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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Riley Boudreaux.

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## DIGEST

Present constitution [Const. Art. VI, Sec. 29(A)] authorizes the governing authority of any parish, municipality, or school board to levy and collect a sales and use tax.

Present constitution [Const. Art. VII, Sec. 3(B)] requires sales and use taxes levied by political subdivisions to be collected by a single collector for each parish and authorizes the legislature, to establish a method of providing for such a single collector or a central collection commission in each parish.

Proposed law creates the Uniform Sales and Use Tax Commission and authorizes it to do the following:

- (1) Begin administering sales and use taxes on behalf of the state of Louisiana beginning on January 1, 2014. Its authority specifically includes any state sales and use taxes which may be levied in the 2013 Regular Session of the Legislature or thereafter. Requires all of the duties and powers currently held by the Department of Revenue (DOR) as it relates to the administration, auditing and collection of state sales and use taxes to be transferred to the commission effective January 1, 2014, and provides to the commission all of the powers and duties that the DOR has in present law to collect, investigate, enforce, audit, levy penalties, etc. Specifically authorizes the interest on delinquent taxes to accrue at three percentage points above the rate provided in R.S. 9:3500(B)(1) effective January 1, 2014.

Requires all employees of DOR whose job duties are identified by the commissioner of administration as relating to administration and collection of sales and use taxes to be transferred to the commission. Authorizes those employees to remain a member of the retirement system of which he had been a member prior to his employment and to retain his rights to the same employee benefits.

- (2) Authorizes the single tax collector or the central collection commission for a parish to enter into a contract with the commission on behalf of the local taxing authorities in the parish for administration and collection of the tax of the local taxing authorities if the governing authority of such central collection commission approves by a vote of 2/3's of the members of the governing authority of such central collection commission.

A local taxing authority itself may enter into a contract with the commission if there is no central collection commission established within the parish, but if a second local taxing authority from the same parish applies to participate by entering into a contract and is approved by the commission, then those taxing authorities must enter into an agreement

to act as a single collection entity for purposes of the commission.

No contract for collection can be effective until six months after the date the commission provides written notification to the secretary of DOR that the single tax collectors or the central collection commissions for 32 parishes have entered into contracts with the commission to be the collector of their sales and use taxes. At that time, the DOR shall no longer have the ability to contract to collect and enforce local sales and use taxes for taxing authorities.

- (3) Authorizes the single tax collector or the central collection commission for a parish, or a local tax authority to enter into a similar contract with the commission using the procedure above in order to have their sales and use taxes collected from "remote sellers" if the federal Marketplace Fairness Act or other similar federal legislation is passed. "Remote sellers" is defined as those sellers which cannot be required to collect the sales or use tax of the state or its political subdivisions because of restrictions imposed by the U.S. Constitution. Provides that the commission is the only authority within the state with the authority to collect sales and use taxes from remote sellers.

Proposed law authorizes the commission to promulgate regulations pursuant to the APA relating to the application for such contracts and approving and contracting.

Proposed law provides that any single tax collector or central collection commission which has voluntarily contracted with the commission to administer and collect all of its sales and use tax or only the collection of sales and use taxes from remote sellers pursuant to federal legislation as provided in R.S. 47:340.1.20 shall only have such authority to administer, collect, or enforce those taxes as provided for in the contract with the commission.

Proposed law authorizes the commission to contract with any single tax collector or central collection commission to collect state sales and use taxes due, local sales and use taxes due, or both. They are to be paid a fee determined by the commission for doing so. In addition, the commission may contract with a political subdivision to collect the sales and use taxes due by distraint and sale if the taxpayer is within the jurisdiction of the political subdivision.

Proposed law requires tax collected by the commission to be remitted to the taxing authorities levying the tax no later than 60 days after receipt of the taxes by the commission. Political subdivisions collecting on behalf of the commission must remit taxes collected no later than 60 days after their receipt.

Proposed law authorizes a taxpayer who is aggrieved by a finalized rule or regulation issued by the commission pursuant to the APA to appeal the ruling to the commission. If the commission upholds its finalized rule or regulation after a hearing before the members of the commission, then the taxpayer has appeal to a state court of appropriate jurisdiction within 60 days. The parish of venue for a proceeding brought against two or more taxing authorities located in more than one parish or against the state is East Baton Rouge Parish.

