

# NOTICE OF INTENT

## Louisiana Sales and Use Tax Commission for Remote Sellers

### Voluntary Disclosure Agreements (LAC 61:III.2905)

Under the authority of and in accordance with R.S. 47:340(G)(11) 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 a rule to provide general guidance and procedures for the administration of voluntary disclosure agreements.

#### Title 61

#### REVENUE AND TAXATION

#### Part III. Administrative and Miscellaneous Provisions

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

#### §2905. Voluntary Disclosure Agreements

A. Definitions. For the purposes of this Section, the following terms are defined. Any terms not specifically defined shall be defined as provided in R.S. 47:340.

*Applicant* — any association, corporation, estate, firm, individual, joint venture, limited liability company, partnership, receiver, syndicate, trust, or any other entity, combination or group that has a state or local sales or use tax liability to the Commission and submits or arranges through a representative for the submission of an application to request a voluntary disclosure agreement for said undisclosed sales or use tax. Applicants may be registered or unregistered with the Commission. If the application is submitted through a representative, anonymity of the applicant can be maintained until the Commission accepts the application to request a voluntary disclosure agreement.

*Application* — a completed “Application to Request Voluntary Disclosure Agreement” or an “application for multistate voluntary disclosure” filed with the Multistate Tax Commission’s National Nexus Program and all supplemental information including, but not limited to, cover letters, schedules, reports, and any other documents that provide evidence of the applicant’s qualification for a voluntary disclosure agreement. Supplemental information requested by the Commission and timely provided by the applicant shall be considered part of the *application*.

*Application Date* — the date a fully completed application requesting a voluntary disclosure agreement is received by the Commission. Supplemental information requested by the Commission timely provided by the applicant shall not extend or delay the *application date*.

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

*Delinquent Penalty* — any specific penalty imposed pursuant to R.S. 47:1603,1604.1, 337.70, 337.71 or 337.71 as a result of the failure of the taxpayer to timely make any required return or payment.

*Look-Back Period* — a period for which an applicant agrees to disclose and pay the tax and interest due.

*Signing Date* — the date the voluntary disclosure agreement is signed by the Chairman or his authorized representative.

*Undisclosed Liability* — a tax liability that became due during the look-back period and which has not been determined, calculated, researched, identified by or known to the Commission at the time of disclosure and which would likely not be discovered through normal administrative activities. The *undisclosed liability* must exceed \$500 during the look-back period to qualify for consideration of a voluntary disclosure agreement. The Commission has the discretion to conduct an audit of the applicant’s records to confirm the amount of the *undisclosed liability*.

*Voluntary Disclosure Agreement* — a contractual agreement between an applicant and the Commission wherein the applicant agrees to pay the tax and interest due on an undisclosed liability, and the Commission agrees to remit or waive payment of the whole or any part of the penalty associated with that liability and to restrict collection of prior liabilities to the look-back period, except for periods in which tax was collected and not remitted.

## B. Program Requirements

1. An undisclosed liability will qualify for a voluntary disclosure agreement if it results from the underpayment or non-payment of sales tax due to an error in the mathematical computation of the tax due on the return, interpretation of the law, or process of reporting the tax due on the return. An undisclosed liability also qualifies if it resulted from the merger or acquisition of a company that previously failed to properly report sales and use taxes to the Commission.

a. An error in the mathematical computation of the tax due on the return is an error on the part of the taxpayer in mathematical computation on the face of the return or on any of the supporting documents or the unintentional failure to include all amounts necessary for calculating the correct amount of taxes due on the return.

b. An error in the interpretation of the law is a construction of the law on the part of the taxpayer contrary to the Commission's construction of the law that caused the applicant to incorrectly determine that no tax or a smaller amount of tax was due.

c. An error in the process of reporting the tax due on the return is an error, omission, or a mistake of fact of consequence to the determination of the tax liability on the part of the taxpayer.

2. Notwithstanding the provisions of Paragraph 1 of this Subsection, an applicant shall fail to comply with the requirements for a voluntary disclosure agreement under the following conditions:

a. The applicant is registered as a dealer that is required to report retail sales or sales at retail, as defined in R.S. 47:301(4)(m), to the Commission on the application date and the undisclosed liability results from the applicant's failure to file remote seller sales tax returns.

b. The undisclosed liability results from the filing of false, fraudulent, or grossly incorrect returns and the circumstances indicate that the taxpayer had intent to defraud the Commission of the tax due under all state and local sales tax impositions.

c. The applicant has been contacted by the Commission to inquire about a tax matter, including but not limited to nexus, a potential tax liability or an audit of the taxpayer's records provided such contact occurred in writing and prior to the application date of the agreement.

d. The applicant is affiliated, as defined by law, with an entity that has been contacted by the Commission for the purpose of performing an audit. An applicant shall be considered in compliance with the requirements of the voluntary disclosure program after the audit of the affiliated entity has been completed, provided the undisclosed liability qualifies under the criteria described in Paragraph 1 of this Subsection and the applicant is not disqualified under the criteria listed in Subparagraphs a, b or c of this Paragraph.

3. Notwithstanding the conditions listed in paragraphs 1 and 2 of this subsection, applicants that applied for a voluntary disclosure agreement with the Commission prior to the effective date of this rule and subsequently entered into a voluntary disclosure agreement with the Commission shall be deemed to have met the program requirements.

