

Regular Session, 2013

SENATE BILL NO. 233

BY SENATOR RISER

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

TAX/TAXATION. Creates the Uniform Sales and Use Tax Commission. (gov sig)

1 AN ACT

2 To amend and reenact R.S. 47:301(2), 337.2(B)(1), 337.6(A)(3), 337.13(A), (B), (D), (E),

3 (G), 337.14, 337.16(A), 337.26(A), 337.27, 337.49, 337.67, and 1508(A)(1) and (3),

4 and to enact R.S. 36:458(H), R.S. 47:337.2(A)(1)(c), 337.14.1, 337.16(C),

5 337.23(K), 337.45(C), 337.51(A), Chapter 2-E of Subtitle II of Title 47 of the

6 Louisiana Revised Statutes of 1950, to be comprised of R.S. 47:340.1.1 through R.S.

7 47:340.1.113, and R.S. 1508(B)(33), relative to the collection of sales land use taxes;

8 to create the Uniform Sales and Use Tax Commission and provide for its powers and

9 duties; to provide for or modify the authority of the Department of Revenue, political

10 subdivisions, and central collection commissions with respect to the administration

11 and collection of state and local sales and use taxes; to provide for the jurisdiction

12 of certain boards and courts; and to provide for related matters.

13 Be it enacted by the Legislature of Louisiana:

14 Section 1. R.S. 36:458(H) is hereby enacted to read as follows:

15 §458. Offices; purposes and functions

16 \* \* \*

17 **H. The Uniform Sales and Use Tax Commission which shall do the**

1 **following:**

2 **(1) Perform generally the functions of the state relating to the**  
3 **administration, auditing, assessment, and collection of the following:**

4 **(a) The state sales and use taxes as set forth in Chapters 2, 2-A, 2-B, 2-C,**  
5 **2-D and 2-E of the Revised Statutes.**

6 **(b) The sales and use tax of the Louisiana Tourism Promotion District**  
7 **set forth in R.S. 51:1286.**

8 **(c) Any other state sales and use taxes which may be levied in the 2013**  
9 **Regular Session of the Legislature or thereafter.**

10 **(2) Perform generally the functions of the state relating to the**  
11 **administration, auditing, assessment, and collection of the local sales and use**  
12 **taxes of such political subdivisions through contracts with such political**  
13 **subdivisions.**

14 **(3) Provide for such taxes as it is responsible for administering through**  
15 **the filing and processing of tax returns; reviewing determinations made with**  
16 **regard to such taxes; promulgating rules and regulations and setting policy**  
17 **pertaining to such taxes; administering the collection of sales and use taxes from**  
18 **remote sales; creating a unified sales and use tax base as it relates to such**  
19 **remote sales; and perform any other purpose as necessary and responsible for**  
20 **administration of the law and ordinances as it relates to sales and use tax.**

21 Section 2. R.S. 47:301(2), 337.2(B)(1), 337.6(A)(3), 337.13(A), (B), (D), (E), (G),  
22 337.14, 337.16(A), 337.26(A), 337.27, 337.49, 337.67, and 1508(A)(1) and (3) are hereby  
23 amended and reenacted and R.S. 36:458(H), R.S. 47:337.2(A)(1)(c), 337.14.1, 337.16(C),  
24 337.23(K), 337.45(C), 337.51(A), Chapter 2-E of Subtitle II of Title 47 of the Louisiana  
25 Revised Statutes of 1950, to be comprised of R.S. 47:340.1.1 through R.S. 47:340.1.113, and  
26 R.S. 1508(B)(33) are hereby enacted to read as follows:

27 §301. Definitions

28 As used in this Chapter the following words, terms, and phrases have the  
29 meaning ascribed to them in this Section, unless the context clearly indicates a

1 different meaning:

2 \* \* \*

3 (2) "Collector" shall mean and include (a) the secretary of the Department  
4 of Revenue for the state of Louisiana and includes his duly authorized assistants,  
5 when used in reference to a sales and use tax levied by the state, or (b) the individual  
6 or entity designated as **collector of the appropriate single sales and use tax**  
7 **collection office or** central collection commission, and ~~his~~ **their** duly authorized  
8 assistants, of any political subdivision authorized under the constitution and laws of  
9 the state of Louisiana to levy and collect a sales and use tax, except a statewide  
10 political subdivision, when used in reference to a sales and use tax levied by such  
11 political subdivisions; **however, the term "collector" shall include the Uniform**  
12 **Sales and Use Tax Commission and may include such single sales and use tax**  
13 **collector or central collection commission with respect to state sales tax if they**  
14 **enter into a contract for collection of such state sales taxes with the commission.**

15 \* \* \*

16 §337.2. Intent; application and interpretation of Chapter

17 A.(1) The intention of the legislature in enacting the provisions of this  
18 Chapter is as follows:

19 \* \* \*

20 **(c) To authorize political subdivisions and the central collection**  
21 **commissions in a parish to voluntarily contract with the Uniform Sales and Use**  
22 **Tax Commission to administer and collect their sales and use tax.**

23 \* \* \*

24 B.(1) Notwithstanding any other provision of law or local ordinance to the  
25 contrary, and except as provided for in Paragraph (3) of this Subsection, the  
26 provisions of this Chapter shall apply in the assessment, collection, administration,  
27 and enforcement of the sales and use tax of any political subdivision. **However, if**  
28 **the single tax collector or the central collection commission in the parish**  
29 **voluntarily contracts with the Uniform Sales and Use Tax Commission to**

1       administer and collect its sales and use tax in the manner and according to the  
 2       procedure provided for in Chapter 2-E of this Subtitle, then the authority of  
 3       such single tax collectors and central collection commissions shall be modified  
 4       as provided for in that contract.

\*       \*       \*

§337.6. Definitions

7           A. The following words, terms, and phrases used in this Chapter shall have  
 8       the meaning ascribed to them in this Subsection, unless the context clearly indicates  
 9       a different meaning:

\*       \*       \*

11           (3)(a) "Secretary" or "secretary of revenue" means the secretary of the  
 12       Department of Revenue for the state of Louisiana.

13           **(b) However, for any single tax collector or the central collection**  
 14       **commission which has voluntarily contracted with the Uniform Sales and Use**  
 15       **Tax Commission to administer and collect its sales and use tax, such**  
 16       **commission shall assume the powers, duties, and responsibilities of the**  
 17       **Secretary of the Department of Revenue pursuant to the provisions of this**  
 18       **Chapter with respect to the administration of all their sales and use taxes or**  
 19       **with respect to only the collection of sales and use taxes from remote sellers**  
 20       **pursuant to federal legislation. Therefore, the term "secretary" or "secretary**  
 21       **of revenue" shall mean "the Uniform Sales and Use Tax Commission" with**  
 22       **regards to those political subdivisions and central collection commissions and**  
 23       **the taxes under the contract.**

\*       \*       \*

§337.13. Collection of sales and use taxes by political subdivisions

26           A. Any sales and use tax levied by taxing authorities located within a single  
 27       parish may be collected by a single tax collector for that parish. **A single tax**  
 28       **authority may also contract with the Uniform Sales and Use Tax Commission**  
 29       **to collect such taxes in the manner provided for in Chapter 2-E of this Subtitle.**

1           B. In each parish, every taxing authority that levies a sales and use tax in that  
 2 parish may contract and make such agreement between and among themselves with  
 3 respect to the joint collection, enforcement, and administration of the sales and use  
 4 taxes as may be deemed proper by their respective governing authorities. Such  
 5 agreement, when concluded, shall be in writing and shall include a statement of the  
 6 financial obligations of each of the parties to the agreement and may provide for the  
 7 joint use of funds, facilities, personnel, or any combination thereof deemed necessary  
 8 to accomplish the purposes of the agreement. No provision of such agreement shall  
 9 have the effect of providing for a donation, in whole or in part, of the public funds  
 10 or services of one of the parties for the benefit of the other. Such agreement may  
 11 also provide for the collection, enforcement, and administration of taxes other than  
 12 sales and use taxes which are levied by taxing authorities. **The single tax collector**  
 13 **or a local central tax collection commission created pursuant to this Section may**  
 14 **also contract and make an agreement with the Uniform Sales and Use Tax**  
 15 **Commission for collection, enforcement, and administration of sales and use**  
 16 **taxes as provided for in Chapter 2-E of this Subtitle.**

17   \*       \*       \*

18           D. The commission and any taxing authority not represented on the  
 19 commission may enter into an agreement providing for the collection, enforcement,  
 20 and administration of any sales and use taxes authorized by said taxing authority.  
 21 The commission may charge other taxing authorities a collection fee based on a  
 22 percentage of collections.

23           E. The commission may, at its option, contract and make agreements with  
 24 other local political subdivisions **or the Uniform Sales and Use Tax Commission**  
 25 to collect taxes other than sales and use taxes.

26   \*       \*       \*

27           G. This Section shall not be construed to prohibit the contracting between  
 28 and among parishes for the collection, enforcement, and administration of sales and  
 29 use taxes; nor shall it be construed to prohibit the state from collecting sales and use

1 taxes or to prohibit the state from collecting sales and use taxes levied by a taxing  
2 authority at the request of the political subdivision as provided in R.S. 47:337.26.

3 **The provisions of this Section shall not be construed to prohibit contracting**  
4 **between the Uniform Sales and Use Tax Commission and any single tax**  
5 **collector or central collection commission for the collection, enforcement, and**  
6 **administration of their sales and use taxes.**

7 \* \* \*

8 **§337.14.1 Limitation on authority to collect**

9 **Notwithstanding the provisions of R.S. 47:337.13 and 337.14 or any other**  
10 **law to the contrary, any single tax collector or central collection commission**  
11 **which has voluntarily contracted with the Uniform Sales and Use Tax**  
12 **Commission to administer and collect all of its sales and use tax or only the**  
13 **collection of sales and use taxes from remote sellers pursuant to federal**  
14 **legislation shall only have such authority to administer, collect, or enforce those**  
15 **taxes as provided for in such contract for as long as such single tax collector or**  
16 **the central collection commission is bound by the contract with the Uniform**  
17 **Sales and Use Tax Commission.**

18 §337.16. Authority to collect local sales and use taxes

19 A. ~~The~~ **Until the establishment date provided for in Subsection C of this**  
20 **Section, the** secretary of the Department of Revenue is hereby authorized to contract  
21 with all the governing authorities of any taxing authority, at the request of the  
22 subdivisions, to collect and enforce the collection of any sales and use tax, and  
23 related penalty, interest, or other charge, levied by the taxing authorities. In order to  
24 collect and enforce any such tax, the secretary is vested with all the power and  
25 authority conferred by this Title.

26 \* \* \*

27 **C. Six months after the date the Uniform Sales and Use Tax Commission**  
28 **provides written notification to the secretary of the Department of Revenue that**  
29 **the single tax collectors or the central collection commissions for thirty-two**

1 parishes have entered into contracts with the commission to be the collector of  
 2 their sales and use taxes as provided for in Chapter 2-E of this Subtitle, the  
 3 Department of Revenue shall no longer have the ability to contract to collect  
 4 and enforce local sales and use taxes for taxing authorities. Such date shall be  
 5 hereinafter referred to as the establishment date. Six months after the  
 6 establishment date, the Uniform Sales and Use Tax Commission shall begin to  
 7 collect and administer the sales and use tax of the single tax collectors and the  
 8 central collection commissions with which it has contracted pursuant to  
 9 Chapter 2-E of this Subtitle.

10 §337.23. Uniform electronic local return and remittance system; official record of  
 11 tax rates, and exemptions

12 \* \* \*

13 K. Beginning six months after the establishment date provided for in  
 14 R.S. 47:337.16(C), the Uniform Sales and Use Tax Commission shall succeed to  
 15 the duties of the Department of Revenue relating to the Uniform electronic local  
 16 return and remittance system. The Department of Revenue and the Uniform  
 17 Sales and Use Tax Commission shall cooperate with each other regarding the  
 18 transfer of these duties.

19 \* \* \*

20 §337.26. Contracts for purposes relating to collection of sales and use taxes

21 A. Within the limits provided for in Article VII, Section 3(B) of the  
 22 Constitution of Louisiana, the governing authority of any taxing authority may  
 23 contract with the sheriff, the ~~Louisiana Department of Revenue~~ **Uniform Sales and**  
 24 **Use Tax Commission**, any political subdivision of this state, or any other agency,  
 25 whether public or private, for the examination or investigation of the place of  
 26 business, if any; the tangible personal property; and the books, records, papers,  
 27 vouchers, accounts, and documents of any taxpayer for the purposes of enforcement  
 28 and collection of any tax imposed by that taxing authority.