Proposed law authorizes the commission to determine the amount of monthly expenses which is

to be charged by the commission to participating non-state local tax authorities for matters related to the administration and collection of their sales tax. The expenses are to be paid monthly to the state treasurer, the amount of the payment to be based upon the proportion that the sales tax of such non-state local tax authority bears to the total sales tax administered and collected by the commission.

The money is required to be deposited in the "Uniform Sales and Use Tax Commission Expense Fund" in the state treasury and may be expended only pursuant to appropriation by the legislature and shall be appropriated, expended, and used solely for expenses and costs of the commission, including but not limited to expenses and costs of operations, audits, and examinations and the defense, determination, or development of assessments and assessment procedures, including costs associated with outside experts.

The balance in the fund remains in the fund but earnings on investment of the funds are deposited into the general fund.

Proposed law provides that the Uniform Sales and Use Tax Commission is to be composed of 9 members, one person appointed by the governor from a nomination provided by each of the following:

- (1) The secretary of the Department of Revenue.
- (2) The Commissioner of the Division of Administration.
- (3) The Speaker of the House of Representatives.
- (4) The President of the Senate.
- (5) The Louisiana Association of Tax Administrators.
- (6) The Louisiana Municipal Association.
- (7) The Sheriff's Association.
- (8) The School Board Association.
- (9) The Police Jury Association.

Initial appointments are made for staggered terms and at the termination of the initial terms each term of office is six years. Initial terms are to be designated by the governor:

- (1) Three members for two-year terms.
- (2) Three members for four-year terms.

- (3) Three members for six-year terms.

Any vacancy which occurs prior to the expiration of the term is filled by the governor for the unexpired term. At the expiration of a term, the member is appointed as provided above.

Each appointment is confirmed by the Senate.

A majority of the commission constitutes a quorum for the transaction of business and the performance of its duties.

Proposed law authorizes the commission to appoint or employ all necessary employees and personnel, including hiring of experts such as legal counsel and analysts, auditors, appraisers, and witnesses. The commission may contract with private parties, other state agencies, departments, boards and political subdivisions to carry out any of its duties including collections, the filing and processing of sales and use tax returns, and any other duties as it deems necessary to its function.

The commission must hold sessions or conduct investigations at any place other than its office in its domicile when it is deemed necessary to facilitate the performance of its duties. Any member may be designated by the commission to hold hearings or conduct investigations, either at its office or its domicile or any other place, and report the result thereof to the members of the commission for action. Likewise, the commission may name and appoint, in any instance where such appointment may appear to further the objects of the proposed law and administration of the sales tax which it collects, persons to make investigations and hold public hearings, with the same authority that the commission, or any member thereof, would have, the result of such investigations and hearings to be referred to all the members of the commission as it may require.

Proposed law provides for appeals for redetermination an assessment and for tax matters to be litigated by a state court of appropriate jurisdiction if it has been created by law and is required to hear appeal of assessments and such tax cases.

Proposed law provides a criminal penalty for any person who willfully fails to file any return or report, or who willfully files or causes to be filed with the commission 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 commission of any false or fraudulent return, report, or statement, with the intent to defraud the state, the commission, or a local taxing authority, or evade the payment of any tax, fee, penalty, or interest, or any part thereof. Requires the following:

- (1) Such person shall be 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) Such person shall be fined not more than one thousand dollars or imprisoned for not more than one year, or both, for all other violations under this Section.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 47:301(2), 337.2(B)(1), 337.6(A)(3), 337.13(A), (B), (D), (E), (G), 337.14, 337.16(A), 337.26(A), 337.27, 337.49, 337.67, and 1508(A)(1) and (3); adds R.S. 36:458(H), R.S. 47:337.2(A)(1)(c), 337.14.1, 337.16(C), 337.23(K), 337.45(C), 337.51(A), and R.S. 47:340.1.1 through 340.1.113, and 1508(B)(33))