

Louisiana Law Review

Volume 79 | Number 4
Summer 2019

A Budgetary Life Raft: An Analysis of Louisiana's State and Local Sales Tax

Hayden O. Bigby

Repository Citation

Hayden O. Bigby, *A Budgetary Life Raft: An Analysis of Louisiana's State and Local Sales Tax*, 79 La. L. Rev. (2019)
Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol79/iss4/10>

This Comment is brought to you for free and open access by the Law Reviews and Journals at LSU Law Digital Commons. It has been accepted for inclusion in Louisiana Law Review by an authorized editor of LSU Law Digital Commons. For more information, please contact kreed25@lsu.edu.

A Budgetary Life Raft: An Analysis of Louisiana’s State and Local Sales Tax

TABLE OF CONTENTS

Introduction	1147
I. History and Function of Louisiana Sales Tax	1149
A. Louisiana State Tax History: Where Does the Money Come From?	1149
B. Louisiana Sales Tax Currently.....	1152
1. Revenue, Rate, and Expenses.....	1152
2. Rulemaking and Compliance	1153
3. Exemptions and Exclusions	1154
II. Equity, Efficiency, and Administration of Louisiana Sales Tax	1156
A. Equity: How Fair is Louisiana’s Sales Tax?.....	1156
1. Vertical Equity	1157
2. Horizontal Equity	1160
B. Revenue Raising	1162
C. Administration	1165
III. How Louisiana Can Improve the State and Local Tax System.....	1168
A. Broadening the Base and Lowering the Rate.....	1168
B. Unifying the State and Local Tax Base and Collection System	1172
Conclusion.....	1174

INTRODUCTION

Louisiana recently faced significant budget deficits, as Governor John Bel Edwards’s suggestion of possibly cutting a Louisiana State University football season evidences.¹ Rather than send Louisiana residents into an uproar over football, legislators instead chose to fill the budget deficit by

Copyright 2019, by HAYDEN O. BIGBY.

1. Julia O’Donoghue, *Louisiana’s Budget is a Hot Mess: How We Got Here*, TIMES-PICAYUNE (Feb. 19, 2016), http://www.nola.com/politics/index.ssf/2016/02/louisiana_is_in_a_budget_mess.html [<https://perma.cc/YRY8-G8FE>].

temporarily raising the state sales tax rate to quickly increase revenues.² Louisiana was able to avoid a budget crisis, but the increased reliance on sales tax for revenue has consequences of its own.³ A closer look at Louisiana's state and local sales tax infrastructure reveals that Louisiana citizens should be concerned equally with the adequacy of their sales taxes as they are with the success of their football team.⁴

The state's decision to increase the sales tax rate made an already-high rate even higher.⁵ This lofty rate combined with one of the most complicated sales tax structures in the country rapidly made the state an unfriendly location for businesses and residents.⁶ The Tax Foundation, a pro-business think tank based in the District of Columbia, annually submits rankings of state business tax structures that state legislators often cite.⁷ Louisiana sales tax often ranks near the bottom of the list.⁸ Representative Julie Stokes, one of the most knowledgeable members on tax issues in the Louisiana Legislature, suggested that the Tax Foundation "would rank us 70th if they could, maybe 80th."⁹ The author of the Tax Foundation rankings, Scott Drenkard, accurately summed up the problem, stating, "Louisiana has a high tax rate plus a poor base structure plus administrative problems."¹⁰ This Comment proposes that Louisiana implement a comprehensive reform of the state and local tax framework to avoid increased sales tax rates to cure budget deficits. Part I of this Comment provides general background information of sales taxes and the particular characteristics of Louisiana's sales tax. Part II analyzes the state and local sales tax from equity, revenue-raising efficiency, and

2. TASK FORCE ON STRUCTURAL CHANGES IN BUDGET AND TAX POLICY, LOUISIANA'S OPPORTUNITY: COMPREHENSIVE SOLUTIONS FOR A SUSTAINABLE TAX AND SPENDING STRUCTURE 29 (Jan. 27, 2017) [hereinafter TASK FORCE].

3. Louisiana now relies more on sales tax for revenue than any other source, despite sales being deficient in key areas. *Id.* at 31.

4. *Id.*

5. Scott Drenkard, *Louisiana Fiscal Reform: A Framework for the Future*, TAX FOUND. 36 (2015).

6. *Id.*

7. Scott Drenkard, Jared Walczack & Joseph Bishop-Henchman, *2019 Business Tax Climate Index*, TAX FOUND. (Sept. 26, 2018), <https://taxfoundation.org/state-business-tax-climate-index-2019/> [<https://perma.cc/45CK-7F9A>].

8. *Id.*

9. Representative Julie Stokes currently serves as chair of the Sales Tax Streamlining and Modernization Commission. Tyler Bridges, *Louisiana Sales Tax System Now Ranks Worst Than Last Place*, ADVOCATE (Apr. 5, 2016, 4:03 PM), http://www.theadvocate.com/baton_rouge/news/politics/legislature/article_b82b895a-0e5c-5cdf-abd8-2d2015e5b1d1.html [<https://perma.cc/T8XC-55FQ>].

10. *Id.*

administrative perspectives, identifying the issues within each of these areas. Part III offers solutions to improve the state and local sales tax in the three areas described in Part II by broadening the tax base and lowering the sales tax rate and by unifying the state and local collection system and tax bases to improve administration.

I. HISTORY AND FUNCTION OF LOUISIANA SALES TAX

Louisiana's state and local sales tax includes many complex elements.¹¹ To analyze and critique Louisiana sales tax, one must understand both the history and mechanics of the tax.

