SLS 13RS-372 ORIGINAL

Regular Session, 2013

SENATE BILL NO. 233

BY SENATOR RISER

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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)

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	* * *

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 administration, auditing, assessment, and collection of the following: 3 (a) The state sales and use taxes as set forth in Chapters 2, 2-A, 2-B, 2-C, 4 5 2-D and 2-E of the Revised Statutes. (b) The sales and use tax of the Louisiana Tourism Promotion District 6 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 administration, auditing, assessment, and collection of the local sales and use 11 12 taxes of such political subdivisions through contracts with such political 13 subdivisions. (3) Provide for such taxes as it is responsible for administering through 14 the filing and processing of tax returns; reviewing determinations made with 15 regard to such taxes; promulgating rules and regulations and setting policy 16 pertaining to such taxes; administering the collection of sales and use taxes from 17 remote sales; creating a unified sales and use tax base as it relates to such 18 19 remote sales; and perform any other purpose as necessary and responsible for administration of the law and ordinances as it relates to sales and use tax. 20 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 amended and reenacted and R.S. 36:458(H), R.S. 47:337.2(A)(1)(c), 337.14.1, 337.16(C), 23 24 337.23(K), 337.45(C), 337.51(A), Chapter 2-E of Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 47:340.1.1 through R.S. 47:340.1.113, and 25 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

meaning ascribed to them in this Section, unless the context clearly indicates a

different	meaning:

2 * * *

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

* * *

§337.2. Intent; application and interpretation of Chapter

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

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

23 * * *

B.(1) Notwithstanding any other provision of law or local ordinance to the contrary, and except as provided for in Paragraph (3) of this Subsection, the provisions of this Chapter shall apply in the assessment, collection, administration, and enforcement of the sales and use tax of any political subdivision. However, if the single tax collector or the central collection commission in the parish 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.
5	* * *
6	§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:
10	* * *
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.
24	* * *
25	§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

authority may also contract with the Uniform Sales and Use Tax Commission

to collect such taxes in the manner provided for in Chapter 2-E of this Subtitle.

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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	
20	and administration of any sales and use taxes authorized by said taxing authority.
20	The commission may charge other taxing authorities a collection fee based on a
21	The commission may charge other taxing authorities a collection fee based on a
21 22	The commission may charge other taxing authorities a collection fee based on a percentage of collections.
212223	The commission may charge other taxing authorities a collection fee based on a percentage of collections. E. The commission may, at its option, contract and make agreements with
21222324	The commission may charge other taxing authorities a collection fee based on a percentage of collections. E. The commission may, at its option, contract and make agreements with other local political subdivisions or the Uniform Sales and Use Tax Commission
2122232425	The commission may charge other taxing authorities a collection fee based on a percentage of collections. E. The commission may, at its option, contract and make agreements with other local political subdivisions or the Uniform Sales and Use Tax Commission to collect taxes other than sales and use taxes.
21 22 23 24 25 26	The commission may charge other taxing authorities a collection fee based on a percentage of collections. E. The commission may, at its option, contract and make agreements with other local political subdivisions or the Uniform Sales and Use Tax Commission to collect taxes other than sales and use taxes. * * * *

use taxes; nor shall it be construed to prohibit the state from collecting sales and use

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

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

* * *

§337.14.1 Limitation on authority to collect

Notwithstanding the provisions of R.S. 47:337.13 and 337.14 or any other law to the contrary, any single tax collector or central collection commission which has voluntarily contracted with the Uniform Sales and Use Tax 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 shall only have such authority to administer, collect, or enforce those taxes as provided for in such contract for as long as such single tax collector or the central collection commission is bound by the contract with the Uniform Sales and Use Tax Commission.

§337.16. Authority to collect local sales and use taxes

A. The <u>Until the establishment date provided for in Subsection C of this</u>

Section, the secretary of the Department of Revenue is hereby authorized to contract with all the governing authorities of any taxing authority, at the request of the subdivisions, to collect and enforce the collection of any sales and use tax, and related penalty, interest, or other charge, levied by the taxing authorities. In order to collect and enforce any such tax, the secretary is vested with all the power and authority conferred by this Title.

