

Regular Session, 2008

HOUSE BILL NO. 747

BY REPRESENTATIVE ROBIDEAUX

TAX/TAXATION: Provides for restrictions on the use of private auditing firms and private legal counsel

1 AN ACT

2 To amend and reenact R.S. 47:337.26(B), (C), (D), and (E), 337.75(A), and 1605(A) and  
3 (B)(1) and to repeal R.S. 47:337.75(E), relative to use of private auditing firms and  
4 private counsel; to prohibit contingency fee contracts with private auditing firms; to  
5 require certification of auditing firms; to limit the services that an auditing firm may  
6 provide; to limit taxpayer costs with respect to additional taxes due as a result of  
7 certain audits; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 47:337.26(B), (C), (D), and (E), 337.75(A), and 1605(A) and (B)(1)  
10 are hereby amended and reenacted to read as follows:

11 §337.26. Contracts for purpose relating to collection of sales and use taxes

12 \* \* \*

13 B.(1) Within the limits provided for in Article VII, Section 3(B) of the  
14 Constitution of Louisiana, for the purpose of auditing for compliance with local sales  
15 and use tax ordinances, any taxing authority or other entity which collects local sales  
16 and use taxes may enter into a contract with a private auditing firm, and when so  
17 authorized by such contract, such firm may examine or investigate the place of  
18 business, if any; the tangible personal property; and the books, records, papers,  
19 vouchers, accounts, and documents of any taxpayer.

20 (2) The rate of compensation shall not be on a contingency or any other basis  
21 dependent on the outcome of the examination, but rather only on an hourly basis,

1 agreed to in advance of the audit, plus reasonable expenses. The private agency or  
2 auditing firm shall bill and invoice each local collector for services rendered on  
3 behalf of such local collector, irrespective of the amount of tax or whether any tax  
4 is collected. In addition, all such contracts shall be approved by the majority of the  
5 affected taxing authorities.

6 C.(1) Any private agency or auditing firm hired for the purposes of this  
7 Section and any employee, contractor, or other agent of such private agency or  
8 auditing firm shall be governed by the provisions of R.S. 47:1508 et seq. Each  
9 examination performed by a private agency or auditing firm shall have a lead auditor  
10 who possesses either an active Certified Public Accounting license, a bachelor of  
11 science degree with a minimum of eighteen hours in accounting, or a certified Tax  
12 Examiner's Certificate issued by the Louisiana Association of Tax Administrators.  
13 However, if the examination is performed by a Certified Public Accounting firm  
14 licensed in Louisiana, the lead auditor provisions of this Paragraph shall not apply.

15 (2) Notwithstanding any provision of this Chapter to the contrary, such  
16 private agency or auditing firm shall limit its activities to auditing the books and  
17 records of the taxpayer and shall not perform any assessment or collection functions  
18 required to be performed by the local collector.

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

23 (a) Reasonably describe the nature of the audit.

24 (b) Identify the name, office, address, and office telephone number of the  
25 firm or individual who will initiate the audit.

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

28 (d) Summarize the remedies available to the taxpayer if the taxpayer should  
29 choose to contest the audit findings.

1 (e) Describe the interest, penalties, and costs, including audit costs, for which  
2 the taxpayer may be liable if taxes are determined to be due.

3 (2) During the course of the audit, the taxpayer shall be notified of the name,  
4 office address, and office telephone number of each auditor assigned to the audit.  
5 Private auditing firms shall provide any taxpayer subject to an audit with access to  
6 an original or a copy of the audit contract specifying the terms under which the audit  
7 firm was engaged, in addition to the audit bill and invoice submitted to the local  
8 collector, which may be reviewed and copied by the taxpayer.

9 E. If the cost of a sales tax compliance audit conducted by a private auditing  
10 firm is to be borne by the taxpayer, pursuant to R.S. 47:337.75, the cost to the  
11 taxpayer shall not exceed thirty percent of the amount of the additional taxes  
12 determined to be due as the result of the audit.

13 \* \* \*

14 §337.75. Examination and hearing costs

15 A. If any taxpayer fails to make any return required by this Chapter, or  
16 makes a grossly incorrect report, or a false or fraudulent report, and the collector, in  
17 performance of his duty to ascertain the amount of tax due, makes an examination  
18 of books, records, or documents, or an audit thereof, or conducts a hearing, or  
19 subpoenas witnesses, then there may be added to the amount of tax found to be due  
20 a specific penalty, in addition to any other penalty provided, in an amount as  
21 itemized by the collector to compensate for ~~all~~ actual direct costs incurred in making  
22 such examination or audit, or in holding such hearing, or in subpoenaing and  
23 compensating witnesses. This specific penalty shall be an obligation to be collected  
24 and accounted for in the same manner as if it were part of the tax due and can be  
25 enforced either in a separate action or in the same action for the collection of the tax.  
26 The cost to the taxpayer shall not exceed ten percent of the amount of the additional  
27 taxes determined to be due as a result of the audit.