A. Louisiana State Tax History: Where Does the Money Come From?

From the 1930s until the early 1980s, a deal with the oil and gas industry financed Louisiana's state government.¹² The deal allowed the state to recover taxes on mineral extractions.¹³ The consistent and substantial stream of revenue from the mineral taxes allowed the state to lessen its reliance on citizens for tax revenue, which resulted in relatively low state taxes on families in Louisiana.¹⁴ The state's significant dependence on taxes from the oil and gas industry, however, made it particularly vulnerable to downturns in the oil and gas market, the first of which occurred in the early 1980s.¹⁵ The 1980s "Oil Bust" caused the state's deal with the oil and gas industry to falter, removing a mainstay of revenue from Louisiana's budget.¹⁶ From the 1980s until the early 2000s, Louisiana was forced to creatively fill the budgetary void the suddenly less dependable oil and gas industry created.¹⁷ Louisiana implemented various new policies and programs to help generate revenue for the state.¹⁸ Policies included a state lottery, casino gambling, and temporary sales taxes.¹⁹ The

11. *Id.*

12. Nick Albares, *Moving From Budget Cuts to State Investments: A Blueprint for a Stronger Louisiana*, LA. BUDGET PROJECT (Feb. 22, 2017), <http://www.labudget.org/wp-content/uploads/2017/02/Blueprint-for-a-stronger-Louisiana.pdf> [https://perma.cc/D3X3-9T76].

13. *Id.*

14. *Id.*

15. *From Boom to Bust: Louisiana Oil Industry Feels Pinch in 1980s*, TIMES-PICAYUNE (Apr. 9, 2017), http://www.nola.com/300/2017/04/louisiana_oil_bust_1980s_04092017.html [https://perma.cc/C95N-S3AT] (last updated Mar. 23, 2018).

16. *Id.*

17. Albares, *supra* note 12.

18. *Id.*

19. *Id.*

revenue-raising methods did not provide Louisiana with stable revenue around which to create a budget, however, prompting the state to pursue more substantial tax reform.²⁰

In 2002, Louisiana implemented tax reform by turning to the “Stelly Plan,” a tax package Lake Charles-area state representative Vic Stelly championed.²¹ In November of 2000, Louisiana voters initially rejected the Stelly Plan, the first step at tax reform that would have reduced some of the state’s dependence on sales tax as a major source of revenue.²² When it was eventually passed under the same proposal in 2002, the Stelly Plan accomplished a number of things: (1) it eliminated the state sales tax on food and utilities; (2) it increased the state income tax for wealthy persons by eliminating deductions for federal income taxes and excess itemized deductions; and (3) it adjusted the individual income tax rates.²³ In the years following the enactment of the Stelly Plan, revenues grew along with the state economy²⁴ because the state had reduced reliance on the sales tax, which, in contrast, does not grow with the economy because it is based on consumption, a relatively stable figure.²⁵

In 2005, Hurricanes Katrina and Rita hit the Louisiana coast, causing major destruction and devastation.²⁶ In the wake of the storms’ impact, Louisiana experienced a significant surge in state revenues.²⁷ The revenues came in the form of federal rebuilding dollars, increased economic activity, insurance proceeds, and record energy prices.²⁸ The post-storm revenues presented Louisiana with a string of large annual budget surpluses,²⁹ an unfamiliar situation for a state thirsty for revenues since the downturn of the oil and gas markets in the 1980s.³⁰ The influx of money made Louisiana legislators comfortable with the amount of money coming in so, in 2007 and 2008, legislators voted to repeal the income tax portion

20. *Id.*

21. *Id.*

22. Susan Kalinka, *State Tax Reform: Louisiana Needs to Begin Somewhere*, 48 LA. B.J. 374 (Feb. 2001).

23. *Id.*

24. Albares, *supra* note 12.

25. Kalinka, *supra* note 22.

26. Adam Nossiter, *For Louisiana, the Bon Temps Proved All Too Brief*, N.Y. TIMES (Dec. 18, 2008), <http://www.nytimes.com/2008/12/19/us/19louisiana.html> [<https://perma.cc/U4E3-Q9P6>].

27. *Id.*

28. *Id.*

29. *Id.*

30. Albares, *supra* note 12.

of the Stelly Plan.³¹ This repeal, along with an elimination of sales taxes on business utilities, reduced state revenue collections by nearly \$1 billion per year.³² By 2010, state revenue was \$3.1 billion below the 2008 peak and \$1.8 billion below the pre-2005 trend.³³

From 2009 to 2016, Louisiana struggled to consistently pay its bills.³⁴ During this period, Louisiana addressed its financial issues by cutting the budget and filling the remaining gaps in revenue through a variety of measures.³⁵ Such measures included diverting money from state accounts set aside for specific uses; selling state property; and using temporary federal stimulus dollars to pay for ongoing obligations in health care and higher education.³⁶ One can refer to methods of filling in the revenue gap as “one-time money” because they act only as temporary fixes to the financial shortfall and are not readily available in subsequent years.³⁷

In February of 2016, Louisiana faced a \$963 million budget deficit that needed to be closed by fiscal year end on June 30.³⁸ Louisiana temporarily increased the state sales tax rate by one cent, raising the rate from 4% to 5% as a way to meet revenue demands in the face of an unprecedented budget crisis.³⁹ The state also implemented removal or restriction of certain exemptions from the sales tax.⁴⁰ The tax rate increase ended on June 30, 2018.⁴¹ The state’s budget woes have been resolved

31. *PAR Guide to the State Budget Crisis How We Got Here, The Jindal Record, The Real Priorities*, PUB. AFFAIRS RES. COUNCIL LA. (Apr. 10, 2015), <http://files.ctctcdn.com/bec30a10201/8bab0e36-b547-42e7-a69b-2dc309265553.pdf> [<https://perma.cc/3VLP-A3XY>].