* * *

C. Six months after the date the Uniform Sales and Use Tax Commission

provides written notification to the secretary of the Department of Revenue that

the single tax collectors or the central collection commissions for thirty-two

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

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

* * *

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

19 * * *

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

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

* * *

1 §337.27. Venue

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

* * *

§337.45 Alternative remedies for the collection of tax

* * *

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

* * *

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

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

* * *

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

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

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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
14 15	an appeal for redetermination of the assessment with any state court with jurisdiction over such matters which may be provided by law.
15	jurisdiction over such matters which may be provided by law.
15 16	jurisdiction over such matters which may be provided by law.
15 16 17	jurisdiction over such matters which may be provided by law. * * * §337.67. Suspension and interruption of prescription
15 16 17 18	jurisdiction over such matters which may be provided by law. * * * §337.67. Suspension and interruption of prescription * * * *
15 16 17 18 19	jurisdiction over such matters which may be provided by law. * * * §337.67. Suspension and interruption of prescription * * * B. The prescriptive period running against any such sales and use tax shall
15 16 17 18 19 20	jurisdiction over such matters which may be provided by law. * * * §337.67. Suspension and interruption of prescription * * * B. The prescriptive period running against any such sales and use tax shall be interrupted by any of the following:
15 16 17 18 19 20 21	jurisdiction over such matters which may be provided by law. * * * §337.67. Suspension and interruption of prescription * * * B. The prescriptive period running against any such sales and use tax shall be interrupted by any of the following: * * * *
15 16 17 18 19 20 21 22	jurisdiction over such matters which may be provided by law. * * * §337.67. Suspension and interruption of prescription * * * B. The prescriptive period running against any such sales and use tax shall be interrupted by any of the following: * * * * (3) The filing of any pleading, either by the collector or the taxpayer, with
15 16 17 18 19 20 21 22 23	jurisdiction over such matters which may be provided by law. * * * §337.67. Suspension and interruption of prescription * * * B. The prescriptive period running against any such sales and use tax shall be interrupted by any of the following: * * * (3) The filing of any pleading, either by the collector or the taxpayer, with any state court of appropriate jurisdiction or federal court.

Department of Revenue and the Uniform Sales and Use Tax Commission or the

records and files maintained pursuant to a tax ordinance, excluding ad valorem

property taxes and ad valorem property tax assessment rolls, of any political

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 $\underline{of\ their}$ 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

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	<u>§340.1.2. Definitions</u>
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 term of office shall be six years. Initial terms shall be as follows as designated 4 5 by the governor: (a) Three members shall be appointed for two-year terms. 6 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 Each member shall take the oath of office within thirty days after his 15 appointment. Each commission member will be paid a per diem of one hundred 16 17 forty dollars per day for handling the business of the commission. §340.1.6. Domicile and transaction of business 18 19 A.(1) The commission is a body corporate and has the power to sue and be sued. The domicile of the commission shall be in the Parish of East Baton 20 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. (2) A majority of the commission shall constitute a quorum for the 25 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

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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 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, in any instance where such appointment may appear to further the objects of 6 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 as it may require. (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 accomplished by such investigations or hearings. Such order shall be full authority for the persons so designated to do all acts that any member of the commission would have authority to do in the matter of making such investigations or holding such hearings. All orders, notices, and the like issued in such case by the designated person shall be in the name of the commission by the person.

§340.1.7. Employment of commission, clerical help and experts

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

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

and outside experts, such costs, salaries, expenses, and compensation to be paid

upon the order of the commission. 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

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

and use tax returns, and any other duties as it deems necessary to its function.