29 \* \* \*

1 §337.27. Venue

2 An action to enforce the collection of a sales or use tax, including any  
3 applicable interest, penalties, or other charges, levied by a taxing authority may be  
4 brought in the parish in which the taxing authority is situated. **If a court of limited**  
5 **jurisdiction over tax matters is created with a venue other than such parish,**  
6 **then an action may also be brought before that court.**

7 \* \* \*

8 §337.45 Alternative remedies for the collection of tax

9 \* \* \*

10 **C. The Uniform Sales and Use Tax Commission may choose any of the**  
11 **remedies provided for in this Section or any remedy afforded to it in Chapter**  
12 **2-E of this Subtitle to enforce collection, if a single tax collector or a central**  
13 **collection commission has contracted with the commission to collect, enforce,**  
14 **and administer sales and use taxes imposed by the local taxing authority.**

15 \* \* \*

16 §337.49. Protest to collector's determination of tax due

17 The taxpayer, within fifteen calendar days from the date of the notice  
18 provided in R.S. 47:337.48(A) or within thirty calendar days from the date of the  
19 notice provided in R.S. 47:337.48(B), may protest thereto. This protest must be in  
20 writing and should fully disclose the reasons, together with facts and figures in  
21 substantiation thereof, for objecting to the collector's determination. The collector  
22 **or the Uniform Sales and Use Tax Commission** shall consider the protest, and  
23 shall grant a hearing thereon, before making a final determination of tax, penalty, and  
24 interest due.

25 \* \* \*

26 §337.51. Notice of assessment and right to appeal or arbitration

27 A. Having assessed the amount determined to be due, the collector shall send  
28 a notice by certified mail to the taxpayer against whom the assessment is imposed  
29 at the address given in the last report filed by ~~said~~ **such** taxpayer, or to any address



1 obtainable from any private entity which will provide such address free of charge or  
 2 from any federal, state, or local government entity, including but not limited to the  
 3 United States Postal Service or from the United States Postal Service certified  
 4 software. If no report has been timely filed, the collector shall send a notice by  
 5 certified mail to the taxpayer against whom the assessment is imposed at any address  
 6 obtainable from any private entity which will provide such address free of charge or  
 7 from any federal, state, or local government entity, including but not limited to the  
 8 United States Postal Service or from the United States Postal Service certified  
 9 software. This notice shall inform the taxpayer of the assessment and that he has  
 10 thirty calendar days from the date of the notice to (a) pay the amount of the  
 11 assessment; (b) request mandatory arbitration pursuant to R.S. 47:337.51.1 or; (c)  
 12 pay under protest in accordance with R.S. 47:337.63 and file suit as provided for in  
 13 that Section or request mandatory arbitration pursuant to R.S. 47:337.51.1; **or (d) file**  
 14 **an appeal for redetermination of the assessment with any state court with**  
 15 **jurisdiction over such matters which may be provided by law.**

\* \* \*

17 §337.67. Suspension and interruption of prescription

\* \* \*

19 B. The prescriptive period running against any such sales and use tax shall  
 20 be interrupted by any of the following:

\* \* \*

22 (3) The filing of any pleading, either by the collector or the taxpayer, with  
 23 any state **court of appropriate jurisdiction** or federal court.

\* \* \*

25 §1508. Confidential character of tax records

26 A.(1) Except as otherwise provided by law, the records and files of the  
 27 Department of Revenue **and the Uniform Sales and Use Tax Commission** or the  
 28 records and files maintained pursuant to a tax ordinance, excluding ad valorem  
 29 property taxes and ad valorem property tax assessment rolls, of any political

1 subdivision are confidential and privileged, and no person shall divulge or disclose  
2 any information obtained from such records and files except in the administration  
3 and enforcement of the tax laws of this state or of a political subdivision of this state.

4 \* \* \*

5 (3) Neither the secretary or the Uniform Sales and Use Tax Commission  
6 nor any of their employees engaged in the administration or charged with the  
7 custody of any such records or files shall be required to produce any of them for  
8 inspection or use in any action or proceeding, except in an action or proceeding in  
9 the administration or enforcement of the tax laws of this state or of a political  
10 subdivision.

11 B. Nothing herein contained shall be construed to prevent:

12 \* \* \*

13 (33) The furnishing, in the discretion of the secretary or a political  
14 subdivision, of any information disclosed by the records or files to the Uniform  
15 Sales and Use Tax Commission if the commission in fact furnishes or has agreed  
16 with the secretary or political subdivision to furnish information contained in  
17 the records and files administered by the commission to the Department of  
18 Revenue or the political subdivision on a reciprocal basis; however, no such  
19 exchange of information shall be made in contravention of any provision of state  
20 or federal law prohibiting the dissemination of such information, nor shall such  
21 information be divulged except as provided by law.

22 \* \* \*

23 CHAPTER 2-E. Uniform Sales and Use Tax Commission

24 PART A. CREATION AND DOMICILE

25 §340.1.1. Purpose

26 The purpose of this Chapter is to provide for a Uniform Sales and Use  
27 Tax Commission to administer, audit, and collect state and local sales and use  
28 taxes arising under certain state tax laws to ensure uniformity and consistency  
29 in the interpretation and application of state and local tax law. In addition, the

1 purpose of this Chapter is to allow the state of Louisiana and its political  
2 subdivisions to participate in the Marketplace Fairness Act or other similar  
3 federal legislation pertaining to collection of sales and use taxes from relating  
4 to items of tangible personal property and services sold over the Internet to  
5 Louisiana consumers.

6 §340.1.2. Definitions

7 The following terms as used in this Chapter shall have the following  
8 definitions:

9 (1) "Commission" means the Uniform Sales and Use Tax Commission.

10 (2) "Local sales tax" or "local sales and use tax" means any sales and use  
11 tax of a local taxing authority which has contracted for administration and  
12 collection of such tax by the commission and any penalty, interest, attorney fees,  
13 or other charges related to the same.

14 (3) "State sales tax" or "state sales and use tax" means all of the  
15 following:

16 (a) The state sales and use taxes as set forth in Chapters 2, 2-A, 2-B, 2-C,  
17 2-D and 2-E of the Revised Statutes.

18 (b) The sales and use tax of the Louisiana Tourism Promotion District  
19 as set forth in R.S. 51:1286.

20 (c) Any other state sales and use taxes which may be levied in the 2013  
21 Regular Session of the Legislature or thereafter.

22 (d) Any penalty, interest, attorney fees, or other charges related to such  
23 taxes.

24 (4) "Taxing authorities" means the state, parishes, municipalities and  
25 any other political subdivision that levies and collects sales and use tax or the  
26 single tax collector or central collection commission collecting their taxes.

27 (5) "Marketplace Fairness Act" means S. 11, 113th Cong. (2013), entitled  
28 Marketplace Fairness Act or other similar federal legislation, which is made  
29 law.

1           **§340.1.3. Creation; Domicile**

2                   There shall be a commission established to be known as the Uniform  
3           Sales and Use Tax Commission within the Louisiana Department of Revenue.

4                                   **PART B. GENERAL DUTIES**

5           **§340.1.3A. Powers and Duties**

6                   The Uniform Sales and Use Tax Commission shall act on behalf of the  
7           state and its political subdivisions and shall have the power to do all of the  
8           **following:**

9                           (1) Administer and collect all state and local sales and use taxes.

10                           (2) Act as a body for the review of state and local sales and use tax  
11           **determinations.**

12                           (3) Promulgate rules and regulations and set policy pertaining to state  
13           **and local sales and use taxes.**

14                           (4) Create a unified sales and use tax base for purposes of collecting sales  
15           taxes relating to remote sales and for any other purposes relating to its  
16           **administrative duties.**

17           **§340.1.4. Members; tenure; vacancies**

18                   A. The Uniform Sales and Use Tax Commission shall be composed of  
19           nine members, one person who shall be a qualified elector of the state of  
20           Louisiana appointed by the governor from a nomination provided by each of  
21           **the following:**

22                           (1) The secretary of the Department of Revenue.

23                           (2) The Commissioner of the Division of Administration.

24                           (3) The Speaker of the House of Representatives.

25                           (4) The President of the Senate.

26                           (5) The Louisiana Association of Tax Administrators.

27                           (6) The Louisiana Municipal Association.

28                           (7) The Sheriff's Association.

29                           (8) The School Board Association.

1                   **(9) The Police Jury Association.**

2                   **B.(1) Initial appointments shall be made for staggered terms as specified**  
3 **in this Subsection, and at the termination of these initial terms of office, each**  
4 **term of office shall be six years. Initial terms shall be as follows as designated**  
5 **by the governor:**

6                   **(a) Three members shall be appointed for two-year terms.**

7                   **(b) Three members shall be appointed for four-year terms.**

8                   **(c) Three members shall be appointed for six-year terms.**

9                   **(2) Any vacancy which occurs prior to the expiration of the term for**  
10 **which a member of the commission has been appointed shall be filled by the**  
11 **governor for the unexpired term. At the expiration of a term, the member shall**  
12 **be appointed as provided for in Subsection A of this Section.**

13                   **C. Each appointment by the governor will be confirmed by the Senate.**

14                   **§340.1.5. Members; oath; qualifications**

15                   **Each member shall take the oath of office within thirty days after his**  
16 **appointment. Each commission member will be paid a per diem of one hundred**  
17 **forty dollars per day for handling the business of the commission.**

18                   **§340.1.6. Domicile and transaction of business**

19                   **A.(1) The commission is a body corporate and has the power to sue and**  
20 **be sued. The domicile of the commission shall be in the Parish of East Baton**  
21 **Rouge, and immediately after the appointment of the members, the governor**  
22 **shall designate the chair. The Chair shall call the first meeting of the**  
23 **commission as soon as feasible. At the meeting, the commission shall elect such**  
24 **other officers and provide for such by-laws of operation as it deems necessary.**

25                   **(2) A majority of the commission shall constitute a quorum for the**  
26 **transaction of business and the performance of its duties.**

27                   **(B)(1) The commission shall be open for the transaction of business every**  
28 **day, Sundays and legal holidays excepted.**

29                   **(2) The commission shall hold sessions or conduct investigations at any**

1 place other than its office in its domicile or when it is deemed necessary to  
2 facilitate the performance of its duties; and any member may be designated by  
3 the tax commission to hold hearings or conduct investigations, either at its office  
4 or its domicile or any other place, and report the result thereof to the members  
5 of the commission for action. Likewise, the commission may name and appoint,  
6 in any instance where such appointment may appear to further the objects of  
7 this Chapter and administration of the sales tax which it collects, persons to  
8 make investigations and hold public hearings, with the same authority that the  
9 commission, or any member thereof, would have the result of such  
10 investigations and hearings to be referred to all the members of the commission  
11 as it may require.

12 (3) Where such person is designated, he shall have a written order to that  
13 effect from the commission instructing him in the objects desired to be  
14 accomplished by such investigations or hearings. Such order shall be full  
15 authority for the persons so designated to do all acts that any member of the  
16 commission would have authority to do in the matter of making such  
17 investigations or holding such hearings. All orders, notices, and the like issued  
18 in such case by the designated person shall be in the name of the commission by  
19 the person.

20 §340.1.7. Employment of commission, clerical help and experts

21 A.(1) The commission may appoint or employ all necessary agents,  
22 assistants, auditors, clerks, inspectors, investigators, or other experts and  
23 employees required in the defense, determination, or development of  
24 assessments, assessment procedures, and valuation of property, including the  
25 hiring of experts such as legal counsel and analysts, auditors, appraisers, and  
26 witnesses.

27 (2) The commission may also pay from its expense fund expenses of the  
28 commission and its operation, travel and other expenses, costs, salaries, or  
29 compensation of the commission, any member, and its assistants, employees,

1 and outside experts, such costs, salaries, expenses, and compensation to be paid  
2 upon the order of the commission. The commission may contract with private  
3 parties, other state agencies, departments, boards and political subdivisions to  
4 carry out any of its duties including collections, the filing and processing of sales  
5 and use tax returns, and any other duties as it deems necessary to its function.

6 B.(1) The commission shall begin administering sales and use taxes on  
7 behalf of the state of Louisiana beginning on January 1, 2014. All of the duties  
8 and powers currently held by the Department of Revenue as it relates to the  
9 administration, auditing and collection of state sales and use taxes shall be  
10 transferred to the commission effective January 1, 2014. All employees of the  
11 Louisiana Department of Revenue whose job duties are identified by the  
12 commissioner of administration as relating to administration and collection of  
13 sales and use taxes shall be transferred to the Uniform Sales and Use Tax  
14 Commission.

15 (2) If any employee of a taxing authority levying sales and use tax  
16 becomes an employee of the commission, that employee may remain a member  
17 of the retirement system of which he had been a member prior to his  
18 employment with the commission and shall retain his rights to the same  
19 employee benefits that he had been entitled to and participating in prior to his  
20 employment with the commission.

21 **§340.1.8. Funding**

22 A. The commission shall determine the amount of monthly expenses  
23 which shall be charged by the commission to participating non-state local tax  
24 authorities for matters related to the administration and collection of their sales  
25 tax as provided for in this Chapter. Such expenses of the commission shall be  
26 paid monthly to the state treasurer by the non-state local tax authorities  
27 participating in the commission, the amount of such payment to be based upon  
28 the proportion that the sales tax of such non-state local tax authority bears to  
29 the total sales tax administered and collected by the commission.