32. *Id.*

33. *Focus on the Fisc. A Publication for the Louisiana Legislature by the Legislative Fiscal Office*, LA. LEGIS. FISCAL OFF. (Mar. 2016), http://lfo.louisiana.gov/files/publications/FY16_FocusOnTheFisc.pdf [<https://perma.cc/CT54-NFTV>].

34. *PAR Guide to the State Budget Crisis*, *supra* note 31.

35. Albares, *supra* note 12.

36. *Id.*

37. *Id.*

38. O’Donoghue, *supra* note 1.

39. Albares, *supra* note 12; Act No. 25, 2016 La. Acts 2318; Act No. 26, 2016 La. Acts 2326.

40. For example, the legislature made purchase, use, and lease of manufacturing machinery and equipment subject to the state sales tax, whereas previously the legislature would have exempted this type of transaction. Act No. 25, 2016 La. Acts 2318.

41. Act No. 26, 2016 La. Acts 2326.

only temporarily, however, resulting in much debate about whether the legislature will actually remove the added penny from the sales tax.⁴²

B. Louisiana Sales Tax Currently

An assessment of information about the state and local sales tax in Louisiana reveals Louisiana's reliance on the sales tax for revenues, the method of administration of the state and local sales tax, and the state's use of exemptions as a part of the sales tax.⁴³

1. Revenue, Rate, and Expenses

Louisiana administers a sales tax at both the state and local levels.⁴⁴ The sales tax rate at the state level is currently 5%, and local municipalities may administer their own additional sales taxes of up to 7%.⁴⁵ Assessing a sales tax at both the state and local levels means that the actual sales tax Louisiana residents pay will vary by region, with the highest possible rate being 12%.⁴⁶ With the increase of the state sales tax rate from 4% to 5%, Louisiana now has the highest average combined state and local sales tax rate in the country.⁴⁷

For the 2015–2016 fiscal year, Louisiana collected approximately \$3 billion in revenue from sales taxes,⁴⁸ which demonstrates an 8.45% increase from the amount of revenue collected during the 2014–2015 fiscal

42. Julia O'Donoghue, *Will Louisiana Keep Highest-in-the-Country Sales Tax?*, TIMES-PICAYUNE (Sept. 17, 2017), http://www.nola.com/politics/index.ssf/2017/09/legislature_sales_tax.html [https://perma.cc/6JLY-KP42].

43. This information is further analyzed in Part II, *infra*.

44. Jared Walczak & Scott Drenkard, *State and Local Sales Tax in 2017*, TAX FOUND. (Jan. 31, 2017), <https://taxfoundation.org/state-and-local-sales-tax-rates-in-2017/> [https://perma.cc/UM5N-647N].

45. *Id.*

46. Only one municipality in East Carroll Parish, Lake Providence, charges the maximum allowed sales tax rate of 12%. *East Carroll Parish*, LA. ASS'N TAX ADM'RS (2017), http://www.laota.com/index.php?option=com_content&view=article&id=28&Itemid=140 [https://perma.cc/8SM9-UXX6].

47. Louisiana's state tax rate of 5% ranks as only the 33rd highest in the country. The average local tax rate of 4.98% ranks as the 2nd highest in the country. It is the combination of these two rates that gives Louisiana the highest combined rate in the country at about 10%. Walczak & Drenkard, *supra* note 44.

48. LA. DEP'T OF REVENUE, STATE OF LOUISIANA ANNUAL TAX COLLECTION REPORT 2015–2016 39 (Jan. 1, 2017), [http://revenue.louisiana.gov/Publications/AR\(15-16\).pdf](http://revenue.louisiana.gov/Publications/AR(15-16).pdf) [https://perma.cc/T2N3-SCH8].

year, likely because of the increase in the state sales tax rate.⁴⁹ The sales tax collections accounted for approximately 38.8% of the state's \$7.5 billion in total tax collections, up from 35.1% of the state's tax collections in the previous year.⁵⁰ The 38.8% portion of the state's revenue accrued from the sales tax made the sales tax the biggest revenue earner for the state in the 2015–2016 fiscal year, only slightly higher than the state income tax, which accounted for 38.3% of the state's revenue.⁵¹

Sales tax revenue accounting for such a sizable portion of Louisiana's total revenues highlights the importance of the sales tax being efficient and easily administrable. Certainly, Louisiana would benefit from its largest revenue-earner being simple and methodical.

2. Rulemaking and Compliance

Louisiana's state and local sales tax is a complex, tangled web of regulations.⁵² No comprehensive sales tax regulatory system exists governing Louisiana sales tax.⁵³ Instead, administrators must consult several separate statutory sources and applicable case law to determine the appropriate tax treatment of a particular transaction.⁵⁴ Hundreds of sections of laws in the Louisiana Revised Statutes and countless subsections relate to state and local sales and use taxes.⁵⁵ Revenue rulings from the Louisiana Department of Revenue ("DOR"),⁵⁶ as well as jurisprudence regarding the applicable statutory language and proper

49. *Id.* at 6.

50. *Id.*

51. The state sales tax and the income tax have been comparable in revenue collection for several years, with the income tax slightly being the biggest revenue earner in the three years prior to the sales tax rate increase in 2016. *Id.*

52. Drenkard, *supra* note 5.

53. *Id.*

54. *General Sales & Use Tax*, LA. DEP'T REVENUE, <http://revenue.louisiana.gov/SalesTax/GeneralSalesAndUseTax> [https://perma.cc/M7Q4-KKS5] (last visited Apr. 2, 2019).

