

State of Louisiana
Department of Revenue

JOHN BEL EDWARDS
Governor



KIMBERLY LEWIS ROBINSON
Secretary

October 29, 2020

Mr. Jason DeCuir, Chairman and
Members of the
Centralized Sales and Use Tax Administration Study Group

RE: Comments to Centralization Proposal

Dear Chairman DeCuir and Members:

Thank you for the opportunity to provide comments to the "HR 31 Committee Proposal" as presented by Mr. Talbot on behalf of the local associations. We appreciate the collaborative efforts of local government representatives to develop and endorse the creation of a "Sales Tax Board" as centralized collector of state and local sales tax. In concept, we agree that centralized collection would simplify sales tax administration in Louisiana.

The proposal provides a solid starting point for further discussion and vetting, including consideration of public comments from stakeholders beyond the Study Group members. We offer the following comments to the proposal:

1. Consolidation of Louisiana Sales and Use Tax Commission for Remote Sellers

As created by the Legislature in a year prior to the *Wayfair* decision, the Commission serves as a centralized collector of state and local sales tax on remote sales for delivery into Louisiana. Through dedicated efforts of state and local representatives, the Commission was established following *Wayfair* and recently celebrated its statutory enforcement date of July 1, 2020. This work should not go unnoticed, but instead, serve as a model for the Sales Tax Board.

To that end, however, the Commission's role as centralized collector would be duplicative of the Sales Tax Board's role; the key difference being the existence of physical or economic nexus of its registered taxpayers. For simplification, the Commission's functions should be merged within the Sales Tax Board while continuing to provide remote sellers a centralized point of registration, filing, and remittance free of undue burdens.

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2. Governance of the Sales Tax Board

State sales tax revenue totaled over \$3.5B in Fiscal Year 2019 and represented more than one-third of the state taxes collected by the Department of Revenue. Over the last decade, the state taxes collected by the Department annually comprise at least 70% of the general fund revenue. This tax revenue funds essential state level services like healthcare and higher education, while also providing direct appropriations to local government for the Minimum Foundation Program to fund K-12 education and supplemental pay for law enforcement. As such, the Secretary cannot support any proposal that does not provide equal representation of board membership between state and local government.

We have seen equal representation work in standing up the Commission and reaching agreement on mandatory collection from remote sellers. Modeling this proposed Sales Tax Board after the Commission's success, the membership should be composed of equal representation between the state and local collectors. By requiring a majority of state and local representatives acting together to take action, there would exist assurance that state and local governments cooperate through compromise while acting in the best interests of the taxpayers we serve.

A few final points on governance for consideration. First, the proposal recommends an entity outside the executive branch of government. The tax collection function is an executive branch, administrative function of state government. While local government wants to ensure a level of autonomy from the state, there are structures to allow for this within the executive branch. Next, the oversight of the tax collection function should require substantive tax administration knowledge and experience. The local collectors are subject matter experts and should be the persons involved as the board members. To reflect a cross section of the local governments, the board could include: (1) a collector representing a parish with a population in excess of 350,000; (2) a collector representing a parish with a population between 175,000 and 350,000; (3) a collector representing a parish with a population between 50,000 and 174,000; and (4) a collector representing a parish with a population of less than 50,000. Then to cover the different types of collectors, select the representatives based on the percentages of collectors; i.e., school boards represent x percentage of collectors, so x of the total board members would be selected from school boards or the collector representing this x populations would come from school boards. These are simply alternative ideas for consideration and not definitive recommendations on how the local representation should be selected. The one definitive position is that the local representation of the Sales Tax Board should be subject matter experts. The final point on governance is that the state representatives on the Sales Tax Board should be appointed by the Governor and answerable to him as the elected, chief executive officer of Louisiana's executive branch of government.

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3. Issuance of Binding Policy Advice to State and Local Collectors

Under this proposal, state and local collectors retain their collection, enforcement, and audit functions while the Sales Tax Board is charged with setting sales tax policy subject to appellate review by the Board of Tax Appeals. Another approach for consideration is that the state and local sales tax collectors retain their regulatory and guidance setting authority—the state through the Secretary of Revenue and the locals through the Uniform Local Sales Tax Board. The Sales Tax Board would then implement this guidance in furtherance of its single point of registration, filing, and remittance duties. In this approach, the Sales Tax Board remains as the central collector of state and local sales tax while state and local collectors continue to set policy that will be applied in their determination of tax or refunds due to state and local government through collection, enforcement, and audit. The Uniform Local Sales Tax Board may need more authority to become the constitutionally established regulatory and policy setting entity for local sales tax.

These comments are intended to invite further dialogue as the specifics are developed and vetted. In creating this Sales Tax Board and providing for its authority, functions, and limitations, there remain additional logistical, operational, and legal details that should be carefully crafted to maximize efficient government operations while minimizing regulatory burdens on businesses.

Alternative Proposal

While this Study Group's charge is limited to the issue of centralized collection of state and local sales tax, there remains the differing bases and rates for state and local sales tax that continue to provide challenges to simplification and uniformity. We agree with Mr. Talbot's suggestions to review the substantive areas of sales tax law, including exclusions and exemptions, both constitutionally mandated and statutorily optional across state and local sales tax laws and ordinances. The inherent differences of state and local sales tax remain the obstacles that cannot be addressed through a single point of registration, filing, and remittance.

Therefore, we recommend an alternative proposal:

Create a Local Sales Tax Collection Board to serve as the centralized collector of local sales tax. The Local Sales Tax Collection Board, subject to the policy setting guidance of the Uniform Local Sales Tax Board, would serve as local level single point of registration, filing, and remittance. The Department of Revenue would retain its authority to collect state level sales tax and set state level sales tax policy. Retain the Louisiana Sales and Use Tax Commission for Remote Sellers as the centralized collector of state and local sales tax on remote sales only.

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Under this alternative, state and local sales tax administration remains separate, but yet provides a significant step toward sales tax simplification while local government retains its historic authority to collect local sales tax. A unitary administration of state and local sales tax through centralized collection should remain on hold pending further study and recommendation relative to unifying the state and local bases and rates of sales tax through comprehensive reform to all the uniformity, simplicity, and administrative issues of sales tax.

We recognize that, while the Study Group must present its final report by November 1, this vetting process for centralized collection should continue as the details are ironed out through drafting of proposed legislation. While we have presented an alternative proposal, we applaud and support our local government counterparts' diligence in the development of a proposal across the several associations. The Department appreciates the work of the Study Group, and we look forward to providing our input throughout the next steps of this continuing process.

Sincerely,



Luke Morris

Assistant Secretary of Revenue

Centralized Sales and Use Tax Administration Study Group Member