

NOTICE OF INTENT

Louisiana Sales and Use Tax Commission for Remote Sellers

Policy Statements and Guidance (LAC 61:III.2901 and 2903)

Under the authority of and in accordance with R.S. 47:340(F) and the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Louisiana Sales and Use Tax Commission for Remote Sellers, (“the commission”) through this Notice of Intent, proposes to adopt rules to provide general definitions as well as to define the types of policy statements and guidance to communicate the commission’s position and to ensure the correct, consistent and fair enforcement of tax laws.

Title 61

REVENUE AND TAXATION

Part III. Administrative and Miscellaneous Provisions

Chapter 29. Louisiana Sales and Use Tax Commission for Remote Sellers

§2901. Definitions

A. The terms not otherwise defined in this Chapter shall be defined as provided in R.S. 47:301(4)(m) and R.S. 47:339 unless another definition is specifically modified.

B. In this chapter, the following terms shall have the meanings provided herein, unless the context clearly indicates otherwise.

Commission—the Louisiana Sales and Use Tax Commission for Remote Sellers.

Local Taxing Authority—those parishes, municipalities, special tax districts, political subdivisions, parish governing bodies, and school boards, who are authorized under the provisions of the Constitution of Louisiana, the Louisiana Revised Statutes of 1950 and jurisprudence to levy and collect local sales and use taxes.

Remote Sales—sales made by a remote seller for delivery into Louisiana.

Remote Seller(s)—a seller who sells for sale at retail, use, consumption, distribution, or for storage to be used for consumption or distribution any taxable tangible personal property, products transferred electronically, or services for delivery within Louisiana, but who lack physical presence in Louisiana, and is not considered a dealer as defined by R.S. 47:301(4)(a) through (l).

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:340(F).

HISTORICAL NOTE: Promulgated by the Louisiana Sales and Use Tax Commission for Remote Sellers LR ____:

§2903. Commission Policy Statements and Guidance

A. Purpose

1. This rule defines the types of policy statements that may be issued and the procedures for issuing them. Policy statements provide guidance to communicate the commission’s position and ensure the correct, consistent and fair enforcement of tax laws.

2. The commission will issue the following policy statements:

a. rules adopted according to the Administrative Procedure Act;

b. policy and procedure memoranda;

c. declaratory rulings:

i. private letter rulings;

ii. commission rulings; and

iii. statements of acquiescence or nonacquiescence;

d. commission information bulletins; and

e. informal advice.

3. All policy statements or guidance issued by the commission are binding regarding only the state and local taxes collected by the commission.

B. Distinguishing Rules from Other Policy Statements

1. Rules are adopted in accordance with Louisiana's Administrative Procedure Act (APA), R.S. 49:950 et seq., and the APA is the authoritative guide as to when a rule is required.

2. The APA excepts agency statements, guides, or requirements for conduct or action that regulate the internal management of the agency from the definition of a Rule (R.S. 49:951(6)). Policy and Procedure Memoranda are issued under this exception.

3. The APA also provides that “The fact that a statement of policy or an interpretation of a statute is made in the decision of a case or in an agency decision upon or disposition of a particular matter as applied to a specific set of facts involved does not render the same a rule within this definition or constitute specific adoption thereof by the agency so as to be required to be issued and filed as provided in this Subsection” (R.S. 49:951(7)). The term Rule “does not include declaratory rulings or orders.” (R.S. 49:951(6)). Declaratory Rulings are issued under these exceptions.

4. General information may be disseminated and general assistance provided, but remote sellers are only bound by statutes and regulations that have the force and effect of law. Commission information bulletins and informal advice offered to remote sellers do not establish legal requirements.

5. Within the parameters set forth by the APA, Title 47, and other applicable laws, discretion may be used to determine if policy guidance is needed and the type of policy guidance to be issued.

6. Reasons for issuing a rule may include:

- a. the law or current rules are not clear and the issue affects many people;
- b. there is inconsistency in the treatment of a tax issue among remote sellers;
- c. the procedures a remote seller should follow to comply with the law are undefined, unclear, or inconsistently followed;
- d. a request for a private letter ruling from one remote seller concerns an issue that may affect many;
- e. a request for policy guidance from employees concerns an issue that may affect many remote sellers; or
- f. issuance of a rule will assist the public in meeting its legal obligations in an effective and efficient manner.

7. Reasons for not issuing a rule may include:

- a. the matter affects only one remote seller;
- b. the law is clear;
- c. a statutory change is more desirable; or
- d. the matter may best be handled by another means.

C. Declaratory Rulings

1. Declaratory Rulings are statements pertaining to a specific set of facts to provide guidance for commission employees and remote sellers. Declaratory Rulings, policy and procedure memoranda, commission information bulletins, and informal advice are not agency or commission rules and are not binding on the public.