55. The sales tax portion of the tax code begins with Louisiana Revised Statutes § 47:301, which provides an immense list of definitions one may use when determining proper application of the subsequent sections of the code.

56. The DOR may issue a ruling to a taxpayer upon request. The ruling applies principles of law to the taxpayer's specific set of facts. *How to Request a Private Letter Ruling*, LA. DEP'T REVENUE, <http://revenue.louisiana.gov/LawsAndPolicies/RequestPrivateLetterRuling> [https://perma.cc/Y4KN-WWK3] (last visited Apr. 2, 2019).

application of the law, augment this large segment of law.⁵⁷ Requiring a multitude of different sources to determine how an administrator should apply a particular tax is problematic, particularly when different sources contradict one another.⁵⁸ Often, litigation occurs when administrators must sort through inconsistent revenue rulings from the DOR over application of the sales tax.⁵⁹ Other intricacies accompany the inconsistent sources, rendering the sales tax even more confusing.⁶⁰

3. Exemptions and Exclusions

The prevalence of tax exemptions is another facet of the state and local sales tax that makes it difficult to administer and limits its ability to raise revenues.⁶¹ “Tax exemption” refers to provisions of state tax statutes that allow a special exclusion, exemption, or deduction from gross income or sales, or provide a special credit, preferential rate of tax, or deferral of tax liability.⁶² An item is generally considered a tax exemption if the tax revenue associated with that item is reduced because of a specific constitutional, statutory, or federal provision.⁶³

Tax exemptions are considered “tax expenditures” because the lost revenues are similar to direct expenditures the government makes.⁶⁴ The difference is that foregoing revenue from the targeted taxpayer, rather than the legislature directly spending money, makes tax expenditures.⁶⁵ Tax exemptions can be dangerous for a state’s tax budget because once

57. An example of such jurisprudence comes from *Pot-O-Gold Rentals, L.L.C. v. City of Baton Rouge*, 155 So. 3d 511 (La. 2015).

58. *Id.*

59. In the *Pot-O-Gold* case, the Court recognized an inconsistency between two revenue rulings that was creating an issue in determining how the DOR should apply a sales tax. *Id.* at 512.

60. *Primer on State Tax Structure in Louisiana*, LA. DEP’T REVENUE & LA. ECON. DEV. 9 (Oct. 8, 2012), http://house.louisiana.gov/rc/pdf/Primer_on_State_Tax_Structure_in_Louisiana_10.4.12.pdf [<https://perma.cc/8K3P-7QBZ>].

61. TASK FORCE, *supra* note 2.

62. *Primer on State Tax Structure in Louisiana*, *supra* note 60.

63. *Id.*

64. Robert H. Gleason, *Reevaluating the California Sales Tax: Exemptions, Equity, Effectiveness, and the Need for a Broader Base*, 33 SAN DIEGO L. REV. 1681 (1996).

65. *Id.* at 1704.

enacted, there is typically no limit on the number of people or businesses who may claim the benefit.⁶⁶

Louisiana currently has 207 exemptions in the Louisiana Revised Statutes and the Louisiana Constitution.⁶⁷ Louisiana's sales tax exemptions serve a number of purposes;⁶⁸ for example, Louisiana has implemented some exemptions to help improve the equity of the sales tax.⁶⁹ One such policy is a sales tax exemption on food that one purchases for home consumption.⁷⁰ This exemption is a common practice among states trying to make their sales taxes more progressive.⁷¹ Food for home consumption is considered a necessity for all citizens, and therefore, not assessing a tax on the purchase of these foods is an equitable policy decision.⁷² The exemption helps to make the sales tax more progressive because low-income citizens spend a higher portion of their incomes on groceries than high-income citizens.⁷³

An exemption on food for home consumption is not the only method improving the equity of the sales tax. Louisiana also uses sales tax holidays to make the sales tax more progressive.⁷⁴ A sales tax holiday offers certain

66. The danger of exemptions comes from the diminished ability of the government to predict revenues, resulting in inaccurate estimates and therefore budget deficiencies. *Id.*

67. LA. DEP'T OF REVENUE, STATE OF LOUISIANA TAX EXEMPTION BUDGET 2017-2018 252-59, [http://revenue.louisiana.gov/Publications/TEB\(2017\).pdf](http://revenue.louisiana.gov/Publications/TEB(2017).pdf) [<https://perma.cc/M62H-6L9G>].

68. Each exemption listed in the Tax Exemption Budget has an associated purpose. *Id.* at 259.

69. *Frequently Asked Questions – Sales Tax*, LA. DEP'T REVENUE, <http://www.revenue.louisiana.gov/FAQ/QuestionsAndAnswers/8> [<https://perma.cc/TNG6-7DVP>] (last visited Apr. 2, 2019).

70. Food for home consumption refers to those foods one purchases from the grocery store and means to prepare at home. *Id.*

71. Gleason, *supra* note 64, at 1716.

72. Scott Drenkard, *Three Big Problems with Sales Tax Today – and How to Fix Them*, TAX FOUND. (Feb. 10, 2017), <https://taxfoundation.org/three-big-problems-sales-tax/> [<https://perma.cc/5QJL-BA4Z>].

73. A 2012 study shows that citizens with household incomes from \$15,000–\$19,999 spend 10.2% of their incomes on groceries, but citizens with a household income above \$150,000 spend only 5.4% of their incomes on groceries. Jacob Goldstein, *How the Poor, The Middle Class and the Rich Spend Their Money*, NPR (Aug. 1, 2012, 10:51 AM), <http://www.npr.org/sections/money/2012/08/01/157664524/how-the-poor-the-middle-class-and-the-rich-spend-their-money> [<https://perma.cc/7YKP-XHFW>].