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

§340.1.8. Funding

A. The commission shall determine the amount of monthly expenses which shall be charged by the commission to participating non-state local tax authorities for matters related to the administration and collection of their sales tax as provided for in this Chapter. Such expenses of the commission shall be paid monthly to the state treasurer by the non-state local tax authorities participating in the commission, the amount of such 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.

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.

PART C. PARTICIPATION BY POLITICAL SUBDIVISIONS

§340.1.15. Participation in the Uniform Sales and Use Tax Commission by local 1 2 taxing authorities 3 A. Only taxing authorities levying a sales and use tax shall be authorized to participate in the Uniform Sales and Use Tax Commission. Participation by 4 5 a local taxing authority is strictly voluntary and shall be accomplished by either of the following: 6 7 (1) The single tax collector or the central collection commission for the 8 parish established pursuant to the provisions of R.S. 47:337.14, et seq., may 9 enter into a contract with the commission on behalf of the local taxing 10 authorities in the parish for administration and collection of the tax of the local taxing authorities if the governing authority of such central collection 11 12 commission approves by a vote of two-thirds of the members of the governing 13 authority of such central collection commission. 14 (2) The local taxing authority itself may enter into a contract with the commission for administration and collection of its tax if there is no central 15 collection commission established within such parish pursuant to the provisions 16 17 of R.S. 47:337.14 et seq., or if an earlier attempt by the local taxing authorities in such parish failed to establish a central collection commission. However, if a 18 19 second local taxing authority from the same parish applies to participate by 20 entering into a contract and is approved by the commission, then those taxing 21 authorities shall enter into an agreement to act as a single collection entity for 22 purposes of the commission. 23 B. The commission may promulgate regulations pursuant to the Administrative Procedure Act relating to the application of central collection 24 25 commissions and local taxing authorities to participate and to approving and 26 contracting with them.

C.(1) Notwithstanding the provisions of R.S. 47:337.13 and 337.14 or any other law to the contrary, any single tax collector or the central collection commission which has voluntarily contracted with the commission to administer

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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	<u>remote sellers</u>
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

<u>local tax authority to have their sales and use taxes collected from remote sellers</u>

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

PART E. ADMINISTRATIVE PROVISIONS

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

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

§340.1.30. Commission's records

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

§340.1.31. Microfilm or microfiche records; electronic digitized records

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

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

certified copy of the original.

3 §340.1.32. Authentication of the commission's records

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

§340.1.35 Confidential character of tax records

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

- (2) No person shall divulge or disclose any information obtained from any examination or inspection of the premises or property of any person in connection with the administration and enforcement of the tax laws of this state or a political subdivision of this state except to the taxing authority by whom he is employed or, in the case of an already existing independent contractor arrangement, to the contracting taxing authority.
- (3) Neither the commission nor any employee engaged in the administration or charged with the custody of any such records or files shall be required to produce any of them for inspection or use in any action or proceeding, except in an action or proceeding in the administration or enforcement of the tax laws of this state or of a political subdivision.

B. Nothing herein contained shall be construed to prevent:

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

- (2) The publication of statistics so classified as to prevent the identification of any return or report and the items thereof.
- (3) The use of reports filed by a taxpayer under one provision of the tax laws of this state or an ordinance of a political subdivision, in an action against the same taxpayer for a tax due under another provision of the tax laws of this state, or another tax ordinance of the political subdivision.
- (4) The inspection by the attorney general or other legal representative of the state of the returns, reports, or files relating to the claim of any taxpayer who has brought an action to review or set aside any sales or use tax administered by the commission or against whom an action or proceeding has been instituted in accordance with the provisions of state law or ordinance concerning such tax.
- (5) The furnishing, in the discretion of the commission or a political subdivision, of any information disclosed by the records or files to any official person of another department or political subdivision of this state, or any other state, or of the United States, who is concerned with the administration of taxes and who in fact furnishes or has agreed with the commission or political subdivision to furnish information contained in the records and files administered by him to the commission, Department of Revenue, or the political subdivision on a reciprocal basis; however, no such exchange of information shall be made in contravention of any provision of state or federal law prohibiting the dissemination of such information, nor shall such information be divulged except as provided by law, nor shall income tax records be divulged

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

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Computers and recording devices which the internal auditor deems necessary

for the purpose of making an examination and audit of the books and accounts

of the commission. Any information so furnished shall be considered

the same extent as heretofore provided.

