

NOTICE OF INTENT

Department of Revenue Policy Services Division

Absorption of the Sales Tax by
Sellers of Taxable Goods and Services
(LAC 61:I.4311)

Under the authority of R.S. 47:304, R.S. 47:337.2, R.S. 47:337.17, and R.S. 47:1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to amend LAC 61:I.4311 relative to the absorption of sales and use tax by selling dealers.

This proposal amends LAC 61:I.4311.C and D, which pertain to the treatment of sales and use taxes collected by selling dealers as required by R.S. 47:304(F) and R.S. 47:337.17(F). Prior to July 1, 2001, R.S. 47:304(F) prohibited a vendor from advertising or holding out to the public in any way that he would absorb all or any portion of the tax collectable from customers. Act 245 of the 2001 Regular Legislative Session amended R.S. 47:304(F) to allow dealers to absorb the sales tax under certain conditions. Act 73 of the 2003 Regular Session enacted R.S. 47:337.17(F), which imposed similar conditions for the absorption of local sales and use taxes. These proposed amendments describe the requirements necessary for a dealer to absorb the tax.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered by the Secretary of Revenue

Chapter 43. Sales and Use Tax

§4311. Treatment of Tax by Dealer

A. - B. ...

C. Sellers, as far as practical, must separately list the sales tax from the selling price or payment for the goods or services sold. Sellers are prohibited from absorbing all or any part of the tax except when all of the following conditions are met.

1. Customers must be notified prior to the sale that the seller will remit the tax due to

the appropriate taxing jurisdiction. Advertising through newspapers, magazines, television or radio commercials, billboards, and in-store displays or brochures are considered adequate notification. Oral comments made to customers immediately prior to the sale are not adequate notification to satisfy this requirement.

2. The dealer must absorb the tax for all of the customers from a predetermined class of purchases. Privately agreeing to absorb the tax for a particular customer in order to secure a sale is prohibited.

3. The sales invoices or receipts given to customers must list the amount of tax that would have been collected and include a statement that the seller will pay the tax to the appropriate taxing jurisdiction on behalf of the customer.

D. Sellers that violate the provisions of LAC 61:I.4311.C are subject to fines and imprisonment as provided for in R.S. 47:304(F)(3) and R.S. 47:337.17(F)(3).

E. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:304, R.S. 47:337.2, R.S. 47:337.17, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987), amended by the Department of Revenue, Policy Services Division, LR 30:2867 (December 2004), LR 31:

Family Impact Statement

As required by Act 1183 of the 1999 Regular Session of the Louisiana Legislature the following Family Impact Statement is submitted to be published with the Notice of Intent in the *Louisiana Register*. A copy of this statement will also be provided to our legislative oversight committees.

1. The Effect on the Stability of the Family. Implementation of these proposed amendments will have no effect on the stability of the family.

2. The Effect on the Authority and Rights of Parents Regarding the Education and Supervision of Their Children. Implementation of these proposed amendments will have no effect on the authority and rights of parents

regarding the education and supervision of their children.

3. The Effect on the Functioning of the Family. Implementation of these proposed amendments will have no effect on the functioning of the family.

4. The effect on Family Earnings and Family Budget. Implementation of these proposed amendments will have no effect on family earnings and family budget.

5. The Effect on the Behavior and Personal Responsibility of Children. Implementation of these proposed amendments will have no effect on the behavior and personal responsibility of children.

6. The Ability of the Family or a Local Government to Perform the Function as Contained in the Proposed Rule. Implementation of these proposed amendments will have no effect on the ability of the family or a local government to perform this function.

Interested persons may submit data, views, or arguments, in writing to Raymond E. Tangney, Senior Policy Consultant, Policy Services Division, P.O. Box 44098, Baton Rouge, LA 70804-4098 or by fax to (225) 219-2759. All comments must be submitted by 4:30 p.m., Monday, March 28, 2005. A public hearing will be held on Tuesday, March 29, 2005, at 10:00 a.m. at the Department of Revenue Headquarters Building, 617 North Third Street, Baton Rouge, LA.

Raymond E. Tangney
Senior Policy Consultant

**FISCAL AND ECONOMIC IMPACT
STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Absorption of the Sales Tax
by
Sellers of Taxable Goods and Services**

**I. ESTIMATED IMPLEMENTATION COSTS
(SAVINGS) TO STATE OR LOCAL
GOVERNMENT UNITS (Summary)**

There would be no implementation costs or savings to state or local authorities for this proposal.

**II. ESTIMATED EFFECT ON REVENUE
COLLECTIONS OF STATE OR LOCAL
GOVERNMENTAL UNITS (Summary)**

There would be no effect on revenue collections of state or local governmental units as a result of this proposed amendment.

**III. ESTIMATED COSTS AND/OR ECONOMIC
BENEFITS TO DIRECTLY AFFECTED
PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

This proposed rule would have no effect on costs or benefits to Louisiana dealers that sell goods and services subject to sales tax because vendors may elect to absorb the sales tax collectable from customers.

**IV. ESTIMATED EFFECT ON COMPETITION
AND EMPLOYMENT (Summary)**

This proposed amendment would ensure equal competition among dealers in goods and services subject to sales tax because it clarifies the conditions that must be satisfied for sellers to absorb the tax. This proposed amendment would have no effect on employment.

Cynthia Bridges
Secretary
0502#029

H. Gordon Monk
Staff Director
Legislative Fiscal Office