74. Louisiana had three separate sales tax holidays in 2017. Each lasted from two to three days and offered a reduction in the state sales tax rate assessed to applicable goods and services. The sales tax holidays included: (1) a hurricane-

goods or services a brief exemption—typically two to three days—from the assessment of the sales tax.⁷⁵ Unfortunately for consumers, however, Louisiana has recently pared back its use of sales tax holidays because of the budget issues the state faces.⁷⁶

II. EQUITY, EFFICIENCY, AND ADMINISTRATION OF LOUISIANA SALES TAX

The legislature seeks to make any tax equitable to those upon whom the government imposes it, efficient in raising revenue, and simple to administer.⁷⁷ These three factors are commonly used when evaluating the success of a tax,⁷⁸ and an evaluation of Louisiana's sales tax under these factors indicates room for improvement in all categories.⁷⁹

A. Equity: How Fair is Louisiana's Sales Tax?

When legislators create a tax system, one of the primary goals is equity.⁸⁰ A determination of the equity of a tax system looks at how the tax treats the targeted taxpayers from a fairness perspective.⁸¹ To determine the fairness of the tax, the legislature evaluates the tax using the

preparedness sales tax holiday; (2) an annual sales tax holiday; and (3) a Second Amendment weekend sales tax holiday. The hurricane-preparedness holiday offered a reduction in sales tax applicable to the first \$1,500 of the sales price of goods useful for safety and preparation for a hurricane—e.g., batteries, storm shutter devices, and portable, self-powered light sources. The annual sales tax holiday offered a reduction in sales tax rate on all consumer purchases of tangible personal property provided that the property is not for use in a business, trade, or profession. The exemption did not apply to purchases of taxable services. The Second Amendment weekend sales tax holiday offered a reduction in the sales tax rate on purchases of firearms, ammunition, and hunting supplies. *2017 Louisiana Sales Tax Holidays*, LA. DEP'T REVENUE, <http://revenue.louisiana.gov/SalesTax/SalesTaxHolidays> [https://perma.cc/XFC7-9G54] (last visited Apr. 2, 2019).

75. *Sales Tax Holidays: An Ineffective Alternative to Real Sales Tax Reform*, INST. ON TAX'N & ECON. POL'Y (July 2017), <https://itep.org/wp-content/uploads/SalesTaxHolidays2017.pdf> [https://perma.cc/TY9C-FBGY].

76. Rather than offer a full exemption of 5% from the sales tax, Louisiana's tax holidays offer only a partial exemption of a 3% state sales tax rate. *Id.*

77. *Understanding the Tax Reform Debate: Background, Criteria, & Questions*, GOV'T ACCOUNTABILITY OFF. (Sept. 2005), <https://www3.nd.edu/~mkirsch/fedtax/documents/gao-tax-policy.pdf> [https://perma.cc/3ND6-KS8V].

78. *Id.*

79. Drenkard, *supra* note 5.

80. *Understanding the Tax Reform Debate*, *supra* note 77.

81. Drenkard, *supra* note 5.

ability-to-pay principle,⁸² which states that those with a higher ability to pay should pay more in taxes than those with lesser ability to pay.⁸³ The ability-to-pay principle is refined into two smaller frameworks: horizontal and vertical equity.⁸⁴ Horizontal equity compares taxes paid among taxpayers with similar income levels but perhaps different familial situations.⁸⁵ Vertical equity refers to the distribution of taxes among taxpayers with differing income levels.⁸⁶ Due to the ethical issues and value judgments involved in making a determination of fairness, few absolute answers about the concept of fairness exist.⁸⁷

1. Vertical Equity

The most common criticism of a sales tax is that a sales tax in any form is regressive.⁸⁸ A regressive tax is one that takes a larger percentage of a lower income and a smaller percentage of a higher income;⁸⁹ that is,

82. *Id.*

83. A taxpayer's ability to pay can vary depending on the metric chosen to determine how much the taxpayer must give. A taxpayer's ability to pay can be based upon their overall wealth or their income. A taxpayer who worked for many years and then retired may have accumulated a significant amount of wealth and may therefore have a high ability to pay, but low current income. *Id.*

84. *Id.*

85. Examples of different familial living situations include whether the taxpayer is married or has children. Although this principle is not particularly controversial, it is often difficult to implement, as there are innumerable factors that could potentially influence whether two taxpayers are "similarly situated." NAT'L CONFERENCE OF STATE LEGISLATURES, TAX POLICY HANDBOOK FOR STATE LEGISLATORS (2d ed. 2003).

86. The idea of vertical equity is more challenging in both theory and practice. The concept can lend itself to a wide variety of tax structures depending on the articulated goals of the tax system. *Id.* Vertical equity is an evaluation of how much of the burden from a tax a family with \$200,000 of income should carry, versus a family with \$50,000 of income, versus a family with \$10,000 of income, etc. JOEL SLEMROD & JON BAKIJA, TAXING OURSELVES: A CITIZEN'S GUIDE TO THE DEBATE OVER TAXES (4th ed. 2008).