2. The following types of declaratory rulings will be issued with a uniform format and numbering system. Each declaratory ruling will indicate the date the ruling was issued, a summary title of what the ruling addresses (subject heading), whether it replaces, modifies, or supersedes a previous policy statement, applicable references and authority, a statement of scope, and other pertinent information.

a. Private Letter Rulings

i. Private letter rulings (PLR) provide guidance to a specific remote seller at the remote seller's request. It is a written statement issued to apply principles of law to a specific set of facts or a particular tax situation. A PLR does not have the force and effect of law.

ii. A PLR is not binding on the person who requested it or on any other remote seller. It is binding on the commission only as to that remote seller and only if the facts provided were truthful and complete and the transaction was carried out as proposed. It continues as authority for the commission's position unless a subsequent declaratory ruling, rule, court case, or statute supersedes it.

iii. Requests for PLR are submitted to the commission by an identified remote seller, or the remote seller's representative who has a power of attorney. Requests must contain the following information:

- (a). name, address, and telephone number of person requesting the advisory opinion;
- (b). a power of attorney, if the remote seller is represented by a third party;
- (c). specific questions to be answered or issues to be addressed;
- (d). complete statement of all relevant facts;
- (e). citations to or copies of relevant statutes, regulations, court decisions, advisory opinions, or other authority that appear to support the remote seller's position;
- (f). copies of relevant documents such as account statements, workpapers, reports, invoices, etc.; and
- (g). a statement attesting:
 - (i). whether the remote seller requesting the opinion has the same issue under audit or appeal with the commission or any other taxing or revenue authority;
 - (ii). if the remote seller requesting the opinion has been notified that an examination or audit is pending;
 - (iii). if the remote seller requesting the opinion is litigating the issue;
 - (iv). if the commission, or any other taxing or revenue authority, has previously issued an advisory opinion on the same issue (with copy attached); and
 - (v). if the Attorney General's Office has been, or will be, requested to issue an opinion concerning the issue; and
 - (vi). that, prior to the issuance of a PLR, if the requesting remote seller is notified of a pending examination or audit by the commission or other taxing or revenue authority, they will notify the commission of the pending examination.

iv. PLRs may be published but only after all remote seller identifying information has been removed and measures are taken to protect taxpayer confidentiality.

v. A PLR request may not be used to delay or interrupt an audit.

vi. Reasons for issuing a private letter ruling may include:

(a). it has been requested by an identified remote seller, or the remote seller's representative who has a power of attorney; and

(b). the law and regulations are not clear.

vii. Reasons for not issuing a private letter ruling may include:

(a). the law and regulations are clear;

(b). a rule would be more appropriate under the APA;

(c). the inquiry concerns alternative treatments or purely hypothetical situations;

(d). the inquiry concerns matters scheduled for audit or in audit, appeal, or litigation;

(e). the inquiry concerns an issue that is being litigated or may be litigated in the near

future;

(f). the request is incomplete because it does not contain all of the information required

by §101.C.2.a.iii;

(g). the request can best be handled by another means; or

(h). the requesting remote seller withdraws the request at any point prior to issuance of

the PLR.

b. Commission Rulings

i. A commission ruling provides guidance to the public and employees.

(a). It is a written statement issued to apply principles of law to a specific set of facts.

(b). A commission ruling does not have the force and effect of law and is not binding on the public. It is a statement of the commission's position and is binding on the commission until superseded or modified by a subsequent change in statute, regulation, declaratory ruling, or court decision.

(c). A commission ruling is requested by employees, who provide a complete factual and legal background similar to that required of remote sellers requesting a private letter ruling.

(d). A commission ruling request cannot be used to delay or interrupt an audit.

ii. Temporary commission rulings may be issued when necessary due to time constraints or emerging issues.

(a). Temporary commission rulings must clearly state their lack of finality and once a final commission ruling is issued, the temporary commission ruling is superseded.

(b). If the final commission ruling reaches a different conclusion than the temporary commission ruling, the commission will honor whichever ruling is more favorable to the remote seller, but only for those transactions that occurred after the temporary commission ruling was issued and before the final commission ruling.

iii. Reasons for issuing a commission ruling may include:

(a). to provide an official interpretation of rules, regulations, statutes, court cases, Board of Tax Appeals decisions, or any other sources of law as to a specific set of facts;

(b). to serve as guidance to remote sellers, tax practitioners, and employees if the law or regulations are not clear as to a specific set of facts.

iv. Reasons for not issuing a commission ruling may include:

(a). the law and regulations are clear;

(b). a rule would be more appropriate under the APA;

(c). the inquiry concerns an issue that is being litigated or may be litigated in the near

future;

(d). the facts contain information that could identify a remote sellers and the remote seller has not consented to publication of the commission ruling or there are other confidentiality concerns; and

(e). the request can best be handled by another means.

c. Statements of Acquiescence or Nonacquiescence

i. A statement of acquiescence or nonacquiescence (SA/SNA) is intended to provide guidance to the public and to employees.

ii. A SA/SNA is a written statement issued to announce the commission's acceptance or rejection of specific unfavorable court or administrative decisions. If a decision covers several disputed issues, a SA/SNA may apply to just one of them, or more, as specified.

iii. A SA/SNA is not binding on the public, but is binding on the commission unless superseded by a later SA/SNA, declaratory ruling, rule, statute, or court case.

iv. If the commission acquiesces, these guidelines will be followed.