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

confidential and privileged by the internal auditor, and members of his staff, to

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

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

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

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

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

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

(14) The commission, in order to implement the provisions of R.S. 56:303(E), from disclosing to the Department of Wildlife and Fisheries upon the request of the commission of the Department of Wildlife and Fisheries or his 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 social security number of the person designated by Department of Children and 4 5 Family Services as an absent parent for the purpose of implementing the provisions of R.S. 46:236.1.1 et seq., the family and child support program. 6 7 (16) The sharing or furnishing, in the discretion of the commission, of 8 information to the Louisiana Workforce Commission for the purposes of determining, investigating, or prosecuting fraud related to all areas 9 10 administered by the Louisiana Workforce Commission. Any information shared or furnished shall be considered and held confidential and privileged by the 11 Louisiana Workforce Commission to the same extent heretofore provided. 12 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. §340.1.36. Unauthorized disclosure of information 16 17 A. Any officer, employee, or agent, or any former officer, employee, or agent of the state of Louisiana or of any political subdivision of the state who 18 19 unlawfully discloses any information obtained from a return of a taxpayer or records and files of the commission, contrary to the provisions of R.S. 20 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

The commission may prepare and publish materials and memoranda

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

§340.1.38. Preservation of returns and reports

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

B. Subsection A of this Section shall not apply to internally generated reports used for the processing of tax information. The commission shall have the authority to establish procedures for the destruction of these reports. §340.1.39. Power to employ counsel; attorney fees

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

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

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

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

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

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

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

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

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

§340.1.40. Power to make rules and regulations

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

§340.1.41. Power to administer oaths

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

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

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

§340.1.43. Out-of-state debt collection

A. To facilitate the collection of taxes, interest, penalties, and fees due to 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.

§340.1.44. In-state debt collection

1	A.(1) 10 facilitate the conection of sales taxes, interest, penalues, 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 <u>charged to the account.</u>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

the commission pursuant to the Administrative Procedure Act shall have the right 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 will have the right to appeal to a state court of appropriate jurisdiction within sixty 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 shall be East Baton Rouge Parish.

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

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

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

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

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

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

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

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machine-sensible format used by the taxpayer upon request of the commission. §340.1.53. Power to examine the records of third parties

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

§340.1.54. Power to conduct hearings

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

§340.1.55. Power to subpoena witnesses; fees

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

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

§340.1.56. Notice to attend hearings; how given

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The notice or subpoena requiring a person to attend a hearing authorized by this Chapter to be examined, or to answer any questions, or to produce any books, records, papers, vouchers, accounts, or documents, shall be given by the commission or any of its authorized assistants, either through personal service on the person and endorsement of such service on the reverse of a copy of such notice, or by sending a notice by registered or certified mail to the last known address of such person. The mailing of the notice shall be presumptive evidence of its receipt by the person to whom it was addressed. §340.1.57. Procedure to compel witnesses to attend and to testify at hearing

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

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	<u>47:340.1.73.</u>
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	<u>liability</u>
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

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

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

§340.1.61. Determination and notice of tax due

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

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

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

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

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

§340.1.63. Assessment of tax, interest, and penalties

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

§340.1.64. Notice of assessment and right to appeal

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

B.(1) If the taxpayer has not filed an appeal with the Board of Tax

Appeals or with a successor state court of appropriate jurisdiction which has

been created by law and is required to hear such appeals with regard to the

state tax assessment within the sixty day period, the assessment of state sales tax

shall be final and shall be collectible by distraint and sale as hereinafter

provided.