87. Advocates of varying kinds of vertical equity exist. Some believe taxes should be progressive, meaning that a family's total tax liability, as a fraction of income, rises with income. Others believe, however, that it is only fair to impose the same tax rate on everyone. Lastly, some favor more extreme, regressive taxes. Opinions widely vary about what makes for a fair sharing of the tax burden. Advocating one tax as fairer than another inherently implies one's moral and ethical values. *Id.*

88. Gleason, *supra* note 64, at 1714.

89. *Regressive Tax*, BLACK'S LAW DICTIONARY (10th ed. 2014).

a regressive tax causes lower-income citizens to pay a higher percentage of their incomes in taxes compared to the higher-income citizens. For example, a jurisdiction may have an applicable sales tax of 7%. If two individuals each purchase \$100 of clothing per week, each individual will pay \$7 in sales tax. The first individual earns \$2,000 per week, making the sales tax rate on his purchase 0.35% of his income. The other individual makes \$320 per week, resulting in the sales tax rate on this individual's purchase being 2.2% of his income. Louisiana's significant reliance on sales tax is therefore a regressive system imposed on its citizens.⁹⁰

Legislators turned to the sales tax in the face of an impending budget shortfall because other options included cutting spending in essential areas such as healthcare and higher education.⁹¹ The equity effect of continuing to increase an already high sales tax will impact low-income citizens, imposing on them a larger burden of tax liability.⁹²

Prior to the sales tax increase from 4% to 5%, a report from the Institute on Taxation and Economic Policy ("ITEP") indicated that citizens who earn the lowest 40% of income in Louisiana pay 10% of their incomes in state and local taxes.⁹³ Citizens who earn the highest 1% of income in Louisiana paid only 4.2% of their incomes in state and local taxes.⁹⁴ ITEP further analyzed the potential effect of increasing the rate from 4% to 5%.⁹⁵ The results showed that the lowest 40% of income-earners would then pay 10.8% of their incomes—an increase of 0.8%—to state and local taxes, but the tax liability of the top 1% of income earners would increase by only 0.1% to a total of 4.3% of their incomes.⁹⁶ The 1% increase in the sales tax increased the percentage of income paid to state and local taxes eight times more for the lowest 40% of income earners than it did for the highest 1% of income earners.⁹⁷

90. *Who Pays Report*, INST. ON TAX'N & ECON. POLICY (Jan. 13, 2015), <https://itep.org/whopays/louisiana/> [<https://perma.cc/H6K5-YQDP>].

91. Grace Reinke, *A Stronger EITC Can Mitigate Sales Tax Increase*, LA. BUDGET PROJECT (Feb. 2, 2016), <http://www.labudget.org/lbp/2016/02/a-stronger-eitc-can-mitigate-sales-tax-increase/> [<https://perma.cc/CYC3-NDNB>].

92. *Id.*

93. *Who Pays Report*, *supra* note 90. ITEP as used in this Comment is not to be confused with the Louisiana Industrial Tax Exemption Program, which carries a similar acronym.

94. *Id.*

95. *Id.*

96. *Louisiana: State & Local Taxes in 2015*, INST. ON TAX'N & ECON. POLICY (Jan. 13, 2015), <https://itep.org/whopays/louisiana/> [<http://perma.cc/H6K5-YQDP>].

97. *Id.*

These figures indicate that Louisiana's state and local tax system as a whole is regressive.⁹⁸ Similar data applied only to Louisiana's sales tax offers evidence that the significant reliance on the sales tax is the primary cause of the regressive state and local tax.⁹⁹ In 2015, before the increase in the sales tax rate, Louisiana families in the lowest 20% of income—earning less than \$17,000 per year—spent 8.5% of their incomes on sales taxes.¹⁰⁰ Alternatively, families in the top 1% of income—earning over \$470,000 per year—paid only 1.2% of their incomes in sales taxes.¹⁰¹ These figures make Louisiana's sales tax considerably regressive when citizens' ability to pay is based on yearly family income.¹⁰²

The policies like the exemption from state sales tax on groceries and several sales tax holidays that are meant to make the sales tax less regressive are not sufficient to make the sales tax more progressive.¹⁰³ The policies have some effect,¹⁰⁴ but as the data on percentage of income spent on sales tax for low-income families as compared to higher-income families indicate, the policies do not prevent the sales tax from being considerably regressive.¹⁰⁵ The policies' broadness likely is the cause of their ineffectiveness.¹⁰⁶

As a side effect of the exemption on food for home consumption, the state significantly narrows the tax base.¹⁰⁷ To justify the considerable loss of revenue the sales tax exemption on food for home consumption causes, the equity benefits must be substantial.¹⁰⁸ Although the benefits are significant for low-income citizens who must spend more of their income

98. *Who Pays Report*, *supra* note 90.

99. *Id.*

100. *Louisiana: State & Local Taxes in 2015*, *supra* note 96.

101. This trend of lower-income families paying a higher percentage of their incomes to sales taxes is consistent across all income brackets. The second 20% of income families—\$17,000 to \$32,000—paid 7.8% of their incomes to sales taxes; the middle 20% of income families—\$32,000 to \$51,000—paid 6.7% of their incomes to sales taxes; the fourth 20% of income families—\$51,000 to \$92,000—paid 5.6% of their incomes to sales taxes; the next 15% of income families—\$92,000 to \$186,000—paid 4.0% of their incomes to sales taxes; and the next 4% of income families—\$186,000 to \$470,000—paid 2.3% of their incomes to sales taxes. *Id.*

102. *Id.*

103. LA. DEP'T OF REVENUE, *supra* note 67.

104. Drenkard, *supra* note 72.

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

on food, high-income citizens also feel the benefits.¹⁰⁹ The fact that all citizens receive some benefit from the sales tax exemption limits the exemption's ability to make the sales tax more progressive.¹¹⁰ Legislators may have enacted the benefit to help low-income citizens, but by offering the exemption to all citizens, the legislators get less "bang for their buck" with regard to making the tax more progressive.¹¹¹ Blanket exemptions are too poorly targeted to allow for significant change in a tax system's equity.¹¹²