(a). In cases that are substantially the same as the facts, the same result will be reached by commission officials and may be relied on by employees and remote sellers. Remote sellers must be careful to apply acquiescence to the same or substantially the same facts. Acquiescence does not mean agreement with the court's reasoning; simply that the commission will abide by it.

(b). The commission may acquiesce in the result only, which only concedes the litigation with that particular remote seller. The issue may still be pursued with other remote sellers. This indicates that the commission will likely seek out another opportunity to litigate the issue with the hope of having the issue addressed by an authoritative court.

(c). The commission may consider any of the following factors in deciding whether to issue a statement of acquiescence or nonacquiescence:

- (i). whether the issue in the court or administrative decision affects many remote sellers;
- (ii). whether the issue is one of fact or law, or a mixed question;
- (iii). whether the decision is binding statewide with no statement needed;
- (iv). whether other cases on the same or a similar issue are pending;
- (v). whether cases in other jurisdictions have been decided, and in whose favor;
- (vi). the cost of litigation as it relates to that issue, as well as overall;
- (vii). the clarity of the applicable statutes and regulations on the disputed issue;
- (viii). the soundness of the reasoning of the decision; or
- (ix). the likelihood of success if the commission relitigates the issue.

D. Other Types of Policy Guidance

1. Policy and Procedure Memorandum

a. A Policy and Procedure Memorandum (PPM) is an internal document providing internal administrative or management guidance to employees. A PPM does not have the force and effect of law and is not binding on the public. It does not focus on remote sellers' substantive or procedural rights or obligations. It is binding on employees.

b. A PPM may be issued for any of the following reasons:

- i. to notify employees of internal policies that apply only to employees and do not apply to taxpayers;
- ii. to notify employees of internal procedures and instructions that do not apply to remote sellers; or
- iii. to inform employees of internal programs that affect only employees.

c. A PPM may not be the appropriate policy statement if:

- i. a remote seller's substantive or procedural rights or obligations would be affected; or
- ii. a rule would be more appropriate under the APA.

2. Commission Information Bulletin

a. A Commission Information Bulletin (CIB) is an informal statement of information issued for the public and employees that is general in nature. A CIB does not have the force and effect of law and is not binding on the public or the commission. CIBs will be established in a standard format and issued in sequence.

b. A CIB announces general information useful in complying with the laws administered by the commission and may be issued under any circumstance deemed necessary by the commission including:

- i. to inform the public and employees that a statute or regulation has been added, amended, or rescinded;
- ii. to inform the public and employees that a case has been decided;
- iii. to publish information to employees and the public that is based on data supplied by other agencies, such as comparative tax collections by parish;
- iv. to publish information such as deadlines;
- v. to inform the public of services offered by the commission, such as office hours, website features, and like information; or
- vi. to revise a previous commission information bulletin or other similar publication.

3. Informal Advice

a. In addition to rules, declaratory rulings, policy and procedure memoranda, and commission information bulletins, remote sellers and employees may still seek advice on tax questions. To assist customers, the commission will provide informal advice. Informal advice does not have the force and effect of law and is not binding on the commission, the public, or the person who asked for the advice. Informal advice will have no effect on an audit.

b. Any of the following types of informal advice may be provided.

i. Informal Oral Advice. There is no formal procedure for requesting informal oral advice. Employees will answer questions by telephone or in person as requested, within resource and appropriateness constraints. Advice given at audit meetings, protest conferences, and the like is considered informal oral advice.

ii. Informal E-Mail Advice. Has the same status as informal oral advice.

iii. Informal Written Advice. Requests for informal written advice should be in writing. Informal written advice is not a declaratory ruling.

iv. Newsletters, Pamphlets, and Informational Publications. The commission may publish informational newsletters, pamphlets, and publications at regular intervals. Statements contained in these publications do not have the force and effect of law and they are not binding on the public or the commission. They are merely helpful tools for disseminating information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:340(F).

HISTORICAL NOTE: Promulgated by the Louisiana Sales and Use Tax Commission for Remote Sellers LR ____:

Family Impact Statement

This Family Impact Statement is provided as required by Act 1183 of the 1999 Regular Session of the Louisiana Legislature.

1. Implementation of this proposed Rule will have no effect on the stability of the family.

2. Implementation of this proposed Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. Implementation of this proposed Rule will have no effect on the functioning of the family.

4. Implementation of this proposed Rule will have no effect on the behavior and personal responsibility of children.

5. Implementation of this proposed Rule will have no effect on the ability of the family or a local government to perform this function.

Poverty Impact Statement

The proposed Rule will have no known impact on poverty as described in R.S. 49:973.

Provider Impact Statement

The proposed Rule will impact the provider in the following manner:

1. XX

Public Comments

Interested persons may submit written data, views, arguments, or comments regarding this proposed rule to _____ by mail to _____. All comments must be received no later than _____ on _____ 2019.

Public Hearing

A public hearing will be held on _____, 2019 at _____ in the _____ Room on the _____ floor of _____.