

RULE

Department of Revenue Policy Services Division

Treatment of Tax by Dealer Uniform State and Local Sales Tax Definitions (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, has amended LAC 61:I.4311 to provide for uniform state and local sales tax definitions in accordance with the provisions of Act 73 of the 2003 Regular Legislative Session.

Act 73 enacted the Uniform Local Sales and Use Tax Code, R.S. 47:337.1 et seq., to promote uniformity in the administration of state and local sales and use taxes by compiling the local sales and use tax laws in the revised statutes. Revised Statute 47:337.2(C)(2), which provides for the development of uniform state and local sales and use tax regulations, allowed local sales tax collectors until January 1, 2004, to file written requests with the Secretary of Revenue for amendments to any Department of Revenue regulation in effect on July 1, 2003, so that the regulation applies to both state and local sales and use taxes. Local collectors, through the Louisiana Association of Tax Administrators, filed a request with the Secretary of Revenue in December 2003 for amendments to several regulations. Requested amendments to the sales tax definitions are included in this Rule.

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. R.S. 47:304 governs the treatment of *state sales and use tax* and R.S. 47:337.17 governs the treatment of *local sales and use tax* that must be collected by *dealers*. Both statutes place the primary burden for operation of the sales tax system upon the seller of merchandise, the performer of taxable services, and the rentor or lessor of property, and require that he collect the tax from the purchaser, user or consumer. If a *dealer* fails or refuses to collect the tax, he not only becomes liable for payment of the tax, but also subjects himself to the possibility of being fined a maximum of \$100 or imprisoned for a period of time not to exceed three months, or both.

B. This primary burden of collecting and remitting sales tax does not apply to the taxes on motor vehicles subject to the vehicle registration license tax, the collection of which is described in R.S. 47:303(B) (LAC 61:I.4307.B). However, dealers of off-road motor vehicles are charged with the responsibility for collecting and remitting the tax on sales of all such off-road vehicles, notwithstanding that they are also dealers of motor vehicles subject to registration and licensing by the motor vehicle commissioner. Dealers of off-road vehicles shall, in addition to collecting and remitting the tax to the *collector*, provide the purchaser with a notarized bill of sale, or other documentation, sufficient to prove that the proper taxes have been paid by the purchaser,

and to enable the purchaser to obtain a certificate of title from the office of the motor vehicle commissioner.

C. - D. ...

E. Certificates of exemption from *state or local sales or use tax* are obtainable from the appropriate *collector* by persons making purchases which may be exempt in whole or in part at the time of purchase or upon which the tax may be deferred until some later event which dictates taxability of the transaction. While primary responsibility for collection of the taxes rests upon the seller, the purchaser who furnishes the seller an exemption certificate will be held liable for any taxes subsequently found to be due.

F. In cases where the total amount of *state or local sales or use tax* collected for a sales tax filing period exceeds the percentage applicable to the particular type of merchandise or service, any such excess must be remitted to the appropriate *collector*.

G. For provisions relating to the amount of *state sales or use tax* collected by a dealer which may be withheld by him as compensation for collecting, accounting for, and remitting the tax to the secretary, see R.S. 47:306. The amount of compensation allowed for reporting *local sales or use tax* is governed by local ordinance.

H. R.S. 47:304 and R.S. 47:337.17 prohibit the use of tokens in the operation of the sales tax law and provides that the *secretary* shall prescribe schedules of the amounts to be collected from purchasers, lessees, or consumers with respect to each sale. Such schedules integrate the collection of the *state and local sales or use tax*, and their use is mandatory with respect to both *dealers* and *political subdivisions* that impose a sales or use tax. The mandatory tables required by R.S. 47:304 and R.S. 47:337.17 will be prepared by the Department of Revenue at the request of any *local taxing authority*, to reflect the aggregate *state and local sales or use tax* rate. Any *dealer*, as well, may obtain these prepared tax rate schedules from the department.

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 Department of Revenue and Taxation, LR 13:107 (February 1987), amended by the Department of Revenue, Policy Services Division, LR 30:2867 (December 2004)

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