Legislators also poorly targeted the sales tax holidays.¹¹³ All citizens may benefit from the sales tax holiday, which limits the tax holiday's ability to make the sales tax less regressive.¹¹⁴ Further, high-income citizens are better positioned to benefit from the tax holiday because they have more flexibility with regard to the timing of their purchases.¹¹⁵ Low-income citizens must spend most or all of their income on necessities from a week-to-week basis to ensure that they maintain a sufficient standard of living.¹¹⁶ Spending most or all of their incomes as soon as they arrive limits low-income citizens' control over the times of the year in which they will have disposable income to buy the goods offered during a sales tax holiday.¹¹⁷

Data shows that when yearly income is used as the measure of ability to pay, Louisiana's sales tax is considerably regressive.¹¹⁸ The efforts of the legislature to make the sales tax more progressive are thus not sufficient to improve the fairness of the state sales tax.¹¹⁹

2. *Horizontal Equity*

A horizontal equity analysis of the sales tax requires examination of the impact of socioeconomic factors on the tax's effect on taxpayers.¹²⁰

109. *Id.*

110. *Id.*

111. *Options for a Less Regressive Sales Tax*, INST. ON TAX'N & ECON. POL'Y (Sept. 2016), <https://itep.org/wp-content/uploads/lessregresssalespb2016.pdf> [<https://perma.cc/BZ8H-3F5Q>].

112. *Id.*

113. *Sales Tax Holidays*, *supra* note 75.

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

118. *Who Pays Report*, *supra* note 90.

119. *Id.*

120. Gleason, *supra* note 64, at 1721.

The size of the taxpayer's household is one of the most impactful socioeconomic factors¹²¹ because a sales tax burdens large families more than smaller families.¹²² Larger households must spend a higher percentage of income on taxable goods to achieve the same standard of living, as providing for more people in the household requires more spending.¹²³ Studies have shown that expenses are higher for households with more people, although income levels and geographic location may impact the range of difference.¹²⁴ A study based on median income households in Des Moines, Iowa, showed that households with two parents and three children had monthly expenses of \$6,358, but households with only a couple had \$3,132 in monthly expenses.¹²⁵ From 1960 to 2016, the national average household size dropped from 3.33 to 2.53 members.¹²⁶ Since 2008, Louisiana has maintained an average of 2.61 people per household.¹²⁷ This trend towards smaller household sizes contributes to more horizontal progressiveness.¹²⁸

Louisiana's sales tax is not equitable because of its regressive nature. From a vertical equity standpoint, the tax places a much higher burden on

121. *Id.*

122. JOHN F. DUE, SALES TAXATION: STATE AND LOCAL STRUCTURE AND ADMINISTRATION 37 (1983).

123. *Id.*

124. Different geographic areas have different costs for expenses such as housing and child care. Elise Gould, *What Families Need to Get By*, ECON. POL'Y INST. (Aug. 26, 2015), <http://www.epi.org/publication/what-families-need-to-get-by-epis-2015-family-budget-calculator/> [<https://perma.cc/ECK7-SYTY>].

125. The study chose Des Moines, Iowa for this survey because the city was selected as the median family budget area for a two-parent, two-child family. *Id.* Researchers conducted a similar study in California, which showed that families of six or more earning less than \$10,000 per year spend 54% of their incomes on taxable purchases, compared to married couples with no children who spend 39% of their incomes on taxable purchases. This study showed that larger households spending more on taxable goods held true for all income levels. JAMES PATTERSON, THE ESTIMATED IMPACT OF CALIFORNIA'S STATE AND LOCAL SALES TAX ON HOUSEHOLDS 11, 14 (1980).

126. *Average Number of People Per Household in the United States from 1960 to 2016*, STATISTA (2017), <https://www.statista.com/statistics/183648/average-size-of-households-in-the-us/> [<https://perma.cc/DU9A-MRKM>].

127. This survey showed Louisiana as having the 18th highest persons-per-household figure in the United States. *Persons per Household for Louisiana*, CIVIC DASHBOARDS BY OPENGOV, http://www.cividdashboards.com/state/louisiana-04000US22/persons_per_household [<https://perma.cc/MM82-USMZ>].

128. DUE, *supra* note 122.

low-income families than it does higher-income families.¹²⁹ The relatively low average number of persons per household in Louisiana allows the state to avoid being classified as horizontally regressive.¹³⁰ Louisiana should take further steps to improve the vertical equity of the sales tax; along with the equity of the sales tax, the ability of the tax to sufficiently raise money for the state is essential to its effectiveness.¹³¹

B. Revenue Raising

Efforts to make the sales tax more equitable through exemptions have collateral effects on the revenue-raising ability of the sales tax.¹³² Louisiana relies heavily on its sales tax for revenue.¹³³ In 2016, Louisiana legislators passed laws to temporarily increase the amount of revenue the sales tax raises by way of imposing the tax on some previously exempted transactions and increasing the sales tax rate from 4% to 5%.¹³⁴ The temporary sales tax rate increase is evidence that the sales tax was not providing sufficient revenue to the government.¹³⁵

The primary reason the sales tax is not effective in raising adequate revenue for the state is that exemptions and exclusions account for a significant amount of revenue losses each year.¹³⁶ For Fiscal Year 2015–2016, Louisiana collected \$2.9 billion in sales taxes.¹³⁷ The estimated revenue lost from exemptions was \$2.7 billion¹³⁸—Louisiana lost 48.2% of total potential collections from the sales tax to exemptions.¹³⁹ The \$2.7 billion in revenue loss for the fiscal year ending in 2016 was less than the

129. *Who Pays Report*, *supra* note 90.

130. *Understanding the Tax Reform Debate*, *supra* note 77.