1                    **B.(1) Funds received by the state treasurer as provided for in Subsection**  
2                    **A of this Section shall be deposited upon receipt in the state treasury.**

3                    **(2) After compliance with the requirements of Article VII, Section 9(B)**  
4                    **of the Constitution of Louisiana relative to the Bond Security and Redemption**  
5                    **Fund and prior to any money being placed into the general fund or any other**  
6                    **fund, an amount equal to that deposited as required by Subsection A of this**  
7                    **Section shall be credited by the Treasurer to a special fund hereby created in**  
8                    **the state treasury to be known as the "Uniform Sales and Use Tax Commission**  
9                    **Expense Fund", hereinafter referred to as the "commission expense fund". The**  
10                   **money in the fund shall be appropriated by the legislature to be used solely as**  
11                   **provided for in Subsection C of this Section.**

12                   **(3)(a) The money in the fund shall be invested by the Treasurer in the**  
13                   **same manner as money in the state general fund and interest earned on the**  
14                   **investment of the money shall be credited to the state general fund after**  
15                   **compliance with the requirements of Article VII, Section 9(B) relative to the**  
16                   **Bond Security and Redemption Fund.**

17                   **(b) All unexpended and unencumbered money in the fund at the end of**  
18                   **the year shall remain in the fund.**

19                   **C. The money in the commission expense fund may be expended only**  
20                   **pursuant to appropriation by the legislature and shall be appropriated,**  
21                   **expended, and used solely for expenses and costs of the commission, including**  
22                   **but not limited to expenses and costs of operations, audits, and examinations**  
23                   **and the defense, determination, or development of assessments and assessment**  
24                   **procedures, including costs associated with outside experts.**

25                   **§340.1.9. Uniform electronic return and remittance system**

26                   **The Uniform Sales and Use Tax Commission shall participate in the**  
27                   **uniform electronic local return and remittance system as provided by R.S.**  
28                   **47:337.23 et seq.**

29                   **PART C. PARTICIPATION BY POLITICAL SUBDIVISIONS**





1 and collect all of its sales and use tax or only the collection of sales and use taxes  
2 from remote sellers pursuant to federal legislation as provided in R.S.  
3 47:340.1.20 shall only have such authority to administer, collect, or enforce  
4 those taxes as provided for in such contract.

5 (2) No contract for collection shall be effective until six months after the  
6 establishment date provided for in R.S. 47:337.16(C).

7 D. The Commission may contract with any single tax collector or central  
8 collection commission to collect state sales and use taxes due, local sales and use  
9 taxes due, or both. The local taxing authority or central collection commission  
10 collecting such taxes on behalf of the commission shall be paid a fee determined  
11 by the commission for doing so.

12 §340.1.16. Remittance of funds collected to taxing authorities

13 Sales and use taxes collected by the commission shall be remitted to the  
14 taxing authorities levying the sales and use tax no later than sixty days after  
15 receipt of the taxes by the commission. Political subdivisions collecting on behalf  
16 of the commission shall remit sales and use taxes collected no later than sixty  
17 days after their receipt.

18 PART D. COLLECTION FROM REMOTE SELLERS

19 §340.1.20. Commission as sole authority to collect sales and use taxes from  
20 remote sellers

21 A. Upon passage of the Marketplace Fairness Act S. 11, 113th Cong.  
22 (2013) or other similar legislation, the Uniform Sales and Use Tax Commission  
23 shall be the only authority within the state of Louisiana with the authority to  
24 collect sales and use taxes from remote sellers. For purposes of this Section,  
25 "remote sellers" means those sellers which cannot be required to collect the  
26 sales or use tax of the state or its political subdivisions because of restrictions  
27 imposed by the Constitution of the United States.

28 B. In order for a single collector, a central collection commission, or any  
29 local tax authority to have their sales and use taxes collected from remote sellers

1 pursuant to the Marketplace Fairness Act, the single tax collector, central  
2 collection commission, or local tax authority shall contract with the commission  
3 in the manner provided for in R.S. 47:340.1.15 and additionally shall agree in  
4 the contract to adopt the commission's rules pertaining to collection of sales and  
5 use tax from remote sellers.

6 **PART E. ADMINISTRATIVE PROVISIONS**

7 **§340.1.29. Administration by the Uniform Sales and Use Tax Commission**

8 The Uniform Sales and Use Tax Commission shall collect and enforce the  
9 collection of all state sales and use taxes, penalties, interest and other charges  
10 related thereto which may be due under the provisions levying such taxes and  
11 administer the legislative mandates therein contained. To that end, the  
12 commission is vested with all the power and authority conferred by this  
13 Chapter, except such as is specifically conferred upon other officials.

14 **§340.1.30. Commission's records**

15 The commission shall keep a record of all its official acts and shall  
16 preserve copies of all rules, decisions, and orders made by it. The commission  
17 shall also keep an accurate record showing the name of the remitter of taxes,  
18 penalties, interest, and other charges, the amount and type of all taxes paid to  
19 it, the reports filed with them, and such other records as are necessary to the  
20 proper administration and execution of this Chapter.

21 **§340.1.31. Microfilm or microfiche records; electronic digitized records**

22 A. The commission may use microfilm, microfiche, or electronic data  
23 storage in the recordation, filing, and preservation of all records, forms, and  
24 documents referred to in R.S. 340.1.30 in order to conserve storage space where  
25 the use of such microfilm, microfiche, or electronic data storage is not otherwise  
26 prohibited by law.

27 B. Such microfilm, microfiche, or electronic copy shall be deemed to be  
28 an original record for all purposes, and shall be admissible in evidence in all  
29 courts or administrative agencies. A facsimile, exemplification, or certified copy

1 thereof shall, for all purposes, be deemed to be a transcript, exemplification, or  
2 certified copy of the original.

3 §340.1.32. Authentication of the commission's records

4 Copies of any rule, decision, or order of the commission, and of any  
5 paper or report filed in any office maintained by it in the administration of this  
6 Chapter, may be authenticated under the signature of an official designated by  
7 the commission, and when so authenticated, shall be evidence in all courts of  
8 this state, with the same force and weight as the originals thereof. For  
9 authenticating any such copy, the collector may charge a fee of one dollar which  
10 shall be deposited to the operating account of the commission.

11 §340.1.35 Confidential character of tax records

12 A.(1) Except as otherwise provided by law, the records and files of the  
13 commission or the records and files maintained pursuant to a tax ordinance of  
14 any political subdivision are confidential and privileged, and no person shall  
15 divulge or disclose any information obtained from such records and files except  
16 in the administration and enforcement of the tax laws of this state or of a  
17 political subdivision of this state.

18 (2) No person shall divulge or disclose any information obtained from  
19 any examination or inspection of the premises or property of any person in  
20 connection with the administration and enforcement of the tax laws of this state  
21 or a political subdivision of this state except to the taxing authority by whom he  
22 is employed or, in the case of an already existing independent contractor  
23 arrangement, to the contracting taxing authority.

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

29 B. Nothing herein contained shall be construed to prevent:

1           **(1) The delivery to a taxpayer or his duly authorized representative of**  
2           **a copy of any return, report, or any other paper filed by him pursuant to the**  
3           **provisions of the tax laws of this state or pursuant to the provisions of a tax**  
4           **ordinance of a political subdivision, or any other information regarding a**  
5           **taxpayer's sales and use tax account even if the information has been provided**  
6           **by a third party pursuant to the provisions of such laws or ordinances.**

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

9           **(3) The use of reports filed by a taxpayer under one provision of the tax**  
10           **laws of this state or an ordinance of a political subdivision, in an action against**  
11           **the same taxpayer for a tax due under another provision of the tax laws of this**  
12           **state, or another tax ordinance of the political subdivision.**

13           **(4) The inspection by the attorney general or other legal representative**  
14           **of the state of the returns, reports, or files relating to the claim of any taxpayer**  
15           **who has brought an action to review or set aside any sales or use tax**  
16           **administered by the commission or against whom an action or proceeding has**  
17           **been instituted in accordance with the provisions of state law or ordinance**  
18           **concerning such tax.**

19           **(5) The furnishing, in the discretion of the commission or a political**  
20           **subdivision, of any information disclosed by the records or files to any official**  
21           **person of another department or political subdivision of this state, or any other**  
22           **state, or of the United States, who is concerned with the administration of taxes**  
23           **and who in fact furnishes or has agreed with the commission or political**  
24           **subdivision to furnish information contained in the records and files**  
25           **administered by him to the commission, Department of Revenue, or the political**  
26           **subdivision on a reciprocal basis; however, no such exchange of information**  
27           **shall be made in contravention of any provision of state or federal law**  
28           **prohibiting the dissemination of such information, nor shall such information**  
29           **be divulged except as provided by law, nor shall income tax records be divulged**

1 to any department, agency, or political subdivision of this state, another state,  
2 or the United States, except the commission, or an equivalent agency of another  
3 state, or the Internal Revenue Service of the United States, and then only on a  
4 reciprocal basis. In addition, information divulged under this Subsection shall  
5 only be given to an agency which has agreed in advance to respect the  
6 confidentiality of such information.

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

10 (7) The commission from disclosing the name and address of any  
11 taxpayer who has filed a sales tax return, but he shall not disclose any tax data  
12 whatsoever with respect to any taxpayer, and such information shall be made  
13 available to any taxpayer upon his request.

14 (8) The commission or political subdivision from disclosing to the  
15 legislative auditor, or any members of his staff designated by him, those papers,  
16 books, documents, including tax returns and tax return information, films,  
17 tapes, and any other forms of recordation, including but not limited to  
18 computers and recording devices which the legislative auditor, in his discretion,  
19 deems necessary for the purpose of making an examination and audit of the  
20 books and accounts of the commission or a political subdivision in the same  
21 manner as is provided for the Department of Revenue in R.S. 24:513.1. Any  
22 information so furnished shall be considered confidential and privileged by the  
23 legislative auditor, and members of his staff, to the same extent as heretofore  
24 provided.

25 (9) The commission contracting with a political subdivision for the  
26 collection of taxes from disclosing to the internal auditor of the political  
27 subdivision, or any members of his staff designated by the auditor, those papers,  
28 books, documents, including tax returns and tax return information, films,  
29 tapes, and any other forms of recordation, including but not limited to

1       computers and recording devices which the internal auditor deems necessary  
2       for the purpose of making an examination and audit of the books and accounts  
3       of the commission. Any information so furnished shall be considered  
4       confidential and privileged by the internal auditor, and members of his staff, to  
5       the same extent as heretofore provided.

6               (10) The commission, the executive director of the Louisiana Workforce  
7       Commission, or any political subdivision from disclosing to the Louisiana  
8       Lottery Corporation information regarding whether or not a lottery vendor or  
9       retailer applicant, as defined in R.S. 47:9002, is current in the filing of all  
10       applicable tax returns and reports, and in payment of all taxes, interest, and  
11       penalties owed to the state of Louisiana or to any taxing political subdivision.  
12       Any information so furnished shall be considered and held confidential and  
13       privileged by the Louisiana Lottery Corporation to the same extent as  
14       heretofore provided.

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

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

27               (c) At such time as the notice provisions of this Paragraph have been  
28       satisfied, the commission may disclose the name and address of the taxpayer,  
29       the type of delinquent taxes due, and the total amount of tax, penalty, and

1 interest due. If the taxpayer is a business entity, the commission may  
2 additionally name any owner who owns at least a fifty percent ownership  
3 interest in the entity. No other taxpayer information may be disclosed. The  
4 disclosure may be made in any newspaper, magazine, or in electronic media,  
5 such as television or the Internet.

6 (12) The commission, in order to implement the provisions of R.S.  
7 51:936(C), from disclosing to the Department of Economic Development, upon  
8 request of the department, information from the state returns and reports of a  
9 taxpayer who has applied to or contracted with the Department of Economic  
10 Development for assistance, including but not limited to tax incentives,  
11 economic development programs, financial assistance, cooperative endeavor  
12 agreements, or technical assistance. The commission shall not disclose any data  
13 from those returns or reports provided by the Internal Revenue Service. Any  
14 information so furnished shall be considered and held confidential and  
15 privileged by the Department of Economic Development to the same extent  
16 heretofore provided.

17 (13) The furnishing of information by the commission to the secretary  
18 of the Senate and the clerk of the House of Representatives regarding whether  
19 any person nominated or appointed to a board, commission, committee,  
20 corporation, district, or other office or position that requires confirmation,  
21 approval, or election by the Senate or the House of Representatives has filed tax  
22 returns or owes a liability for the previous five years. Any information so  
23 furnished shall be considered confidential and privileged by the Senate or the  
24 House of Representatives to the same extent provided for in Subsection A of this  
25 Section.

26 (14) The commission, in order to implement the provisions of R.S.  
27 56:303(E), from disclosing to the Department of Wildlife and Fisheries upon the  
28 request of the commission of the Department of Wildlife and Fisheries or his  
29 designee a list of the names and social security numbers of those persons issued



1 a certificate of exemption pursuant to R.S. 47:305.20(B).

2 (15) The furnishing of, upon the request of the commission of the  
3 Department of Children and Family Services or its designee, the address and  
4 social security number of the person designated by Department of Children and  
5 Family Services as an absent parent for the purpose of implementing the  
6 provisions of R.S. 46:236.1.1 et seq., the family and child support program.