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

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

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

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

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

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

commission are by appeal to the Board of Tax Appeals with regards to a state sales tax matter, or a state court of appropriate jurisdiction which has been created by law and is required to hear such appeal, or by payment of the disputed tax under protest and suit to recover as provided in R.S. 47:340.1.77. §340.1.65. Waiver of restrictions and delays

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

§340.1.66. Assessment and notice when tax is in jeopardy

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

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

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

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

§340.1.67. Assessment and claims in bankruptcy and receivership

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

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

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

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

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

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

§340.1.69. Collection by distraint and sale authorized

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

§340.1.70. Distraint defined

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

penalty or interest due under the provisions of this Chapter.

§340.1.71. Distraint procedure

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

§340.1.72. Surrender of property subject to distraint

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

§340.1.73. Sale of distrained property

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

B. The purchaser shall be liable for nothing beyond the purchase price.

He shall pay the full purchase price to the commission despite the existence of any mortgage, lien, or privilege on the property inferior in rank to that of the commission.

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

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

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

§340.1.74. Collection by summary court proceeding authorized

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

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

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

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

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

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

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

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

I	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.

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

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

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

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

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

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

state court having jurisdiction of the parties and subject matter, for a full and complete adjudication of any and all questions arising in the enforcement of this Chapter as to the legality of any tax accrued or accruing or the method of enforcement thereof. In such action, service of process upon the commission shall be sufficient service, and it shall be the sole necessary and proper party defendant in any such suit.

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

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

§340.1.78. Settlement offers

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

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

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

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

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

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

1	property.
1	property.

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

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

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

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

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

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

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

assistants or attorneys may authorize the cancellation thereof.

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

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

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

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

1	commission snan 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

closed.

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

- (2) The interruption of the running of prescription due to the failure to file a return reporting a state tax or tax of a local taxing authority shall not apply to any tax periods for which the commissioner and the taxpayer have entered into a valid and enforceable voluntary disclosure agreement.
- (3) The provisions of this Subsection shall apply to use tax returns only when the amount due exceeds five hundred dollars for the tax levied.

§340.1.84. Prescription of assessments as judgments

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

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

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

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

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

§340.1.87. Interest on unpaid taxes

A.(1) When any taxpayer fails to pay a tax, or any portion thereof, on or before the day where it is required to be paid under the provisions of this Subtitle, interest shall be added to the amount of tax due and such interest shall be computed from the statutory payment date of the tax until the tax is paid. The rate of interest shall be as provided for in Paragraph (A)(2) of this Subsection. However, in the case of a waiver of restrictions and delays as provided for in R.S. 47:340.1.65, if the taxpayer pays the tax due within ten days after the notice of assessment is mailed to him, the interest shall be computed to the thirtieth day after the filing of such waiver or to the date the deficiency is paid, whichever is earlier. The interest provided for herein shall be an obligation to be collected and accounted for in the same manner as if it were a part of the tax due and may be enforced in a separate action or in the same 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 provided for in R.S. 9:3500(B)(1). 4 5 (b) In no event shall the interest rate provided for in Subparagraph (a) of this Paragraph exceed one and one-quarter percent per month and for any 6 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 writing with respect to such deficiency or payment. 16 17 (d) In order to promote the effective administration of the tax laws of this state, the commission may provide by rules and regulations promulgated 18 19 pursuant to the Administrative Procedure Act for the compromise of the amount of interest to be added to the amount of the tax due as computed 20 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 the provisions of R.S. 47:340.1.35 and R.S. 47:340.1.36, shall be published in the 23 24 commission's annual report. (e) Waiver of interest when a managed audit is performed as agreed to 25 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

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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

at the address given in the last report filed by the taxpayer, or to any address

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I	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

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

§340.1.91. Negligence penalty

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

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

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

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

§340.1.93. Examination and hearing costs

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

- B. For the purposes of this Section, the following terms shall have the following meanings:
- (1) "Grossly incorrect report" means any report filed where there is a substantial understatement of tax for any taxable period. The understatement is substantial if it exceeds the greater of:
- (a) Ten percent of the tax required to be shown on the return for the taxable period.

