

Rights OF THE Taxpayer

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The mission of the Louisiana Department of Revenue (LDR) is to fairly and efficiently collect state tax revenues to fund public services and regulate the sale of alcoholic beverages, tobacco, and charitable gaming within Louisiana. LDR has a responsibility to provide taxpayers with a reasonable opportunity to disagree with a tax assessment and to satisfactorily resolve that disagreement.

This pamphlet provides information to apprise taxpayers of their legal rights when audited by the Department of Revenue. Explained in this brochure are the procedures followed by the Department when a tax return is filed, selected for audit, and examined. The audit procedures followed by the Department are the same for all taxes, for individuals and businesses alike.

LDR assists taxpayers to develop a more thorough knowledge of the steps taken in processing and reviewing returns, so that taxpayers will understand inquiries and notices from the Department.

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Taxpayer's Bill of Rights

Louisiana Revised Statute 47:15 assures state taxpayers:

1. The right to be treated fairly, courteously, and with respect.
2. The right to have all tax forms, instructions, and information written in plain English.
3. The right to prompt and accurate answers to questions in accordance with Department of Revenue Policy and Procedure Memorandum Administrative No. 10.14.
4. The right to ask for and receive assistance in complying with the tax laws, rules, and regulations of Louisiana.
5. The right to strict confidentiality of tax records in accordance with R.S. 47:1508.
6. The right to review and receive a copy of tax records in accordance with R.S. 47:1508(B)(1) and R.S. 44:31 et seq.
7. The right to be free from harassment in audits and collection activities.
8. The right to be served by employees who are not paid or promoted based on the amount of tax dollars billed or collected.
9. The right to receive a refund, in some cases with interest, for any taxes overpaid so long as the refund claim is filed in accordance with Article VII, Section 16 of the Constitution of Louisiana and the laws of the state, including R.S. 47:1621(A); R.S. 47:1623; R.S. 47:2451; and R.S. 47:1580.
10. The right to be notified before records are audited, and to receive information about the estimated time, scope, and extent of the audit, unless the Department of Revenue determines the taxpayer is likely to remove the assets from the jurisdiction of the state.
11. The right to request a meeting to discuss an auditor's proposed assessment of tax due if a taxpayer does not agree with the auditor's findings in accordance with R.S. 47:1563.
12. The right to request any assessment of taxes due, including penalty and interest, be reviewed at the management level of the Department of Revenue in accordance with R.S. 47:1563.
13. The right to represent themselves or to authorize another person to represent or accompany them in person when communicating with the Department of Revenue.
14. The right to a hearing in order to dispute an assessment of taxes, interest, and penalties by filing an appeal with the Board of Tax Appeals as provided by law. A taxpayer shall not be required to pay the disputed tax, interest, and penalties in order to exercise this right.
15. The right to a formal hearing in order to contest the assessment of taxes, interest, and penalties by filing suit with an appropriate state district court. An assessment must be paid in full under protest in order to exercise this right in accordance with R.S. 47:1576.
16. The right to ask the Department of Revenue to consider accepting an installment payment agreement plan in accordance with the provisions of R.S. 47:1576.2 and rules and regulations promulgated in accordance with the Administrative Procedure Act, for taxes, interest, and penalties due.

If a taxpayer qualifies for an installment agreement, no further collection action will be taken as long as the taxpayer complies with the installment payment agreement.
17. The right to a prompt release of a lien upon payment of all taxes, penalties, interest, and filing fees due in accordance with R.S. 47:1578.
18. The right to have all other collection methods exhausted before assets are seized, unless the Department of Revenue determines the taxpayer is likely to remove the assets from the jurisdiction of the state.
19. The right to a public hearing on all proposed Department of Revenue administrative regulations adopted under the Louisiana Administrative Procedure Act, R.S. 49:950 et seq.
20. The right to complain and be heard.

Authority to Examine Records

Louisiana Revised Statute 47:1542 authorizes the Secretary of Revenue, or any authorized assistant, to examine or investigate the place of business and any records of a taxpayer to determine tax liability. The auditor and their supervisors are authorized assistants to the Secretary of Revenue. Any information provided by a taxpayer is strictly confidential (R.S. 47:1508). Public disclosure of such information could subject the Department and the auditor to civil proceedings, fines, and/or incarceration.