7 (16) The sharing or furnishing, in the discretion of the commission, of  
8 information to the Louisiana Workforce Commission for the purposes of  
9 determining, investigating, or prosecuting fraud related to all areas  
10 administered by the Louisiana Workforce Commission. Any information shared  
11 or furnished shall be considered and held confidential and privileged by the  
12 Louisiana Workforce Commission to the same extent heretofore provided.

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

16 §340.1.36. Unauthorized disclosure of information

17 A. Any officer, employee, or agent, or any former officer, employee, or  
18 agent of the state of Louisiana or of any political subdivision of the state who  
19 unlawfully discloses any information obtained from a return of a taxpayer or  
20 records and files of the commission, contrary to the provisions of R.S.  
21 47:340.1.35, shall be guilty of a misdemeanor and, upon conviction thereof, shall  
22 be fined not more than ten thousand dollars or be imprisoned for not more than  
23 two years, or both.

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

28 §340.1.37. Publication of tax information

29 The commission may prepare and publish materials and memoranda

1 concerning Louisiana tax matters which are deemed to be of public interest, and  
2 may make nominal charges for such materials to defray the costs involved in  
3 such preparation and publication.

4 §340.1.38. Preservation of returns and reports

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

11 B. Subsection A of this Section shall not apply to internally generated  
12 reports used for the processing of tax information. The commission shall have  
13 the authority to establish procedures for the destruction of these reports.

14 §340.1.39. Power to employ counsel; attorney fees

15 A.(1) The commission is authorized to employ private counsel to assist  
16 in the collection of any sales tax, penalty, or interest due pursuant to the sales  
17 tax laws of the state or ordinance of local taxing authorities, or to represent it  
18 in any dispute, contest, or other controversy involving the determination of sales  
19 and use tax due, or in any other proceeding under this Chapter.

20 (2) If any sales taxes, penalties, or interest due and final under this  
21 Chapter, law, or ordinance are referred to an attorney at law for a collection  
22 action, an additional charge for attorney fees, in the amount of ten percent of  
23 the taxes, penalties, and interest due, except with respect to amounts timely paid  
24 under protest with a return that is not delinquent, or paid under protest to a  
25 vendor in accordance with law, shall be paid by the taxpayer to the commission;  
26 provided, however, that the amount paid for attorney fees shall be subject to the  
27 discretion of the court as to reasonableness.

28 (3) A taxpayer shall not be subject to the payment of attorney fees unless  
29 the commission is the prevailing party entitled to reimbursement of attorney

1 fees and costs as provided for in Subsection B of this Section.

2 B.(1) Except as otherwise provided for in Paragraph (3) of Subsection A  
3 of this Section, the prevailing party in a dispute, contest, or other controversy  
4 involving the determination of sales and use tax due shall be entitled to  
5 reimbursement of attorney fees and costs, not to exceed ten percent of the taxes,  
6 penalties, and interest at issue, unless the position of the non-prevailing party  
7 is substantially justified. The prevailing party is defined as the party which has  
8 substantially prevailed with respect to the amount in controversy or  
9 substantially prevailed with respect to the most significant issue or set of issues  
10 presented. A position is substantially justified if it has a reasonable basis in law  
11 and fact. The reimbursement amount for attorney fees and costs shall be subject  
12 to the discretion of the court as to reasonableness.

13 (2) The provisions of this Subsection shall not apply to amounts timely  
14 paid under protest by the taxpayer with a return that is not delinquent, or paid  
15 under protest to a vendor in accordance with law, as provided for in Subsection  
16 A of this Section.

17 (3) If the commission is a non-prevailing party in a dispute, contest, or  
18 other controversy involving the determination of sales and use tax due it shall  
19 be reimbursed by the local taxing authorities for attorney fees and costs  
20 incurred by the commission and recoverable as a deduction from current  
21 collections.

22 (4) The provisions of this Subsection shall apply only to matters referred  
23 to private counsel by the commission.

24 C. The commission may waive the attorney fee award as provided for in  
25 this Section. A waiver of attorney fees by the commission shall be considered  
26 timely if the notice of the waiver is mailed to a taxpayer by certified mail, return  
27 receipt requested, within thirty days of the service of process. If a local collector  
28 timely waives its attorney fee award, a taxpayer may not recover attorney fees  
29 as provided for in Subsection B of this Section.

1           **§340.1.40. Power to make rules and regulations**

2           In addition to specific authority granted to the commission in other  
3 provisions of law, the commission is authorized to prescribe rules and  
4 regulations to carry out the purposes of this Chapter and the purposes of any  
5 other statutes or provisions included under the commission's authority. These  
6 rules and regulations shall be promulgated pursuant to the provisions of the  
7 Administrative Procedure Act and will have the full force and effect of law.

8           **§340.1.41. Power to administer oaths**

9           The commissioner or his authorized representatives may take the oath  
10 of any person signing any application, deposition, statement or report required  
11 by the provisions of this Chapter, or administer such other oaths as may be  
12 necessary for the purpose of enforcing and administering the provisions of this  
13 Chapter; provided however, that any form, affidavit or oath required by the  
14 commission in connection with the issuance of a motor vehicle license plate may  
15 be signed before a commission employee or notary public, at the option of the  
16 person applying for such license plate.

17           **§340.1.42. Power to extend time to file returns and pay tax**

18           Upon the written request of the taxpayer and for good cause shown, the  
19 collector may grant reasonable extensions of time for the filing of returns and  
20 payment of tax due under this Chapter; provided that such extensions of time  
21 shall not exceed thirty calendar days. Whenever such an extension is granted,  
22 the return or tax for which the extension is granted shall not become delinquent  
23 until the expiration of the extension period, but interest will accrue on the tax  
24 during the period of the extension, such interest to be computed in all cases  
25 from the date the tax would have become delinquent in the absence of an  
26 extension.

27           **§340.1.43. Out-of-state debt collection**

28           A. To facilitate the collection of taxes, interest, penalties, and fees due to  
29 the Uniform Sales and Use Tax Commission under any provision of this

1        Chapter, the commission is authorized to enter into contracts with collection  
2        contractors for the purpose of debt collection on behalf of the commission,  
3        pursuant to the provisions of R.S. 39:1481 et seq.

4                B. The commission shall enter into such contracts only with respect to  
5        the collection of obligations that have become collectible by distraint and sale,  
6        as provided by this Chapter, from debtors whose identifiable assets subject to  
7        distraint in Louisiana are insufficient to satisfy the obligations owed. The  
8        contracts shall provide, at the discretion of the commission, the rate of payment  
9        and the manner in which compensation for services shall be paid. The tax  
10       debtor shall pay the full amount of any additional charge for collection of any  
11       taxes, penalties, or interest which are referred to a collection contractor.

12               C. The commission shall provide information to collection contractors  
13       concerning the accounts of individual debtors only to the extent necessary for  
14       the collection contractor to fulfill his contractual obligation. The information  
15       furnished by the commission shall be considered confidential and privileged by  
16       the collection contractor and members of his staff, to the same extent as  
17       provided by R.S. 47:340.1.35.

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

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

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

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

29       §340.1.44. In-state debt collection

1           **A.(1) To facilitate the collection of sales taxes, interest, penalties, and fees**  
2           **due to the commission under any provision of this Chapter, law, or ordinance,**  
3           **the commission is authorized to enter into contracts with collection contractors**  
4           **for the purpose of debt collection on behalf of the commission, pursuant to the**  
5           **provisions of R.S. 39:1481 et seq.**

6           **(2) The commission may only enter into such contracts after the**  
7           **requirements of Subsection B are met.**

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

10           **(a) Fees charged.**

11           **(b) Organizational structure.**

12           **(c) Governmental accounts experience.**

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

15           **(e) Collection methodology.**

16           **(f) Financial stability.**

17           **(g) Personnel resources.**

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

25           **(1) That his obligation is a final judgment.**

26           **(2) All the actions the commission is authorized to take in order to collect**  
27           **the debt.**

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

1           **charged to the account.**

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

6           **D. The commission shall provide information to collection contractors**  
7           **concerning the accounts of individual debtors only to the extent necessary for**  
8           **the collection contractor to fulfill his contractual obligation. The information**  
9           **furnished by the commission shall be considered confidential and privileged by**  
10           **the collection contractor and members of his staff, to the same extent as**  
11           **provided by R.S. 47:340.1.35. Collection contractors may not take any action**  
12           **which exceeds the authority of the commission and must follow fair debt**  
13           **collection practices as described in Sections 1692 through 1693r of Title 15 of**  
14           **the United States Code.**

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

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

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

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

27           **I. Notwithstanding any other provisions of this Section, the attorney**  
28           **general shall have a right of first refusal for all accounts the commission decides**  
29           **to send to a collection contractor. A list of such accounts shall be compiled by**

1 the commission and forwarded to the attorney general for the exercise of his  
2 right of first refusal. The right of first refusal shall be exercised within thirty  
3 days of the date of mailing or electronic transmission of the list. If the attorney  
4 general fails to exercise his right of first refusal within thirty days, the  
5 commission may send the accounts to any collection contractor meeting the  
6 requirements of Paragraph (A)(3) of this Section. When the attorney general  
7 accepts an account for collection, the collection fee shall not exceed fifteen  
8 percent of the total liability. If the attorney general refuses to accept an account,  
9 then the commission may send the accounts to any collection contractor meeting  
10 the requirements of Paragraph (A)(3) of this Section.

11 §340.1.45. Authority to require whole-dollar reporting on tax returns

12 A. With respect to any tax or fee with which it is charged with  
13 administering, the commission is hereby authorized to revise, publish, and  
14 adopt tax reporting forms, systems, and procedures which require the reporting  
15 of summary tax amounts which have been rounded off to whole dollars.

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

20 §340.1.46. Payment of taxes by electronic funds transfer; credit or debit cards;

21 other

22 A. In payment of all taxes, penalties, interest, fees, and payments due  
23 under any state law for which the authority to collect has been delegated to the  
24 commission or by agreement between the commission and a taxing authority,  
25 the commission will accept cash, a bank draft, cashier's check, teller's check,  
26 certified check, personal check, money order, electronic funds transfer, or  
27 credit or debit card from a nationally recognized institution. At the time of  
28 payment, the service fee for the use of a credit or debit card shall be charged to  
29 the taxpayer and shall be collectible as part of his liability, but the charge shall



1 not exceed the fee charged by the credit card issuer, including any discount rate.

2 B.(1) The commission may require payments by electronic funds transfer  
3 under any of the following circumstances:

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

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

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

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

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

22 (4) If any taxpayer fails to comply with the electronic funds transfer  
23 requirements, the tax payment will be considered delinquent and will be subject  
24 to penalties and interest as provided under R.S. 47:340.1.87 and 340.1.88.

25 C. The commission shall promulgate such rules and regulations as are  
26 necessary to implement this Section under the Administrative Procedure Act.  
27 These rules and regulations will address, at a minimum, the responsibility of the  
28 commission to notify taxpayers and others responsible for making payments  
29 under this Section, the identification of taxes of which payment is required

1 under this Section, the procedures for making payments, payment alternatives,  
2 and proof of timely payment.

3 §340.1.47. Electronically filed returns; signatures

4 A.(1) The commission may require electronic filing of tax returns or  
5 reports under any of the following circumstances:

6 (a) The taxpayer is required to pay electronically.

7 (b) The report is required for dedicated fund distribution.

8 (2) The electronic filing requirement shall be implemented by  
9 administrative rule adopted and promulgated with legislative oversight in  
10 accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

11 B. Failure to comply with the electronic filing requirements will result  
12 in the assessment of a penalty of one hundred dollars or five percent of the tax,  
13 whichever is greater. If it is determined that the failure to comply is  
14 attributable, not to the negligence of the taxpayer, but to other cause set forth  
15 in written form and considered reasonable by the commission, the commission  
16 may remit or waive payment of the whole or any part of the penalty. However,  
17 in any case where the penalty exceeds twenty-five thousand dollars, such  
18 penalty may be waived by a majority vote of the commission.

19 C. The commission may prescribe alternative methods for signing,  
20 subscribing, or verifying a return, statement, or other document filed by  
21 electronic means that shall have the same validity and consequence as the actual  
22 signature and/or written declaration for such a return, statement, or other  
23 document.

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

27 PART F. INVESTIGATIONS AND HEARINGS

28 §340.1.50. Taxpayer's appeal from Rules or Regulations in effect

29 A taxpayer who is aggrieved by a finalized rule or regulation issued by

1 the commission pursuant to the Administrative Procedure Act shall have the  
2 right to appeal the ruling to the commission. If the commission upholds its  
3 finalized rule or regulation after a hearing before the members of the  
4 commission, then the taxpayer will have the right to appeal to a state court of  
5 appropriate jurisdiction within sixty days. The parish of venue for a proceeding  
6 brought against two or more taxing authorities located in more than one parish  
7 or against the state shall be East Baton Rouge Parish.

