealer desiring to sell gasoline to persons who will use the gasoline for refundable purposes shall, before making such sales of gasoline, obtain from the collector of revenue a special permit as a refund gasoline distributor, which upon proper application shall be issued by the collector without charge.

§ 1684. Issuance of special invoices; coloring of gasoline

Every dealer selling gasoline to be used for refundable purposes shall issue the special invoices required by R.S. 47:1682 and shall at the time gasoline is sold and prior to delivering the invoice to the purchaser dissolve in the gasoline, except aviation gasoline sold for operating or propelling aircraft, a quantity of dye sufficient to color the gasoline to meet such requirements as may be prescribed by the collector of revenue.

§ 1685. Dye

The collector of revenue is authorized to purchase dye and furnish it to dealers for use in coloring gasoline as required by this Part. The collector may choose the type and color of the dye and change them from time to time, provided that only one color shall be prescribed for use at any one time.

§ 1686. Regulation of color of gasoline generally

In order to assure that the color of gasoline to be used for refundable purposes, other than for operating or propelling aircraft, shall be distinctive, the collector of revenue is authorized to limit by rules and regulations the colors which may be used in gasoline generally.

§ 1687. Violations; penalties

A. Any person who issues a special invoice pursuant to R.S. 47:1682 and 47:1684 and who fails to dissolve the proper quantity of dye in the gasoline prior to delivering the invoice to the purchaser shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars or imprisoned for not less than thirty days nor more than six months, or both, at the discretion of the court.

B. Any person who has purchased gasoline under a special refund invoice or any person who has in his possession any gasoline colored as provided in R.S. 47:1684 and who uses such gasoline other than for a refundable purpose, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars or imprisoned for not less than thirty days nor more than six months, or both, in the discretion of the court.

C. Any person who prepares, issues or signs invoices for gasoline to be used for refundable purposes, other than upon the official invoice forms prescribed and furnished by the collector of revenue, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars or imprisoned for not less than thirty days nor more than six months, or both, at the discretion of the court.

D. Any person other than a dealer holding a permit under R.S. 47:1683 or the authorized agent of such dealer, who prepares, issues, or signs an invoice on the special invoice forms prescribed by the collector, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not

Part VIII. Refunds of Gasoline Taxes

less than one hundred dollars nor more than five hundred dollars or imprisoned for not less than thirty days nor more than six months, or both, at the discretion of the court.

E. Any person who prepares, issues or signs an invoice on the special invoice form prescribed by the collector without in fact selling and delivering to the person shown as vendor on the invoice the quantity of gasoline shown on the invoice shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars or imprisoned for not less than thirty days nor more than six months, or both, at the discretion of the court.

F. Any person who alters the color or reduces the intensity of color of any gasoline colored pursuant to R.S. 47:1684 or who mixes such colored gasoline with any other gasoline not so colored, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars or imprisoned for not less than thirty days nor more than six months, or both, at the discretion of the court.

§ 1688. Suspension of dealer's permit

Whenever the collector of revenue determines that a dealer holding a permit under R.S. 47:1683 has violated any of the provisions of this Part, he shall suspend the permit of such dealer for a period of not less than six months nor more than one year; provided that any dealer aggrieved by such action on the part of the collector may appeal suspensively to the board of tax appeals.

§ 1689. Forfeiture of refunds

Any person who uses gasoline colored in accordance with R.S. 47:1684 in any vehicle or engine other than any commercial fishing boat, any vehicle used by a licensed commercial fisherman in the administration of business associated with commercial fishing, any boat used to transport children to or from public or parochial schools, any farm tractor or any farm machinery used in the actual tilling of the soil and production of crops, or any stationary motor used for agricultural purposes, or has in his possession refund gasoline which has not been colored, shall be subject to the following civil penalty: Any claims for refund of gasoline taxes by such person pending with the secretary of the Department of Revenue at the time such violation is discovered shall not be paid; and any claims for refund of such taxes with respect to gasoline consumed during a period of twelve months following discovery of the violation

shall not be paid. Whenever the secretary determines that this penalty is applicable, any person aggrieved by such finding shall have a right to appeal to the board of tax appeals.

§ 1690. Definitions

When used in this Part the following terms shall have the meaning here ascribed to them:

(1) "Farm tractor" and "farm machinery" shall mean and include all motor propelled or motor operated mechanical devices used on a farm in the tilling of the soil and the production of crops, but shall not include any vehicle licensed for use on the public highways of this state.

(2) "Commercial fishing boat" shall mean any water craft used in the occupation of fishing for profit.

(3) "Gasoline" shall mean any motor fuel which is subject to tax under Part I of Chapter 7 of Sub-title II of Title 47 of the Louisiana Revised Statutes of 1950.

(4) "Refundable purposes" shall mean the operating or propelling of any aircraft, any commercial fishing boat, any vehicle used by a licensed commercial fisherman in the administration of business associated with commercial fishing, any boat used to transport children to or from public or parochial schools, any farm tractor or any farm machinery used in the actual tilling of the soil and production of crops or any stationary motor used for agricultural purposes.

§ 1691. Refunds, source

The refunds authorized by this Part shall be made from any funds in the hands of the collector of revenue or previously remitted by the collector to the state treasurer from collection of taxes on gasoline.

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This public document was published at a total cost of . of this public document were published in this first printing at a cost of . The total cost of all printings of this document, including reprints, is . This document was published for the Department of Revenue, Post Office Box 201, Baton Rouge, LA 70821-0201, to provide employees and taxpayers with information on administrative provisions under authority of R.S. 47:1509. This material was printed in accordance with the standards for printing by state agencies established pursuant to R.S. 43:31.