Rights of a Taxpayer Under Examination

- › Fair and courteous treatment
- › Strict confidentiality of tax records within the provisions of the law
- › Reasonably convenient examination of the return or records
- › To retain legal or accounting representation when the return or records are examined
- › Knowledge of the reasons for any proposed change to the tax liability and a detailed explanation of anything not understood
- › Written notice detailing any adjustments made to the tax return and a statement of any balance due or additional refund developed

Retention of Records By Taxpayers

Louisiana Revised Statute 47:1542.1 requires that any document or record necessary to support any tax administered by the Department shall be maintained

by the taxpayer until the tax prescribes. These records should clearly support any and all items claimed on the return.

Other provisions within the tax laws impose fines or imprisonment for failure to keep proper records. The auditor or their supervisor will cooperate in answering any questions a taxpayer may have about these requirements.

The Tax Audit Process

Pre-Audit

As tax returns are received at the Department, they are evaluated through computer analytics and comparisons of records received from third party data sources to assist in identifying obvious errors or questionable reporting. Through this computer based evaluation, tax returns may be corrected systematically or stopped for manual review. If these reviews uncover an error on the return or the omission of essential information, the tax return will be adjusted. Subsequently, a letter notifying the taxpayer of the adjustment, a letter requesting information, an adjusted refund, or an adjusted billing notice will be issued.

Audit

A tax return may be selected for audit. An audit may include a thorough review of items claimed on the return. It may also include an on-site reconciliation of the business's books and records as compared to information entered on the tax return. A Department auditor may review the return and determine the correct tax liability. The auditor's calculations may be the same as those on the return. If not, the taxpayer may receive a refund or a bill for additional tax plus interest.

Notice of Proposed Assessment (30-Day Letter)

If the auditor determines that more tax is due, a notice of proposed assessment (30-day letter) will be issued to the taxpayer. The 30-day letter notifies the taxpayer that the Department plans to assess additional tax, plus any accrued interest and penalties. The taxpayer is allowed 30 days from the date of the proposed assessment to: pay the additional tax, interest, and applicable penalties; protest the tax deficiency; or request an extension of time to reply to the proposed assessment.

Formal Assessment (60-Day Letter)

If the taxpayer fails to protest the proposed notice of assessment within the time prescribed, the Department may issue a formal assessment (60-day letter). A formal assessment requires the taxpayer to pursue further appeal by applying to the Board of Tax Appeals within 60 days of the formal assessment date. However, the taxpayer may choose to pay the formal assessment under protest and file suit within 30 days for recovery of the payment. The Department may choose not to issue a formal assessment and may instead file suit, bypassing the Board of Tax Appeals.

Board of Tax Appeals

The Board of Tax Appeals is a formal, legal body, independent of the Department of Revenue, and authorized to decide tax issues between the Department and taxpayers. Rulings of the Board of Tax Appeals may be appealed by either party to the appropriate Louisiana District Court.

How a Return Is Selected for Audit

The Department employs many methods for selecting returns for audit. A return may be selected at random, or because of an unusual item reported. A return may be chosen for audit as a result of discrepancies discovered through computer comparisons of state and federal returns, or as a result of an examination of a federal return by the Internal Revenue Service. A taxpayer may be selected for audit as a result of an audit of another company with whom a taxpayer conducts business, or by a computer-generated program designed to identify and select taxpayers who may owe substantial amounts of additional taxes.

Audit Procedures

Once a return is selected for audit, it is assigned to an auditor who will be responsible for performing the examination. The taxpayer will be contacted in advance by telephone, letter, or e-mail and informed of the taxes

and the accounting periods to be audited. The records required to conduct the examination are therein discussed, and an audit date is set during this conversation. A letter is sent to confirm the records needed and the date of the audit. The amount of time the auditor will spend at the taxpayer's location to perform the examination will depend on the tax issues involved, the amount of records involved, the size and complexity of the taxpayer's operation, and the level of cooperation and assistance provided the auditor by the taxpayer.

When the auditor arrives at the taxpayer's office, a pre-audit conference is conducted. During the pre-audit conference, the auditor will ask questions about the business activities of the taxpayer, the types of records maintained, and how the tax return is prepared. The answers to these questions are designed to assist the auditor understand the nature of the taxpayer's business and the accounting system employed by the taxpayer. From this information, the auditor will determine the best way to conduct the audit.

A taxpayer is encouraged to ask any questions about the audit procedures to be used. Also, the taxpayer is encouraged to make any audit payment amount at any time during the audit process or review process for taxes he/she believes and/or agrees is due in order to stop interest from accruing.