8 **§340.1.51. Commission's duty to determine the correct tax due**

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

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

16 C. Before using a sampling procedure to project the findings of an audit  
17 and establish a tax liability, the commission or its designee shall notify the  
18 taxpayer in writing of the sampling procedure he intends to use, including but  
19 not limited to how the tax will be computed, the population to be sampled, and  
20 the type of tax for which the tax liability will be established.

21 **§340.1.52. Retention of records by taxpayers; records in machine-sensible**  
22 **format**

23 A. Notwithstanding any other provision of this Chapter, any document  
24 or record which a taxpayer is required to maintain in regard to a tax levied  
25 pursuant to state law or local ordinance shall be retained by the taxpayer until  
26 the tax to which they relate have prescribed.

27 B. If a taxpayer retains records required to be maintained in regard to  
28 a tax levied pursuant to this Chapter in machine-sensible and hard-copy  
29 formats, the taxpayer shall make the records available to the commission in the

1 machine-sensible format used by the taxpayer upon request of the commission.

2 §340.1.53. Power to examine the records of third parties

3 For the purpose of administering the provisions of this Chapter, the  
4 commission whenever it deems it expedient may make or cause to be made by  
5 any of its authorized assistants, an examination of the books, records, papers,  
6 vouchers, accounts and documents of any individual, firm, co-partnership, joint  
7 venture, association, corporation, estate, trust, business trust, receiver, bank,  
8 syndicate, or other group or combination, in so far as said books, records,  
9 papers, vouchers, accounts, and documents relate to, bear on, associate with,  
10 identify, clarify, or disclose, the liability of any person or group made liable for  
11 the tax, penalty, and interest imposed by this Chapter or local ordinance or  
12 assist in the enforcement or collection of any such liability. Every individual,  
13 director, officer, agent, or employee of such individual, firm, co-partnership,  
14 joint venture, association, corporation, estate, trust, business trust, receiver,  
15 bank, syndicate or other group or combination shall exhibit to the commission  
16 or to any of its authorized assistants, the pertinent books, records, papers,  
17 vouchers, accounts, and documents and to facilitate any such examination and  
18 investigation so far as it may be in his or their power so to do.

19 §340.1.54. Power to conduct hearings

20 The commission may conduct hearings, administer oaths to, and examine  
21 under oath, any taxpayer, and the directors, officers, agents, and employees of  
22 any taxpayer, and any other witnesses, relative to the business of such taxpayer  
23 in respect to any matter incident to the administration of the local ordinance  
24 and this Chapter.

25 §340.1.55. Power to subpoena witnesses; fees

26 The commission or any of its authorized assistants may by subpoena  
27 compel the attendance of witnesses and the production of any books, records,  
28 papers, vouchers, or accounts of any taxpayer or any person who the  
29 commission has reason to believe has information pertinent to any matter under

1 investigation by the commission at any hearing held pursuant to the provisions  
2 of this Chapter.

3 §340.1.56. Notice to attend hearings; how given

4 The notice or subpoena requiring a person to attend a hearing  
5 authorized by this Chapter to be examined, or to answer any questions, or to  
6 produce any books, records, papers, vouchers, accounts, or documents, shall be  
7 given by the commission or any of its authorized assistants, either through  
8 personal service on the person and endorsement of such service on the reverse  
9 of a copy of such notice, or by sending a notice by registered or certified mail  
10 to the last known address of such person. The mailing of the notice shall be  
11 presumptive evidence of its receipt by the person to whom it was addressed.

12 §340.1.57. Procedure to compel witnesses to attend and to testify at hearing

13 If a person subpoenaed to attend any hearing under this Chapter refuses  
14 to appear, be examined, or answer any questions, or produce any books,  
15 records, papers, vouchers, accounts, or documents, pertinent to the matter of  
16 inquiry, when subpoenaed by the commission, or any of its authorized  
17 assistants, the commission or such assistant, in term time or vacation, may  
18 apply to any district court, upon proof by affidavit of such refusal, to make an  
19 order returnable in not less than two nor more than ten days, directing such  
20 person to show cause before the court why he should not obey the demand of the  
21 subpoena. Upon the return of such order, the court before whom the matter  
22 comes shall examine the person under oath, and the person shall be given an  
23 opportunity to be heard, and if the court determines that he has refused,  
24 without legal excuse to obey the command of the subpoena, or to be examined,  
25 or to answer any question, or to produce any books, papers, vouchers, records,  
26 accounts, or documents, pertinent to the matter of inquiry which he was by  
27 subpoena commanded to answer or produce, the court may order such person  
28 to comply forthwith with such subpoena or order, or to submit to such  
29 examination or to answer any such question, and any failure to obey such order

1 of the court may be punished by the court as a contempt of the court.

2 §340.1.58. Rule to show cause and examination of judgment debtor

3 Whenever the commission finds that any person has failed to file or  
4 refuses to file any return required by any provision of this Chapter, the  
5 commission may institute against that person:

6 (1) A rule to show cause why the return should not be filed, and

7 (2) A rule to examine a judgment debtor, as provided for in Articles 2452  
8 through 2456, Louisiana Code of Civil Procedure where the tax due has been  
9 duly and finally assessed as otherwise provided.

10 §340.1.59. Alternative remedies for the collection of taxes

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

15 (1) Assessment and distraint, as provided in R.S. 47:340.1.61 through  
16 47:340.1.73.

17 (2) Summary court proceeding, as provided in R.S. 47:340.1.74.

18 (3) Ordinary suit under the provisions of the general laws regulating  
19 actions for the enforcement of obligations.

20 §340.1.60. Special authority to enforce collection of taxes collected; personal  
21 liability

22 A. Notwithstanding any other provision of law to the contrary, if any  
23 corporation, limited liability company, or limited partnership fails to file  
24 returns or to remit the sales and use taxes collected from purchasers or  
25 consumers under sales tax law or ordinance, the commission may, as an  
26 alternative means of enforcing collection, to hold those officers or directors, or  
27 those managers or members as defined in R.S. 12:1301(12) and (13), having  
28 direct control or supervision of such taxes or charged with the responsibility of  
29 filing such returns and remitting such taxes and who willfully fail to remit or

1 account for such taxes collected, personally liable for the total amount of such  
2 taxes collected, and not accounted for or not remitted, together with any  
3 interest, penalties, and fees accruing thereon. Collection of the total amount due  
4 may be made from any one or any combination of such officers or directors, or  
5 managers or members as defined in R.S. 12:1301(12) and (13) who willfully fail  
6 to remit or account for such taxes collected, by use of any of the alternative  
7 remedies for the collection of taxes as provided in R.S. 47:340.1.59.

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

14 §340.1.61. Determination and notice of tax due

15 A. If a taxpayer fails to make and file any return or report required by  
16 the provisions of this Chapter, the commission shall determine the tax, penalty,  
17 and interest due by estimate or otherwise. Having determined the amount of  
18 tax, penalty, and interest due, the commission shall send by mail a notice to the  
19 taxpayer at the address given in the last report filed by him pursuant to the  
20 provisions of the Chapter governing the tax involved, or to any address that  
21 may be obtainable from any private entity which will provide such address free  
22 of charge or from any federal, state, or local government entity, including but  
23 not limited to the United States Postal Service or from United States Postal  
24 Service certified software, setting out its determination and informing the  
25 person of its purpose to assess the amount so determined against him after  
26 thirty calendar days from the date of the notice.

27 B. If a return or report made and filed does not correctly compute the  
28 liability of the taxpayer, the commission shall cause an audit, investigation, or  
29 examination, as provided for by R.S. 47:1541, to be made to determine the tax,

1 penalty, and interest due. Having determined the amount of tax, penalty, and  
2 interest due, the commission shall send by mail a notice to the taxpayer at the  
3 address given in the last report filed by him pursuant to the provisions of the  
4 Chapter governing the tax involved, or to any address that may be obtainable  
5 from the United States Postal Service or from United States Postal Service  
6 certified software, setting out its determination and informing the person of its  
7 purpose to assess the amount so determined against him after thirty calendar  
8 days from the date of the notice.

9 §340.1.62. Protest to commission's determination of tax due

10 The taxpayer, within thirty calendar days from the date of the notice  
11 provided in R.S. 47:340.1.61(A) or (B), may protest thereto. This protest shall  
12 be in writing and should fully disclose the reasons, together with facts and  
13 figures in substantiation thereof, for objecting to the commission's  
14 determination. The commission shall consider the protest and in its discretion  
15 may grant a hearing thereon before making a final determination of tax,  
16 penalty, and interest due.

17 §340.1.63. Assessment of tax, interest, and penalties

18 At the expiration of thirty calendar days from the date of the  
19 commission's notice provided in R.S. 47:340.1.61(A) or (B), or at the expiration  
20 of such time as may be necessary for the commission to consider any protest  
21 filed to such notice, the commission shall proceed to assess the tax, penalty, and  
22 interest that he determines to be due under the provisions of any Chapter of this  
23 Subtitle. The assessment shall be evidenced by a writing in any form suitable to  
24 the commission, which sets forth the name of the taxpayer, the amount  
25 determined to be due, the kind of tax, and the taxable period for which it is due.  
26 This writing shall be retained as a part of the commission's official records. The  
27 assessment may confirm or modify the commission's originally proposed  
28 assessment.

29 §340.1.64. Notice of assessment and right to appeal



1           **A. Having assessed the amount determined to be due, the commission**  
2           **shall send a notice by certified mail to the taxpayer against whom the**  
3           **assessment is imposed at the address given in the last report filed by said**  
4           **taxpayer, or to any address obtainable from any private entity which will**  
5           **provide such address free of charge or from any federal, state, or local**  
6           **government entity, including but not limited to the United States Postal Service**  
7           **or from United States Postal Service certified software. If no report has been**  
8           **timely filed, the commission shall send a notice by certified mail to the taxpayer**  
9           **against whom the assessment is imposed at any address obtainable from any**  
10           **private entity which will provide such address free of charge or from any**  
11           **federal, state, or local government entity, including but not limited to the United**  
12           **States Postal Service or from United States Postal Service certified software.**  
13           **This notice shall inform the taxpayer of the assessment and that he has sixty**  
14           **calendar days from the date of the notice to either (1) pay the amount of the**  
15           **assessment, (2) pay under protest in accordance with R.S. 47:340.1.77 and file**  
16           **suit as provided for in that Section, or, (3) with regards to state sales tax, to**  
17           **appeal for a redetermination of the assessment to the Board of Tax Appeals.**  
18           **However, the notice shall inform the taxpayer if a state court of appropriate**  
19           **jurisdiction has been created by law and is required to hear appeal of**  
20           **assessments of both state and local sales tax.**

21           **B.(1) If the taxpayer has not filed an appeal with the Board of Tax**  
22           **Appeals or with a successor state court of appropriate jurisdiction which has**  
23           **been created by law and is required to hear such appeals with regard to the**  
24           **state tax assessment within the sixty day period, the assessment of state sales tax**  
25           **shall be final and shall be collectible by distraint and sale as hereinafter**  
26           **provided.**

27           **(2) In the case of a local sales tax assessment, there is no appeal of the**  
28           **assessment unless a state court of appropriate jurisdiction has been created by**  
29           **law and is required to hear such appeals and the only remedy for the taxpayer**

1 is to pay the assessment or pay under protest and file suit as provided for in R.S.  
2 47:340.1.77.

3 (3) However, if an appeal for a redetermination of an assessment is able  
4 to be filed and has been filed, the assessment shall not be collectible by distraint  
5 and sale until such time as the assessment has been redetermined or affirmed  
6 by the Board of Tax Appeals or a state court of appropriate jurisdiction which  
7 has been created by law and is required to hear appeal of assessments of both  
8 state and local sales tax, or the court which last reviews the matter.

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

17 (2) The determination of an error of fact or of law under this Subsection  
18 shall be solely that of the commission, and no action against the commission  
19 with respect to the determination shall be brought in any court, and no court  
20 shall have jurisdiction of any such action, it being the intent of this Subsection  
21 only to permit the commission to correct manifest errors of fact or in the  
22 application of the law made by the commission in making the assessment;  
23 however, all reductions of assessments based on such errors, except estimated  
24 assessments made due to the failure of the taxpayer to file a proper tax return,  
25 must be approved and signed by the Commissioner. Estimated assessments  
26 made due to the failure of the taxpayer to file a proper tax return may be  
27 corrected by the acceptance of the proper tax return and must be approved by  
28 the commission or its designee.

29 (3) The remedies of a taxpayer aggrieved by any action of the

1 commission are by appeal to the Board of Tax Appeals with regards to a state  
2 sales tax matter, or a state court of appropriate jurisdiction which has been  
3 created by law and is required to hear such appeal, or by payment of the  
4 disputed tax under protest and suit to recover as provided in R.S. 47:340.1.77.

5 §340.1.65. Waiver of restrictions and delays

6 The taxpayer shall at any time have the right, by a signed written notice  
7 filed with the commission, to waive the restrictions and delays prescribed in  
8 R.S. 47:340.1.61 through R.S. 47:340.1.73 which must ordinarily be observed  
9 before an assessment may become final. When such a waiver is executed, the  
10 assessment is final when made and is immediately collectible by distraint and  
11 sale.

