

Regular Session, 2010
HOUSE BILL NO. 845
BY REPRESENTATIVE NOWLIN

ACT No. 1029

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AN ACT

To amend and reenact R.S. 47:337.26(C) and (D)(1)(introductory paragraph) and (c) and to enact R.S. 47:337.26(D)(3), (F), and (G), relative to collection of local sales and use tax; to provide for requirements governing certain activities of private contractors; to prohibit the sharing of certain taxpayer information; to provide with respect to contracts; to provide for oversight by the legislative auditor; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 47:337.26(C) and (D)(1)(introductory paragraph) and (c) are hereby amended and reenacted and R.S. 47:337.26(D)(3), (F), and (G) are hereby enacted to read as follows:

§337.26. Contracts for ~~purposes~~ purposes relating to collection of sales and use taxes

* * *

C.(1) Any private agency or auditing firm hired for the purposes of this Section and any employee, contractor, or other agent of such private agency or auditing firm shall be governed by the provisions of R.S. 47:1508 et seq.

(2)(a) Audit leads provided by the private agency or auditing firm shall be subject to the taxpayer confidentiality requirements of R.S. 47:1508 et seq. Once confidential information has been disclosed by the taxpayer to the private agency or auditing firm, audit leads by such private agency or auditing firm to other local collectors are strictly prohibited under the taxpayer confidentiality requirements of R.S. 47:1508 et seq; however, the taxpayer may voluntarily waive confidentiality

1 requirements in writing, authorizing the examination or audit to be expanded to
2 include additional tax collectors.

3 (b) Information provided by the private agency or auditing firm to the local
4 collector may be shared by the local collector with other collectors which maintain
5 written reciprocal exchange agreements in accordance with R.S. 47:1508(B)(5).

6 (3) Notwithstanding any provision of this Section to the contrary, a private
7 agency or auditing firm shall limit its activities to auditing the books and records of
8 the taxpayer and shall not perform any assessment or collection functions, except as
9 otherwise expressly permitted by law.

10 (4) A lead auditor of a private agency or auditing firm performing an
11 examination or audit function shall possess or have attained any of the following:

12 (a) An active certified public accountant license.

13 (b) A bachelor's degree with a minimum of eighteen hours of accounting.

14 (c) An active certified tax examiner's certificate issued by the Louisiana
15 Association of Tax Administrators.

16 (d) A minimum of six years' experience in the field of state or local sales and
17 use tax.

18 D.(1) Prior to initiating an examination or audit of a taxpayer, ~~a taxing~~
19 ~~authority~~ the local collector shall provide notice of ~~the taxing authority's~~ the intent
20 to audit which shall be sent by certified mail to the taxpayer at the taxpayer's last
21 known address. Such notice shall:

22 * * *

23 (c)(i) Advise the taxpayer of the right to review and copy the audit contract
24 if the audit will be conducted by a private auditing firm.

25 (ii) If the audit is conducted by a private auditing firm, the notice shall also
26 advise the taxpayer whether the payment of compensation to the private auditing
27 firm is contingent upon the actual collection of tax or in any other way dependent on
28 the outcome of the audit.

29 * * *

1 (3)(a) Upon completion of the audit or examination, all original information
 2 obtained by the private agency or auditing firm from the taxpayer in connection with
 3 the audit or examination, whether written or in electronic form, shall be returned to
 4 the taxpayer, and the private agency or auditing firm shall not retain any copies of
 5 such information. All taxpayer related information derived, compiled, or generated
 6 by the private agency or auditing firm in any form whatsoever, including audit
 7 schedules, working papers, and copies of information received from the taxpayer,
 8 shall be delivered to the tax collector, except to the extent such information may be
 9 retained by certified public accountants in accordance with the Louisiana
 10 Accountancy Act.

11 (b) No provision of this Section shall prohibit a private agency or auditing
 12 firm from retaining books and records of a taxpayer until the termination of any legal
 13 proceedings related to the audit or examination.

14 (c) The tax collector and the private agency or auditing firm may enter into
 15 a written agreement in accordance with this Subparagraph, authorizing such private
 16 agency or auditing firm to act as agent for the storage and safekeeping of documents
 17 otherwise required to be maintained by the tax collector. Such documents shall be
 18 maintained in accordance with R.S. 47:1508 et. seq.

19 * * *

20 F. Each contract entered into pursuant to this Section may be subject to
 21 review and oversight by the legislative auditor pursuant to R.S. 33:1427. Contracts
 22 entered into after July 1, 2010 shall contain a statement by the local collector and
 23 private agency or auditing firm certifying that the terms and conditions of the
 24 contract are in compliance with the requirements of the provisions of this Section.
 25 Any contract that does not satisfy the requirements of this Section may be declared
 26 null and void by a court of competent jurisdiction.

27 G. The private agency or auditing firm hired for the purposes of this Section,
 28 including any employee, contractor, or other agent of such private agency or auditing
 29 firm conducting such examination or audit, shall be subject to the Code of
 30 Governmental Ethics as set forth in R.S. 42:1101 et seq.

1 Section 2. The provisions of this Act shall apply to audits or examinations initiated
2 by the issuance of a local collector's notice of intent to audit after the effective date of this
3 Act.

4 Section 3. This Act shall become effective upon signature by the governor or, if not
5 signed by the governor, upon expiration of the time for bills to become law without signature
6 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
7 vetoed by the governor and subsequently approved by the legislature, this Act shall become
8 effective on the day following such approval.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____