28 \* \* \*

1 §1605. Examination and hearing costs

2 A. If any taxpayer fails to make any return required by this Subtitle, or  
3 makes a grossly incorrect report, or a false or fraudulent report, and the secretary,  
4 in performance of his duty to ascertain the amount of tax due, makes an examination  
5 of books, records, or documents, or an audit thereof, or conducts a hearing, or  
6 subpoenas witnesses, then there may be added to the amount of tax found to be due  
7 a specific penalty in addition to any other penalty provided, in an amount as itemized  
8 by the secretary to compensate for ~~all~~ actual direct costs incurred in making such  
9 examination or audit, or in holding such hearing, or in subpoenaing and  
10 compensating witnesses. This specific penalty shall be an obligation to be collected  
11 and accounted for in the same manner as if it were part of the tax due and can be  
12 enforced either in a separate action or in the same action for the collection of the tax.

13 B. For the purposes of this Section, the following terms shall have the  
14 following meanings:

15 (1) "Grossly incorrect report" means any report filed where there is a  
16 substantial understatement of tax for any taxable ~~period~~ year. The understatement  
17 is substantial if it exceeds the greater of:

18 (a) Ten percent of the tax required to be shown on the return for the taxable  
19 ~~period~~ year.

20 (b) Ten thousand dollars.

21 \* \* \*

22 Section 2. R.S. 47:337.75(E) is hereby repealed in its entirety.

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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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Robideaux

HB No. 747

**Abstract:** Prohibits contingency fee contracts with private auditing firms and requires certification of auditing firms. Limits the services that an auditing firm may provide to a local tax collector and limits taxpayer costs with respect to additional taxes due as a result of certain audits.

Present law authorizes local tax collectors to enter into contracts with private auditing firms for certain examinations or investigations of the books, records, papers, vouchers, accounts, and documents of any taxpayer.

Proposed law clarifies that the compensation of such private auditing firm shall not be on a contingency or any other basis dependent on the outcome of the examination, but rather on an hourly basis agreed to in advance of the audit, plus reasonable expenses. The private auditing firm shall bill and invoice each local collector for services rendered on behalf of such local collector, irrespective of the amount of tax or whether any tax is collected.

Proposed law provides that each examination performed by a private agency or auditing firm shall have a lead auditor who possesses either an active CPA license, a B.S. degree with a minimum of 18 hours in accounting, or a certified Tax Examiner's Certificate issued by the La. Association of Tax Administrators. However, if the examination is performed by a CPA firm licensed in La., the lead auditor provisions in proposed law shall not apply.

Proposed law provides that private auditing firms shall limit their activities to auditing the books and records of a taxpayer and shall not perform any assessment or collection functions required to be performed by the local collector.

Present law restricts the 30% cap on costs of compliance audits to those audits conducted by private auditing firms.

Proposed law provides that the cost of a local sales tax audit conducted by a private audit is to be borne by the taxpayer.

Present law provides that if any taxpayer fails to make any tax return, or makes a grossly incorrect report, or a false or fraudulent report, and the secretary of the Dept. of Revenue or local tax collector makes an examination of books, records, or documents, or an audit thereof, then there may be added to the amount of tax found to be due a specific penalty, in addition to any other penalty provided, in an amount as itemized by the secretary to compensate for all costs incurred in making such examination or audit.

Proposed law provides that the cost to the taxpayer when a local collector conducts an examination shall not exceed 10% of the amount of the additional taxes determined to be due as the result of the audit.

Present law provides that when a local collector conducts an examination or audit because the taxpayer fails to make a return, makes a grossly incorrect report, or a false or fraudulent report, the amount of specific penalty due as a result of such examination or audit shall be the same as is provided by law on July 1, 2003, until such law is amended.

Proposed law repeals present law.

(Amends R.S. 47:337.26(B), (C), (D), and (E), 337.75(A), and 1605(A) and (B)(1); Repeals R.S. 47:337.75(E))

#### Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Ways and Means to the original bill.

1. Adds provision that the compensation of a private auditing firm shall be on an hourly basis agreed to in advance of the audit.
2. Deletes provision relative to the qualifications of each employee, contractor, or other agent performing an examination function on behalf of a private auditing firm.

3. Adds provision that each examination performed by a private agency or auditing firm shall have a lead auditor with certain educational licenses or degrees, but provides an exception to these requirements if the examination is performed by a CPA firm licensed in La.
4. Deletes provisions from the bill relative to employment of private counsel by the Dept. of Revenue.
5. Deletes provision that the cost to the taxpayer, when the Dept. of Revenue conducts an examination, shall not exceed 10% of the amount of the additional taxes determined to be due as the result of the audit.
6. Clarifies that a "grossly incorrect report" means any report filed where there is a substantial understatement of tax for any taxable year. Further clarifies that the understatement is substantial if it exceeds 10% of the tax required to be shown on the return for the taxable year or \$10,000, whichever is greater.