12 §340.1.66. Assessment and notice when tax is in jeopardy

13 A. If the commission finds that a taxpayer designs quickly to depart from  
14 the state, or to remove therefrom any property subject to any tax or to any lien  
15 for a tax, or to discontinue business, or to do any other act tending to prejudice  
16 or render wholly or partly ineffectual any proceedings that might be instituted  
17 to collect such tax, whereby it shall have become important that such  
18 proceedings be instituted without delay, the commission may immediately make  
19 a determination, from any available information or by estimate or otherwise,  
20 of the amount of tax, penalty, and interest such taxpayer is liable to pay under  
21 any provision of this Chapter or state law or ordinance. Having made such  
22 determination, the commission shall immediately assess such amount, and by  
23 a writing to be retained as part of its official records, indicate such assessment  
24 has been made, and without any notice, proceed to distraint as is hereinafter  
25 provided any property belonging to the taxpayer. This type of assessment may  
26 be made whenever a tax becomes due under the provisions of this Chapter,  
27 regardless of whether it is then payable or not.

28 B. As soon as is feasible after such assessment, and not later than two  
29 calendar days thereafter, the commission shall send by certified mail a notice

1 to the taxpayer against whom the assessment lies, at the address given in the last  
2 report filed by such taxpayer, or to any such address as may be obtainable from  
3 any private entity which will provide such address free of charge or from any  
4 federal, state, or local government entity, including but not limited to the United  
5 States Postal Service or from United States Postal Service certified software.  
6 Such notice shall inform the taxpayer of the assessment, its basis, and its  
7 jeopardous nature; make demand for immediate payment thereof; and give  
8 notice that any property distrained or to be distrained will be subject to sale, as  
9 provided in this Chapter, to satisfy the assessment.

10 C. The taxpayer against whom the assessment lies can stay distraint of  
11 his property, or sale of his property already distrained, as the case may be, only  
12 by the immediate payment of the assessment or by posting with the commission  
13 a surety bond for twice the amount of such assessment, or of a lower amount  
14 acceptable to the commission, with such sureties as the commission deems  
15 necessary. The taxpayer shall have sixty calendar days from the date of  
16 payment, or the date of posting bond, to appeal to the Board of Tax Appeals  
17 with regards to a state sales tax matter, or a state court of appropriate  
18 jurisdiction which has been created by law and is required to hear such appeal  
19 for a redetermination of the assessment. During this period, the commission  
20 shall hold any payment made in an escrow account. If the taxpayer does not  
21 appeal, the commission shall immediately credit such payment to tax collections  
22 or proceed to collect from sureties, if any were given. In the event of an appeal,  
23 such payment or demand for payment from sureties given shall be held in  
24 abeyance pending the redetermination or affirmation of the assessment by the  
25 Board of Tax Appeals with regards to a state sales tax matter, or a state court  
26 of appropriate jurisdiction which has been created by law and is required to  
27 hear such appeal, or the court which last reviews the matter. Final payment, or  
28 collection from sureties, will be for the amount of the affirmed or redetermined  
29 assessment.

1        **§340.1.67. Assessment and claims in bankruptcy and receivership**

2                **Upon the adjudication of bankruptcy of any taxpayer in any bankruptcy**  
3 **proceeding, or the appointment of a receiver for any taxpayer in a receivership**  
4 **proceeding, before any court of this state or of the United States, the**  
5 **commission may immediately make a determination from any available**  
6 **information or by estimate or otherwise, of the amount of tax, penalty and**  
7 **interest the taxpayer is liable to pay under this Chapter or state law or**  
8 **ordinance, and immediately assess such amount, and by a writing to be retained**  
9 **as a part of his official records indicate that such assessment has been made.**  
10 **Such assessment may be made whenever a tax becomes due under the**  
11 **provisions of this Chapter or state law or ordinance, regardless of whether it is**  
12 **then payable or not. Claims for such assessments, and additional interest and**  
13 **attorney fees thereon, shall be presented for adjudication in accordance with**  
14 **law, to the court before which the bankruptcy or receivership proceeding is**  
15 **pending despite the pendency of delays before assessment provided in R.S.**  
16 **47:340.1.61 through R.S. 340.1.64, or the pendency of an appeal for a**  
17 **redetermination with the Board of Tax Appeals with regards to a state sales tax**  
18 **matter, or a state court of appropriate jurisdiction which has been created by**  
19 **law and is required to hear such appeal. Provided that no petition for the**  
20 **redetermination of an assessment shall be filed with the Board of Tax Appeals**  
21 **or a court of competent jurisdiction over tax matters after an adjudication of**  
22 **bankruptcy or the appointment of a receiver, unless the petition is accompanied**  
23 **by a certified copy of an order of the court before which the bankruptcy or**  
24 **receivership proceedings is pending, authorizing the trustee or receiver to**  
25 **prosecute such appeal.**

26        **§340.1.68. Assessment of tax shown on face of taxpayer's returns**

27                **A. Whenever a taxpayer files returns and computes the amount of any**  
28 **tax due, such tax together with any penalty and interest due or accruing**  
29 **thereon, whether computed or not, shall be considered assessed and shall be**

1 entered by the commission as an assessment in its official records without the  
2 necessity of observing the delays or giving the notice ordinarily required prior  
3 to assessment.

4 B. If the taxpayer fails to accompany his return filed with a proper  
5 payment, as required by any Chapter of this Subtitle, the commission shall  
6 immediately send a notice by mail to such person, addressed to the address  
7 appearing on the return or to any available address, informing him of the  
8 amount due, or the balance of the amount due if a partial payment has been  
9 made, and demanding payment of such amount within thirty calendar days  
10 from the date of the notice. If payment has not been received at the expiration  
11 of such time, the assessment shall be collectible by distraint and sale as is  
12 hereinafter provided.

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

17 §340.1.69. Collection by distraint and sale authorized

18 When any taxpayer fails to pay any tax, penalty and interest assessed, as  
19 provided in this Chapter, the commission may proceed to enforce the collection  
20 thereof by distraint and sale. The commission may contract with a political  
21 subdivision to collect the sales and use taxes due by distraint and sales provided  
22 the taxpayer is within the jurisdiction of the political subdivision.

23 §340.1.70. Distraint defined

24 The words "distraint" or "distrain" as used in this Subtitle, shall be  
25 construed to mean the right to levy upon and seize and sell, or the levying upon  
26 or seizing and selling, of any property or rights to property of the taxpayer  
27 including goods, chattels, effects, stocks, securities, bank accounts, evidences of  
28 debt, wages, real estate and other forms of property, by the commission or its  
29 authorized assistants, for the purpose of satisfying any assessment of tax,

1 penalty or interest due under the provisions of this Chapter.

2 §340.1.71. Distraint procedure

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

18 §340.1.72. Surrender of property subject to distraint

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

1           **§340.1.73. Sale of distrained property**

2           **A. After notifying all reasonably ascertainable interested third parties,**  
3           **the commission or its authorized assistants shall sell at public auction for cash**  
4           **to the highest bidder so much of the property distrained by it as may be**  
5           **sufficient to satisfy the tax, penalties, interest, and costs due. The property shall**  
6           **not be sold if the price to the highest bidder is less than two-thirds of the**  
7           **appraised value. In that case, the commission shall readvertise the sale of the**  
8           **property in the same manner as the original sale, and the same delays must**  
9           **elapse. At the second offering, the property shall be sold for cash at whatever**  
10           **price it will bring. The commission shall give to the purchaser a certificate of**  
11           **sale which will be prima facie evidence of the right of the commission to make**  
12           **the sale, and conclusive evidence of the regularity of its proceedings in making**  
13           **the sale, and which will transfer to the purchaser merchantable title in and to**  
14           **the property sold.**

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

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

26           **D. The commission shall pay the inferior security interests, mortgages,**  
27           **liens, and privileges, after payment of the costs and the amount due the**  
28           **commission. When the sum remaining after payment of the cost and the amount**  
29           **due the commission is insufficient to pay such inferior claims in full, the**



1 commission shall deposit the remainder with the court and proceed by  
2 contradictory motion against the inferior creditors to have their claims referred  
3 to in the proceeds of the sale.

4 §340.1.74. Collection by summary court proceeding authorized

5 In addition to any other procedure provided in this Subtitle or elsewhere  
6 in the laws of this state; and for the purpose of facilitating and expediting the  
7 determination and trial of all claims for taxes, penalties, interest, attorney fees,  
8 or other costs and charges arising under this Chapter and state law or  
9 ordinance, there is hereby provided a summary proceeding for the hearing and  
10 determination of all claims by or on behalf of the state, local taxing authorities,  
11 or by or on behalf of the commission, for taxes, excises, and licenses and for the  
12 penalties, interest, attorney fees, costs or other charges due thereon, by  
13 preference in all courts, all as follows:

14 (1) All such proceedings, whether original or by intervention or third  
15 opposition, or otherwise, brought by or on behalf of the state, or by or on behalf  
16 of the commission or local taxing authorities, for the determination or collection  
17 of any tax, excise, license, interest, penalty, attorney fees, costs or other charge,  
18 claimed to be due under any provision of this Chapter and state law or  
19 ordinance, shall be summary and shall always be tried or heard by preference,  
20 in all courts, original and appellate, whether in or out of term time, and either  
21 in open court or chambers, at such time as may be fixed by the court, which  
22 shall be not less than two nor more than ten days after notice to the defendant  
23 or opposing party.

24 (2) All defenses, whether by exception or to the merits, made or intended  
25 to be made to any such claim, must be presented at one time and filed in the  
26 court of original jurisdiction prior to the time fixed for the hearing, and no  
27 court shall consider any defense unless so presented and filed. This provision  
28 shall be construed to deny to any court the right to extend the time for pleading  
29 defenses; and no continuance shall be granted by any court to any defendant

1 except for legal grounds set forth in the Louisiana Code of Civil Procedure.

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

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

22 §340.1.75. Failure to pay tax collected from others; rule to cease business

23 A. On motion in a court of competent jurisdiction, the commission may  
24 take a rule on a taxpayer, to show cause in not less than two nor more than ten  
25 days, exclusive of holidays, why the taxpayer should not be ordered to cease  
26 from further pursuit of his business for failure to pay to the state amounts  
27 collected from others by his business as sales and use tax, along with any  
28 interest, penalty, and costs related to such taxes. Such rule may be taken only  
29 for amounts due as a result of assessments or judgments which have become

1           **final and non-appealable.**

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

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

9                   **(2) If the commission files a subsequent motion with the court alleging**  
10           **a violation of the injunction, the court shall hold a hearing in not less than two**  
11           **days nor more than ten days, exclusive of holidays, to determine whether such**  
12           **violation has occurred. Upon a showing by the commission that there has been**  
13           **a violation of the injunction, the court shall consider the violation to be a**  
14           **contempt of the court and shall punish the violator in accordance with law, and**  
15           **every violation of the injunction shall be considered as a contempt of court.**

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

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

25           **§340.1.76. Injunctions prohibited**

26                   **No court of this state shall issue any process whatsoever to restrain the**  
27           **collection of any tax, penalty, interest, or other charge imposed in this Chapter**  
28           **or state law or ordinance.**

29           **§340.1.77. Remittance of tax under protest; suits to recover**

1           **A.(1)(a) Except as otherwise provided in Subsection B of this Section, any**  
2           **taxpayer protesting the payment of any amount found due by the commission,**  
3           **or the enforcement of any provision of the tax laws of the state or ordinance of**  
4           **local taxing authorities in relation thereto, shall remit to the commission the**  
5           **amount due and at that time shall give notice of intention to file suit for the**  
6           **recovery of such tax.**

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

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

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

1           **(4) There shall be no penalty for underpayments of estimated tax with**  
2           **regard to amounts paid under protest and such amounts paid under protest are**  
3           **not required to be paid until the due date of the return determined without**  
4           **regard to extensions.**

5           **B. This Section shall afford a legal remedy and right of action in any**  
6           **state court having jurisdiction of the parties and subject matter, for a full and**  
7           **complete adjudication of any and all questions arising in the enforcement of this**  
8           **Chapter as to the legality of any tax accrued or accruing or the method of**  
9           **enforcement thereof. In such action, service of process upon the commission**  
10           **shall be sufficient service, and it shall be the sole necessary and proper party**  
11           **defendant in any such suit.**

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

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

24           **§340.1.78. Settlement offers**

25           **A. Written settlement offers on matters in litigation shall be submitted**  
26           **to the commission. The commission shall respond with a written acceptance,**  
27           **rejection or counter offer within three months of the date the settlement offer**  
28           **is received. In responding to a settlement offer, the commission may consider**  
29           **the hazards of litigation.**

1           **B. If the commission fails to accept, reject, or make a counter offer as**  
2           **provided for in this Subsection within three months of the date the taxpayer's**  
3           **settlement offer is received, the commission's conduct shall constitute**  
4           **unreasonable delay by the department within the meaning of R.S. 47:340.1.87,**  
5           **and interest shall be abated from the date the taxpayer's settlement offer was**  
6           **received through the date a written acceptance, rejection or counter offer is**  
7           **provided to the taxpayer.**

8           **§340.1.79. Tax obligation to constitute a lien, privilege, and mortgage**

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

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

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

1 property.