During the course of the audit, the auditor will inform the taxpayer of problems encountered and areas where taxable issues may be involved. When the initial field work is completed, the auditor will present the taxpayer with a copy of the preliminary audit schedules and explain any proposed adjustments in detail.

Unless a prescriptive period (statute of limitations) does not allow for a review period, the taxpayer will be allowed a reasonable time to review the audit schedules and discuss the findings with the auditor before the audit is submitted to the Audit Review and Appeals Division of the Louisiana Department of Revenue. During this time, the taxpayer will have the opportunity to discuss the findings with the auditor and present additional facts and documentation to substantiate proposed treatment of items included in the audit. The taxpayer and the auditor will try to resolve all issues at that time. If the taxpayer is in agreement with part or all of the audit findings, the auditor will inform the taxpayer of the Department's refund procedures,

or methods for making payments for taxes owed. If additional taxes are due, the cost of the examination performed may be charged to the taxpayer. All audits

are then forwarded to the Audit Review and Appeals Division for further review, billing and/or refunding.

The Review Process

An audit reviewer will examine the audit report. If the audit reviewer agrees with the auditor's findings and additional taxes are owed, a notice of proposed assessment (30-day letter) will be mailed to the last known address of the taxpayer in accordance with R.S. 47:1564. This notice will indicate the Department's file number, the accounting periods audited, and the tax, penalties, and interest due. A telephone number and the audit reviewer's name will be included on this form to allow the taxpayer the opportunity to speak directly with the audit reviewer about the audit.

If the taxpayer disagrees with the audit findings, a written protest may be submitted to the audit reviewer.

The taxpayer's protest letter should contain a brief and concise factual statement for each disputed issue, as well as a statement of the law or authority on which the taxpayer relies. When the protest is received, the audit reviewer will review the protest.

If the audit reviewer agrees with the taxpayer based on the information provided, appropriate adjustments will be made to the audit findings accordingly. Should the audit reviewer not agree with the taxpayer based on the information provided, the audit findings will proceed to the next step.

At any time during this process, the taxpayer may pay the disputed tax, interest and penalties under protest and file suit within thirty days in accordance with La. R.S. 47:1576. In addition, the taxpayer is encouraged to pay undisputed tax amounts at any time during the review process to stop interest from accruing.

If a taxpayer does not respond to the notice of proposed assessment (30-day letter) within 30 days, the Department may send a second notice (formal assessment) by certified mail to the last known address of the taxpayer. This notice is a formal assessment or bill, and the taxpayer has 60 days to pay or appeal the formal assessment to the Board of Tax Appeals; otherwise, the assessment becomes legally due and

subject to immediate collection. The Department may choose not to issue a formal assessment and may file suit, bypassing the Board of Tax Appeals.

Instead of filing an appeal with the Board of Tax Appeals, a taxpayer may pay the bill under protest within 60 days of receiving a formal assessment. When payments are made under protest, they are held in escrow pending resolution through litigation. The taxpayer has 30 days to file suit for recovery of the payment. If the taxpayer files suit, the payment remains in escrow until a decision is rendered on the case. Should the taxpayer win the suit, the payment is returned to the taxpayer with interest accrued from the date the payment was received by the Department until the date of refund. If the taxpayer does not file suit within the 30-day period, the money is removed from escrow and added to the general fund of the State.

When paying taxes under protest, the taxpayer should inform the Department in writing the intention to file suit within 30 days. Any document sent with a payment under protest should have "payment under protest" boldly printed on it. Checks, money orders, etc., used to pay the tax should also clearly state the taxpayer's intentions. Payments can be made online using the Department's web site www.revenue.louisiana.gov.

If a refund of taxes is indicated by the audit, and the review agrees with the auditor's findings, the audit reviewer will circulate the refund to obtain the appropriate approvals. Once approvals are obtained, the audit reviewer will then process the refund and interest due and issue the amount due to the taxpayer.

Board of Tax Appeals

The Board of Tax Appeals hears and decides, at minimum expense, tax disputes between taxpayers and the Department. It is an independent agency comprised of three members appointed by the Governor. The Board will notify the taxpayer and the Department of its decision. If neither the taxpayer nor the Department is satisfied with the decision, it may be appealed by either party to the appropriate Louisiana District Court.

LDR Contact Info

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Information is also available at the Board of Tax Appeals
website www.labta.la.gov