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. C. Notwithstanding any other provision of law to the contrary, no 4 5 penalty shall be imposed under this Section with respect to any portion of an underpayment when a taxpayer has made a grossly incorrect report if the 6 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. §340.1.94. Distraint cost penalty 9 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 vehicle shall not exceed two hundred seventy-five dollars. This specific penalty 15 shall be in addition to any penalty assessed as provided by law and shall be an 16 17 obligation to be collected and accounted for in the same manner as if it were part of the tax due, and may be enforced either in a separate action or in the 18 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 commission may remove or reduce interest on all other erroneous refunds or on 25

§340.1.96. Refunds of overpayments authorized

facts and circumstances of each case.

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

refunds issued in error due to a ministerial act of the commission, based on the

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.

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

1 <u>particular tax which was overpaid.</u>

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

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

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

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

G. The commission shall report monthly to the commissioner of administration the total amount of refunds made each month. The commission 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. H. The commission is authorized to promulgate regulations pursuant to 4 5 the Administrative Procedure Act for the purpose of administration and enforcement of this Section. Such regulations will have the full force and effect 6 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, whichever is the later, no refund or credit for an overpayment shall be made 16 17 unless a claim for credit or refund has been filed with the commission by the taxpayer claiming such credit or refund before the expiration of such three-year 18 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 of tax may be made, the period of prescription for refunding or crediting 24 overpayments as provided in this Section shall be extended in accordance with 25 26 the terms of the agreement between the taxpayer and the commission. §340.1.99. Interest on refunds or credits

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A. Notwithstanding any other provision of law to the contrary, on all

refunds or credits the commission shall compute and allow as part of the refund

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

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

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

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

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

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 with regards to a state sales tax matter, or a state court of appropriate 4 5 jurisdiction which has been created by law and is required to hear such appeals, shall have jurisdiction to determine the correct amount of tax for the period in 6 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 not more than five years, or both. 16 17 §340.1.111. Automated sales suppression devices; definitions; penalties A. It shall be unlawful for any person to knowingly create, design, 18 19 manufacture, sell, purchase, lease, install, update, repair, service, transfer, use, or possess or otherwise make available any automated sales suppression device, 20 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 transaction data and transaction reports, and which is any of the following: 25 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.

(c) Accessed or stored via any other means.

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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. §340.1.112. Criminal penalty for evasion of tax 3 Any person who willfully fails to file any return or report required to be filed by the provisions of this Chapter or state law or ordinance, or who willfully 5 files or causes to be filed with the commission any false or fraudulent return, 6 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 tax, fee, penalty, or interest, or any part thereof, which shall be due pursuant 11 12 to the provisions of this Chapter or state law or ordinance, shall be punished as 13 follows: (1) Such person shall be fined not more than two thousand dollars or 14 imprisoned, with or without hard labor, for not more than two years, or both, 15 when the total actual tax exceeds one thousand dollars. 16 (2) Such person shall be fined not more than one thousand dollars or 17 imprisoned for not more than one year, or both, for all other violations under 18 19 this Section. §340.1.113. Running of time limitations 20 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 after the offense has been committed. 23 24 Section 3. The provisions of this Act are nonseverable. It is intended that if any provision of this Act, or the application thereof to any person or circumstance is held invalid 25 under the Constitution of Louisiana or of the United States by a final and nonappealable 26 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

signed by the governor, upon expiration of the time for bills to become law without signature

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- 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

<u>Present constitution</u> [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.

<u>Present constitution</u> [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.

<u>Proposed law</u> 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

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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.

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

<u>Proposed law</u> 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.

<u>Proposed law</u> 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.

<u>Proposed law</u> 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.

<u>Proposed law</u> 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.

<u>Proposed law</u> 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.

<u>Proposed law</u> 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 <u>proposed law</u> 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.

<u>Proposed law</u> 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.

<u>Proposed law</u> 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))