2 (2)(a) Notices affecting movable property, including titled motor vehicles  
3 subject to R.S. 32:701 et seq., not held as inventory for sale or lease, shall be  
4 filed with the clerk of court of any parish or in the case of Orleans Parish, with  
5 the recorder of mortgages thereof (the "filing officer"), for inclusion in the  
6 master index of information maintained by the secretary of state.

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

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

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

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

27 §340.1.80. Cancellation of lien, privilege, and mortgage; compromises

28 A. In any case where the tax, penalty, or interest secured by a recorded  
29 lien, privilege, and mortgage has been paid, the commission or its authorized

1 assistants or attorneys may authorize the cancellation thereof.

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

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

12 (2) The commission may authorize the release of any real property from  
13 the effect and operation of any lien, privilege, mortgage, or other encumbrance,  
14 recorded by virtue of this Chapter, provided that the commission is satisfied  
15 that the remaining real property belonging to the tax debtor and upon which  
16 such lien, privilege, and mortgage bears is valued at not less than the amount  
17 of the remaining tax obligation, including all penalties, interest and other costs  
18 incurred, and the amount of all prior liens upon such property. In determining  
19 the value of the remaining property, due consideration shall be given to prior  
20 ranking encumbrances, if any exist on such property.

21 (3) The commission may issue a certificate of release of any part of the  
22 property subject to any lien, privilege, mortgage, or other encumbrance  
23 recorded by virtue of this Chapter, if there is paid over to the commission in  
24 partial satisfaction of the liability an amount determined by the commission,  
25 which shall not be less than the value, as determined by the commission, of the  
26 interest of the state of Louisiana, the commission, or the local taxing authorities  
27 in the part to be released, or the commission determines at any time that the  
28 interest of such parties in the part to be released has no value. In determining  
29 the value of the interest of such parties in the part to be released, the



1 commission shall give consideration to the value of the part and to all prior  
2 ranking liens or other encumbrances existing on the part to be released.

3 (4)(a) Notwithstanding any other provision of this Chapter, the  
4 commission may compromise any judgments for taxes of five hundred thousand  
5 dollars or less exclusive of interest and penalty, including assessments for such  
6 amounts which are equivalent to judgments upon a determination that any of  
7 the following apply:

8 (i) There is serious doubt as to the collectability of the outstanding  
9 judgment.

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

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

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

16 (c) A complete record of all such compromises shall be kept by the  
17 commission, shall be open to public inspection, and, notwithstanding the  
18 provisions of R.S. 47:340.1.35, each such compromise shall be published in the  
19 commission's annual report.

20 C. The certificate of release or cancellation of lien, privilege, or mortgage  
21 herein provided shall be on a form prescribed by the commission and shall be  
22 accepted by all filing officers. Nonstandard form penalties shall not be  
23 applicable to such filings presented pursuant to this Section.

24 D. All fees or costs associated with the cancellation or release of a lien,  
25 privilege, or mortgage provided for herein shall be assessed against the  
26 taxpayer.

27 E. The commission shall promulgate such rules and regulations as are  
28 necessary to implement this Section under the Administrative Procedure Act.

29 §340.1.81. Prescription of taxes, interest, and penalties

1           There shall be no prescription running against any state tax, license,  
2           excise, interest, penalty or other charge levied under this Chapter, except that  
3           ordained in the Constitution of Louisiana.

4           §340.1.82. Prescription of taxes, interest, and penalties

5           There shall be no prescription running against any state tax, license,  
6           excise, interest, penalty or other charge levied under this Chapter or other  
7           provision of state law or ordinance, except that ordained in the Constitution of  
8           Louisiana.

9           §340.1.83. Suspension and interruption of prescription

10           A. The prescription running against any sales and use tax of the state or  
11           any local taxing authority and interest, penalty, or other charge related to such  
12           tax shall be suspended by any of the following:

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

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

16                   (3) The filing of any pleading, either by the commission or by a taxpayer,  
17                   with the Board of Tax Appeals or a court of competent jurisdiction over tax  
18                   matters or federal court.

19                   (4) The filing of a false or fraudulent return, as defined in R.S.  
20                   47:340.1.93, provided that suspended prescription shall begin to run again upon  
21                   notice to the commission of the filing of the false or fraudulent return or upon  
22                   the subsequent filing of a return which is not false or fraudulent.

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

26                   (1) For any period by means of a written agreement between the  
27                   taxpayer and the commission; or

28                   (2) With respect to bankruptcy, for any period from the time the  
29                   taxpayer files for bankruptcy until six months after the bankruptcy case is

1 closed.

2 C.(1) The failure to file any return required to be filed by this Chapter  
 3 or other provision of state law or ordinance shall interrupt the running of  
 4 prescription, and prescription shall not commence to run again until the  
 5 subsequent filing of such return. Once prescription commences to run, the tax,  
 6 license, excise, interest, penalty, or other charge which is reported on such  
 7 return shall prescribe in three years after the thirty-first day of December of the  
 8 year of the filing of the return. However, if a taxpayer who does not file a tax  
 9 return required to be filed by this Chapter or state law or ordinance later  
 10 becomes responsible for the filing of such a return due to a final court decision  
 11 rendering a transaction or other activity as taxable, and the laws, regulation, or  
 12 jurisprudence of this state previously classified that transaction, or other  
 13 activity as nontaxable, this provision shall not apply and prescription shall run  
 14 as if the taxpayer had timely filed the return.

15 (2) The interruption of the running of prescription due to the failure to  
 16 file a return reporting a state tax or tax of a local taxing authority shall not  
 17 apply to any tax periods for which the commissioner and the taxpayer have  
 18 entered into a valid and enforceable voluntary disclosure agreement.

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

21 §340.1.84. Prescription of assessments as judgments

22 Any tax, penalty, interest, or other charges duly assessed under this  
 23 Chapter, being the equivalent of a judgment, shall not be subject to the running  
 24 of any prescription other than such prescription as would run against a  
 25 judgment in favor of the state of Louisiana in accordance with the constitution  
 26 and laws of this state; and the recordation of such assessment shall have the  
 27 same effect as the recordation of a judgment.

28 §340.1.85. Failure to remit tax collected; rule to cease business

29 A. Failure by any person obligated to collect any tax from taxpayers on

1 behalf of the state or a local taxing authority to remit such taxes collected shall,  
2 without demand or putting in default, cause the tax, interest, penalties, and  
3 costs to become immediately delinquent and the commission has the authority,  
4 on motion in a court of competent jurisdiction, to take a rule on such person, to  
5 show cause in not less than two nor more than ten days, exclusive of holidays,  
6 why such person should not be ordered to cease from further pursuit of  
7 business. This rule may be tried out of term and in chambers and shall always  
8 be tried by preference. If the rule is made absolute, the order rendered thereon  
9 shall be considered a judgment in favor of the state, prohibiting the person from  
10 the further pursuit of such business until he has paid the delinquent tax,  
11 interest, penalties, and costs, and every violation of the injunction shall be  
12 considered as a contempt of court and punished according to law.

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

16 §340.1.87. Interest on unpaid taxes

17 A.(1) When any taxpayer fails to pay a tax, or any portion thereof, on or  
18 before the day where it is required to be paid under the provisions of this  
19 Subtitle, interest shall be added to the amount of tax due and such interest shall  
20 be computed from the statutory payment date of the tax until the tax is paid.  
21 The rate of interest shall be as provided for in Paragraph (A)(2) of this  
22 Subsection. However, in the case of a waiver of restrictions and delays as  
23 provided for in R.S. 47:340.1.65, if the taxpayer pays the tax due within ten days  
24 after the notice of assessment is mailed to him, the interest shall be computed  
25 to the thirtieth day after the filing of such waiver or to the date the deficiency  
26 is paid, whichever is earlier. The interest provided for herein shall be an  
27 obligation to be collected and accounted for in the same manner as if it were a  
28 part of the tax due and may be enforced in a separate action or in the same  
29 action for collection of the tax and, unless otherwise provided for in this

1 Chapter, shall not be waived or remitted.

2 (2)(a) Effective January 1, 2014, with respect to tax obligations, interest  
3 shall accrue at an annual rate of three percentage points above the rate  
4 provided for in R.S. 9:3500(B)(1).

5 (b) In no event shall the interest rate provided for in Subparagraph (a)  
6 of this Paragraph exceed one and one-quarter percent per month and for any  
7 fraction of a month.

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

17 (d) In order to promote the effective administration of the tax laws of  
18 this state, the commission may provide by rules and regulations promulgated  
19 pursuant to the Administrative Procedure Act for the compromise of the  
20 amount of interest to be added to the amount of the tax due as computed  
21 pursuant to this Section. A complete record of all such compromises shall be  
22 kept by the commission, shall be open to public inspection and, notwithstanding  
23 the provisions of R.S. 47:340.1.35 and R.S. 47:340.1.36, shall be published in the  
24 commission's annual report.

25 (e) Waiver of interest when a managed audit is performed as agreed to  
26 by the commission and the taxpayer. The commission may waive all or a part  
27 of the interest that would otherwise accrue on any amount identified to be due  
28 in a managed audit performed under the provisions of R.S. 47:340.1.51 and  
29 1541(D).

1                   **(3) Computation of interest on notices of tax due. When a notice is issued**  
2                   **for unpaid taxes, the interest computation date on the notice shall be fifteen**  
3                   **days after the issue date of the notice.**

4                   **(a) If payment is received on or before the fifteenth day after the issue**  
5                   **date, no refund of interest shall be issued.**

6                   **(b) If payment is received after the fifteenth day but on or before the**  
7                   **thirtieth day, no additional interest will be assessed.**

8                   **(c) If payment is not received on or before the thirtieth day following the**  
9                   **issue of the notice, the provisions of this Paragraph shall not apply to the notice**  
10                  **and interest will continue to accrue as provided in Paragraph (A)(1) or (2) of**  
11                  **this Subsection.**

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

15                  **§340.1.88. Penalty for failure to make timely return**

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

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

28                  **(2)(a) Except as provided in Paragraph (3), in the case of the filing of a**  
29                  **return without remittance of the full amount due, the specific penalty shall be**

1 five percent of the unremitted tax if the failure to remit continues for not more  
2 than thirty days, with an additional five percent for each additional thirty days  
3 or fraction during which the failure to remit continues. The penalty imposed by  
4 this Paragraph for each thirty-day period shall be calculated only on the  
5 additional amount due from the taxpayer after the deduction of payments  
6 timely submitted, or submitted during any preceding thirty-day period when:

7 (i) At least ninety percent of the total tax due on the return is not  
8 previously paid on or before the due date of the return.

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

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

13 (c) The penalties provided for by Paragraph (1) of this Subsection and  
14 this Paragraph shall not be imposed for more than five thirty-day periods in  
15 total for each tax return required to be filed.

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

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

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

28 (2) The commission shall send a notice by certified mail to the taxpayer  
29 at the address given in the last report filed by the taxpayer, or to any address

1 obtainable from any private entity which will provide such address free of  
2 charge or from any federal, state, or local government entity, including but not  
3 limited to the United States Postal Service or from United States Postal Service  
4 certified software informing him of the following:

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

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

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

12 (3) The provisions of this Section shall not apply if the taxpayer has paid  
13 the amount due under protest in accordance with R.S. 47:340.1.77 or has  
14 entered into an installment agreement with the commission for the payment of  
15 the amount due and is in compliance with the terms of the agreement.

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

19 §340.1.89. Waiver of penalty for delinquent filing or delinquent payment

20 If the failure to make any return at the time such return becomes due or  
21 the filing of a return without remittance of the full amount due, is attributable,  
22 not to the negligence of the taxpayer, but to other cause set forth in written form  
23 and considered reasonable by the commission, the commission may remit or  
24 waive payment of the whole or any part of the specific penalty provided for such  
25 failure; but in any case when the penalty exceeds five thousand dollars, it may  
26 be waived by a majority vote of the members of the commission.

27 §340.1.90. Penalty for false or fraudulent return

28 When the taxpayer files a return that is false or fraudulent or grossly  
29 incorrect and the circumstances indicate that the taxpayer had intent to defraud



1 the state of Louisiana, the commission, or a local taxing authority of any tax due  
2 under this Chapter, or state law or ordinance, there shall be imposed, in  
3 addition to any other penalties provided, a specific penalty of fifty percent of the  
4 tax found to be due. This specific penalty shall be an obligation to be collected  
5 and accounted for in the same manner as if it were a part of the tax due, and  
6 can be enforced either in a separate action or in the same action for the  
7 collection of the tax.

8 **§340.1.91. Negligence penalty**

9 If any taxpayer fails to make any return required by this Chapter or  
10 makes an incorrect return, and the circumstances indicate willful negligence or  
11 intentional disregard of rules and regulations, but no intent to defraud, there  
12 shall be imposed, in addition to any other penalties provided, a specific penalty  
13 of five percent of the tax or deficiency found to be due, or ten dollars, whichever  
14 is the greater. This specific penalty shall be an obligation to be collected and  
15 accounted for in the same manner as if it were a part of the tax due, and may  
16 be enforced either in a separate action or in the same action for the collection  
17 of the tax.