## C. Application and Evaluation of Offer to Enter into a Voluntary Disclosure Agreement

1. Applications to enter into voluntary disclosure agreements by taxpayers seeking relief from penalties in cases where a liability to the Commission is owed shall be filed on forms provided and in the manner prescribed by the Commission. The applicant or his authorized representative, acting under the authority of a power of attorney, shall sign the application, provide a statement of the facts, and include any other information or declarations required to verify that the applicant has complied with program requirements. Taxpayers may apply anonymously or disclose their identity on the application form.

2. If unregistered, the applicant shall apply to the Commission for a sales tax account within 30 days of the application date.

3. The Commission shall review the application and, based upon the information included therein, determine if the applicant complies with the requirements for a voluntary disclosure agreement. If the applicant complies, the offer will be accepted. If the applicant fails to comply, the offer will be denied.

#### D. Acceptance of Offer to Enter into Voluntary Disclosure Agreement

1. After the Commission has reviewed the application and determined from the information included therein that the applicant qualifies for a voluntary disclosure agreement, the Commission shall send a copy of the agreement, including the legal name of the taxpayer, to the applicant or the applicant's representative for signature.
2. The applicant or applicant's representative, acting under the authority of a power of attorney, must sign the agreement and return it to the Commission within 30 calendar days of the postmark or e-mail date, or within any extension of time authorized by the Commission beyond 30 calendar days from the postmark or e-mail date.
3. After the signed agreement is received from the applicant, the Chairman will sign the agreement and return a copy of the agreement which has been signed by both parties to the applicant.

4. If the application was submitted to the Multistate Tax Commission, the applicant shall return signed agreements in accordance with policies established by the Multistate Tax Commission.

#### E. Determining the Look-back Period and Treatment of Periods prior to the Look-back Period

1. Except for taxes collected and not remitted, the look-back period for existing entities shall include that portion of the current calendar year prior to and including the application date and the three immediately preceding calendar years or the amount of time they were required by R.S. 47:340(G)(6)(a) to be registered with the Commission if less than 3 years.
2. Except for taxes collected and not remitted, the look-back period for a discontinued, acquired, or merged entity shall include the last calendar year in which the discontinued, acquired, or merged entity had nexus in a jurisdiction and the three immediately preceding calendar years.
3. For taxes collected and not remitted, the look-back period shall include all filing periods in which tax was collected and not remitted up to and including the application date. This look-back period shall not affect the look-back period described Paragraphs 1 or 2 of this Subsection for undisclosed liabilities unrelated to tax collected and not remitted.
4. The Commission, in concurrence with the applicant, may adjust the look-back period to accommodate special circumstances.
5. Look-back periods shall be established from the application date, unless the liability results from a merged or acquired entity as described in Paragraph 2 of this Subsection or there is mutual agreement to adjust a look-back period as provided in Paragraph 4 of this Subsection.
6. Periods prior to the look-back period shall be considered part of the voluntary disclosure agreement. However, payment is not required for any taxes due for these periods.
7. Under the agreement, the applicant and the Commission agree to suspend prescription for the look-back period as follows:
  - a. through June 30 of the calendar year subsequent to the signature date when that date occurs on or after January 1 and on or before June 30; and
  - b. through December 31 of the calendar year subsequent to the signature date when that date occurs on or after July 1 and on or before December 31.

#### F. Payment of Tax, Interest, and Penalty Due

1. All tax due for the look-back period must be paid within 60 calendar days of the Chairman's signing date of the voluntary disclosure agreement or within any extension of time authorized by the Commission beyond 60 calendar days of the signing date. All schedules or returns required by the Commission to show the amount of tax due must be included with this payment.
2. The Commission shall compute the interest and penalty due for the tax disclosed by the applicant and send a schedule by mail or email to the applicant or his representative showing the amount of tax, interest and delinquent penalty due. The applicant must submit payment of the full amount of the interest *and* any penalties

not abated ~~remitted~~ or waived within 30 calendar days from the postmark or e-mail date of the schedule or, if applicable, within any extension of time granted by the Commission. If payment of the full amount due has not been received at the expiration of such time, the Commission may void the agreement.

#### G. Waiver or Remittance of Payment of Penalty

1. After all tax and interest due for the look-back period have been paid, the delinquent penalties will be abated ~~remitted~~ or waived, unless the tax disclosed was collected but not remitted.

2. Where the tax was collected but not remitted, the Commission may consider waiving payment of the whole or any part of the delinquent penalties on a case-by-case basis.

H. The Commission may disclose tax information to the Multistate Tax Commission or any political subdivision of the state which has entered into an information exchange agreement with the Commission in order to coordinate the delivery and acceptance of applications for voluntary disclosure agreements. Any information so furnished shall be considered and held confidential and privileged by the Multistate Tax Commission or the political subdivision to the extent provided by R.S. 47:1508.

I. The Commission may conduct an audit of the look-back period to confirm that the correct amount of tax has been paid. Interest and penalty may be assessed on tax found due in excess of the amounts reported under the voluntary disclosure agreement. The Commission shall not assess additional interest or penalty for amounts reported and paid under the voluntary disclosure agreement except in cases of fraud, material misrepresentation, or any such misrepresentation of the facts by the taxpayer.

J. The terms of the voluntary disclosure agreement shall be valid, binding, and enforceable by and against all parties, including their transferees, successors, and assignees.

K. The Commission reserves the right to void the voluntary disclosure agreement if the applicant fails to comply with any of the conditions outlined in the agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:340(G)(11).

HISTORICAL NOTE: Promulgated by the Louisiana Sales and Use Tax Commission for Remote Sellers LR 47:

Jeff Lagrange  
Chairman  
Louisiana Sales and Use Tax Commission for Remote Sellers