18 **§340.1.92. Insufficient funds check or electronic debit in payment of taxes;**  
19 **penalty**

20 In the event a check or electronic debit used to make payment of a tax,  
21 interest, penalty, or fee due under this Chapter or state law or ordinance is  
22 returned unpaid by the bank on which it is drawn for any reason related to the  
23 account on which the check or electronic debit is written, such shall constitute  
24 a failure to pay the tax, interest, penalty, or fee due and a specific penalty shall  
25 be imposed on the taxpayer in addition to all other penalties provided by law;  
26 provided however, upon sufficient proof being furnished to the commission by  
27 the bank that the bank was at fault for the nonpayment of the check or  
28 electronic debit, the commission shall waive the penalty provided for in this  
29 Section. This specific penalty shall be an obligation to be collected and

1 accounted for in the same manner as if it were part of the tax, interest, penalty,  
2 or fee that is due in payment of which the check or electronic debit was given  
3 and may be enforced in a separate action or in any action instituted for the  
4 collection of the tax, interest, penalty, or fee. The specific penalty imposed under  
5 this Section shall be an amount equal to the greater of one percent of the check  
6 or electronic debit or twenty dollars. After receipt of three insufficient fund  
7 checks or electronic debits during any two-year period, the commission may  
8 require payment of the taxes, interest, penalties, or fees due by the taxpayer to  
9 be paid by certified check, money order, or cash.

10 §340.1.93. Examination and hearing costs

11 A. If any taxpayer fails to make any return required by this Subtitle, or  
12 makes a grossly incorrect report, or a false or fraudulent report, and the  
13 commission, in performance of his duty to ascertain the amount of tax due,  
14 makes an examination of books, records, or documents, or an audit thereof, or  
15 conducts a hearing, or subpoenas witnesses, then there may be added to the  
16 amount of tax found to be due, a specific penalty, in addition to any other  
17 penalty provided, in an amount as itemized by the commission to compensate  
18 for all costs incurred in making such examination or audit, or in holding such  
19 hearing, or in subpoenaing and compensating witnesses. This specific penalty  
20 shall be an obligation to be collected and accounted for in the same manner as  
21 if it were part of the tax due and may be enforced either in a separate action or  
22 in the same action for the collection of the tax.

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

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

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

1                   **(b) Ten thousand dollars.**

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

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

9                   **§340.1.94. Distraint cost penalty**

10                   **Whenever the commission uses the distraint procedure to enforce the**  
11 **collection of any tax, there shall be imposed with respect to the tax for the**  
12 **collection of which the distraint procedure is used a specific penalty in an**  
13 **amount to compensate for the costs of the distraint procedure, provided that the**  
14 **amount charged by a third party for distraint concerning the seizure of a**  
15 **vehicle shall not exceed two hundred seventy-five dollars. This specific penalty**  
16 **shall be in addition to any penalty assessed as provided by law and shall be an**  
17 **obligation to be collected and accounted for in the same manner as if it were**  
18 **part of the tax due, and may be enforced either in a separate action or in the**  
19 **same action for the collection of the tax.**

20                   **§340.1.95. Interest on erroneous refunds**

21                   **The commission shall remove interest which has accrued on an**  
22 **erroneous refund which has accrued up to the date the taxpayer is requested to**  
23 **repay a refund issued in error if the taxpayer did not cause the erroneous**  
24 **refund in any way and the refund does not exceed fifty thousand dollars. The**  
25 **commission may remove or reduce interest on all other erroneous refunds or on**  
26 **refunds issued in error due to a ministerial act of the commission, based on the**  
27 **facts and circumstances of each case.**

28                   **§340.1.96. Refunds of overpayments authorized**

29                   **A. For the purpose of this Chapter, "overpayment" means a payment of**

1 tax, penalty, or interest when none was due; the excess of the amount of tax,  
2 penalty, or interest paid over the amount due; or the payment of a penalty that  
3 is later waived or remitted by the commission, provided that the power of the  
4 commission to refund overpayments shall be as prescribed and limited in this  
5 Section.

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

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

11 (2) The tax was overpaid because of a construction of the law on the part  
12 of the taxpayer contrary to the commission's construction of the law at the time  
13 of payment.

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

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

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

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

25 C. Notwithstanding the provisions of Subsection B, where it is  
26 determined that there is clear and convincing evidence that an overpayment has  
27 been made, the commission shall make a refund, subject to conditions or  
28 limitations provided by law.

29 D.(1) Such refunds shall be made out of any current collections of the

1 particular tax which was overpaid.

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

6 (3) If a refund is ordered or determined by an administrative decision or  
7 by a judgment which has become final and nonappealable, then the commission  
8 shall make the refund within forty-five days of the date of such administrative  
9 decision or the date such judgment has become final and non-appealable.

10 E. The commission may recover any refunded or credited amount  
11 determined not to be an overpayment through any collection remedy authorized  
12 by R.S. 47:340.1.59 within two years from December thirty-first of the year in  
13 which the refund was paid or credit was applied. Any refunded or credited  
14 amount determined not to be an overpayment shall bear interest at the rate  
15 provided in R.S. 47:340.1.87, which shall be computed from the date the refund  
16 was issued or credit was given to the date payment is received by the  
17 commission.

18 F. This Section shall not be construed to authorize any refund of tax  
19 overpaid through a mistake of law arising from the misinterpretation by the  
20 commission of the provisions of any law or of the rules and regulations  
21 promulgated thereunder. In the event a taxpayer believes that the commission  
22 has misinterpreted the law or promulgated rules and regulations contrary  
23 therewith, his remedy is by payment under protest and suit to recover, or  
24 appeal to the Board of Tax Appeals with regards to a state sales tax matter, or  
25 to a state court of appropriate jurisdiction which has been created by law and  
26 is required to hear such appeals, in instances where such appeals lie.

27 G. The commission shall report monthly to the commissioner of  
28 administration the total amount of refunds made each month. The commission  
29 shall also report quarterly to the Joint Legislative Committee on the Budget the

1 total amount of refunds made each quarter and shall specifically note when any  
2 refunds were not paid within the time period provided for in Paragraph (D)(3)  
3 of this Section and the reason therefor.

4 H. The commission is authorized to promulgate regulations pursuant to  
5 the Administrative Procedure Act for the purpose of administration and  
6 enforcement of this Section. Such regulations will have the full force and effect  
7 of law.

8 §340.1.97. Crediting or offset of overpayments against other obligations

9 Before refunding any overpayment, the commission may first determine  
10 whether the taxpayer who made the overpayment owes any other liability under  
11 any law administered by it. If such be the case, the commission may credit the  
12 overpayment against such liability and notify the taxpayer of the action taken.

13 §340.1.98. Prescription of refunds or credits

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

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

27 §340.1.99. Interest on refunds or credits

28 A. Notwithstanding any other provision of law to the contrary, on all  
29 refunds or credits the commission shall compute and allow as part of the refund

1 or credit, interest at the annual rate established in R.S. 13:4202 from the date  
2 the return was due, the date the first return for that tax period was filed, or the  
3 date the tax was paid, whichever is later. An overpayment shall bear no interest  
4 if it is credited to the taxpayer's account. No interest on refunds or credits shall  
5 be allowed if the commission proves by clear and convincing evidence that a  
6 person has deliberately overpaid a tax in order to derive the benefit of the  
7 interest allowed by this Section. Payments of interest authorized by this Section  
8 shall be made from funds derived from current collections of the tax to be  
9 refunded or credited.

10 B. As of the date a person files a petition for relief under the uniform  
11 bankruptcy laws of the United States as provided in Title 11 USC 101 et seq., no  
12 interest shall be allowed to accrue as a part of any refund or credit which relates  
13 to a pre-petition tax period.

14 §340.1.100. Appeals from the commission's disallowance of refund claim

15 A. If the commission fails to act on a properly filed claim for refund or  
16 credit within one year from the date received by him or if the commission denies  
17 the claim in whole or in part, the taxpayer claiming such refund or credit may  
18 appeal to the Board of Tax Appeals with regards to a state sales tax matter, or  
19 to a state court of appropriate jurisdiction which has been created by law and  
20 is required to hear such appeals for a hearing on the claim filed. No appeal may  
21 be filed before the expiration of one year from the date of filing such claim  
22 unless the commission renders a decision thereon within that time, nor after the  
23 expiration of sixty days from the date of mailing by registered mail by the  
24 commission to the taxpayer of a notice of the disallowance of the part of the  
25 claim to which such appeal relates.

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

1            C. In answering any such appeal, the commission is authorized to assert  
2            a demand for any tax and additions thereto that he may deem is due for the  
3            period involved in the claim for refund or credit, and the Board of Tax Appeals  
4            with regards to a state sales tax matter, or a state court of appropriate  
5            jurisdiction which has been created by law and is required to hear such appeals,  
6            shall have jurisdiction to determine the correct amount of tax for the period in  
7            controversy and to render judgment ordering the refunding or crediting or any  
8            overpayment or the payment of any additional tax, interest and penalty found  
9            to be due.

10           §340.1.110. Criminal penalty for failing to account for tax monies

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

17           §340.1.111. Automated sales suppression devices; definitions; penalties

18           A. It shall be unlawful for any person to knowingly create, design,  
19           manufacture, sell, purchase, lease, install, update, repair, service, transfer, use,  
20           or possess or otherwise make available any automated sales suppression device,  
21           zapper, or phantom-ware.

22           B. For purposes of this Section:

23           (1) "Automated sales suppression device" or "zapper" means a software  
24           program that falsifies the records of electronic cash registers, including  
25           transaction data and transaction reports, and which is any of the following:

26           (a) Carried on a memory stick or other flash memory data storage  
27           device, or on a removable optical disc.

28           (b) Accessed through an Internet link.

29           (c) Accessed or stored via any other means.



1           **(2) "Electronic cash register" means a device that keeps an electronic**  
2           **record, register, or supporting documentation, through the use of a computer**  
3           **system, of data for the purpose of computing, compiling, or processing retail**  
4           **sales transaction data, and refers to a cash register or any other point-of-sale**  
5           **system.**

6           **(3) "Phantom-ware" means a hidden programming option embedded in**  
7           **the operating system of, or hardwired into, an electronic cash register that can**  
8           **be used to create a virtual second or alternate electronic cash register or to**  
9           **eliminate or manipulate transaction records, which may or may not be**  
10           **preserved in digital format, to represent either the actual or the manipulated**  
11           **record of transactions.**

12           **(4) "Transaction data" includes:**

13           **(a) A description of items purchased by a customer.**

14           **(b) The price for each item purchased.**

15           **(c) A taxability determination for each item.**

16           **(d) A segregated tax amount for each item taxed.**

17           **(e) The amount of cash or credit tendered.**

18           **(f) The net amount returned to the customer in change.**

19           **(g) The date and time of the purchase.**

20           **(h) The name, address, and identification number of the vendor.**

21           **(i) The receipt or invoice number of the transaction.**

22           **(5) "Transaction report" means:**

23           **(a) A report that contains but is not limited to documentation of the**  
24           **sales, taxes, or fees collected, media totals, and discount voids of an electronic**  
25           **cash register and that is printed on a cash register tape or other hard copy at**  
26           **the end of a day or shift.**

27           **(b) A report that documents every action performed on or by an**  
28           **electronic cash register and that is stored electronically.**

29           **C. Whoever violates the provisions of this Section shall be fined not more**

1 than five thousand dollars, or imprisoned with or without hard labor for not  
2 more than five years, or both.

3 §340.1.112. Criminal penalty for evasion of tax

4 Any person who willfully fails to file any return or report required to be  
5 filed by the provisions of this Chapter or state law or ordinance, or who willfully  
6 files or causes to be filed with the commission any false or fraudulent return,  
7 report, or statement, or who willfully fails to pay such tax, penalty, or interest,  
8 or who willfully aids or abets another in the filing with the commission of any  
9 false or fraudulent return, report, or statement, with the intent to defraud the  
10 state, the commission, or a local taxing authority, or evade the payment of any  
11 tax, fee, penalty, or interest, or any part thereof, which shall be due pursuant  
12 to the provisions of this Chapter or state law or ordinance, shall be punished as  
13 follows:

14 (1) Such person shall be fined not more than two thousand dollars or  
15 imprisoned, with or without hard labor, for not more than two years, or both,  
16 when the total actual tax exceeds one thousand dollars.

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

20 §340.1.113. Running of time limitations

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

24 Section 3. The provisions of this Act are nonseverable. It is intended that if any  
25 provision of this Act, or the application thereof to any person or circumstance is held invalid  
26 under the Constitution of Louisiana or of the United States by a final and nonappealable  
27 judgment, then such provision's ineffectiveness or invalidity will invalidate this Act.

28 Section 4. This Act shall become effective upon signature by the governor or, if not  
29 signed by the governor, upon expiration of the time for bills to become law without signature

1 by the governor, as provided in Article III, Section 18 of the Constitution of Louisiana. If  
 2 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
 3 effective on the day following such approval.

---

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

---

#### 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))