131. *Id.*

132. SLEMROD & BAKIJA, *supra* note 86, at 165.

133. *Id.*

134. Act 25 of the 2016 First Extraordinary Legislative Session enacted Louisiana Revised Statutes §§ 47:302(V), 47:321(L), 47:331(S), which provide that certain state exclusions and exemptions are operative but others are not for a designated period of time.

135. *Id.*

136. *Primer on State Tax Structure in Louisiana*, *supra* note 60, at 9.

137. *Id.*

138. *Id.*

139. The top three costliest exemptions from the sales tax come from: (1) the exemption on sales of food for preparation and consumption in the home—\$424 million; (2) the exemption on drugs physicians or dentists prescribe—\$359 million; and (3) the exemption on sales of gasoline, gasohol, and diesel—\$328 million. *Id.* at 9, 11.

loss that occurred in the two preceding years, in which \$3 billion and \$2.9 billion were lost in 2014 and 2015, respectively.¹⁴⁰

Each exemption is purposely in place; the DOR identifies the exemptions in the annual Tax Exemption Budget that it puts out each year.¹⁴¹ The DOR has been tasked with providing a thorough analysis of the exemptions that the state offers,¹⁴² including an opinion of whether or not the tax is fulfilling its designated purpose in a fiscally effective manner and revealing any “[u]nintended or inadvertent effects, benefits, or harm caused by each tax exemption.”¹⁴³ The DOR, however, states that because of data limitations, it is not able to provide information regarding: (1) the cost of administering and implementing each exemption; (2) a determination of whether each tax exemption has been successful in meeting the exemption’s original purpose and providing benefits to those originally intended; (3) a determination of whether each tax exemption is the most fiscally effective means of achieving its purpose; (4) a determination of unintended or inadvertent effects, benefits, or harm each exemption causes; and (5) a determination of whether each exemption simplifies or complicates the state tax statutes.¹⁴⁴

140. The decrease in the amount of revenue lost to exemptions is likely because of the state’s temporary suspension of certain exemptions effective in April 2016. *Id.* at 34.

141. *Id.* at 1.

142. The DOR is statutorily assigned to include the following information pertaining to the state’s tax exemptions: (1) listing of each tax exemption; (2) statutory citation; (3) purpose; (4) estimate of revenue loss to the state for the three preceding years; (5) estimate of revenue loss to the state for the current fiscal year; (6) estimate of revenue loss to the state for the ensuing fiscal year; (7) estimated cost of administering and implementing each tax exemption for the three preceding fiscal years, the current fiscal year, and the ensuing fiscal year; and (8) a schedule listing all tax exemptions by categories. *Id.*

143. The full list of assessments the DOR has been designated to make include: (1) whether or not each tax exemption has been successful in meeting the purpose for which it was enacted, in particular, whether each tax exemption benefits those originally intended to be benefitted, and if not, those who do benefit; (2) whether each tax exemption is the most fiscally effective means of achieving its purpose; (3) unintended or inadvertent effects benefits, or harm each tax exemption causes, including whether each tax exemption conflicts with other state laws or regulations; and (4) whether each tax exemption simplifies or complicates the state tax statutes. *Id.*

144. In the Tax Exemption Budget, the DOR states that it currently does not capture the data required to offer an opinion on the information stated. “The lack of historical data for specific exemptions, both financial and statistical in nature,

Without the necessary data to make evaluations of the exemptions, legislators do not have adequate information available to make decisions about whether exemptions are effective or even necessary.¹⁴⁵ Legislators are left blindly continuing exemptions while nearly half of the collectable revenue from sales taxes is lost to exemptions annually.¹⁴⁶

The information necessary to make effective decisions regarding exemptions may be difficult to obtain.¹⁴⁷ Currently, vendors who collect the sales tax record the exemptions they are claiming on their tax form so that the state can keep track of the revenue lost on each exemption.¹⁴⁸ Obtaining information for exemptions lumped into an “other” category is extremely difficult.¹⁴⁹ Vendors would need to identify precisely which exemptions they are claiming on sales tax return forms, resulting in an extensive list because of the many exemptions.¹⁵⁰ The burden on vendors could decrease if the vendors claim the same exemptions with each tax return, as the DOR could keep the relevant exemptions on file for the next return after the initial sorting of all exemptions used.¹⁵¹ Although the overly complicated reporting system is a burden on vendors, the information gained through an improved reporting system would help to remove unnecessary exemptions.¹⁵²

The sales tax has not sufficiently taken advantage of services as a source of revenue.¹⁵³ Louisiana’s focus on the purchase of tangible personal property—goods—and exempting services from the sales tax has helped to narrow the sales tax base over time.¹⁵⁴ American consumption habits have shifted over the years, making the lack of services under the sales tax an issue.¹⁵⁵ American consumption is no longer primarily

limits the Department’s ability to make a determination with any significant confidence about its degree of accuracy.” *Id.* at 2.

145. TASK FORCE, *supra* note 2, at 70.

146. *Primer on State Tax Structure in Louisiana*, *supra* note 60, at 2.

147. TASK FORCE, *supra* note 2, at 70.

148. *Id.*

149. The “other” category, although comprised of less common exemptions, accounts for \$800 million in value, or nearly 30% of total revenue lost to exemptions. *Id.*

150. *Id.*

151. *Id.*

152. *Id.*

153. Drenkard, *supra* note 5, at 43.

154. *Id.*

155. *Id.*

goods;¹⁵⁶ instead, America is consuming services.¹⁵⁷ In 1949, the purchase of goods accounted for just over 60% of total United States personal consumption expenditures with services accounting for the remaining balance.¹⁵⁸ The purchase of goods as a portion of total U.S. personal consumption has been declining consistently since that time, eventually accounting for only 35% of total personal consumption expenditures in 2013, with spending on services accounting for the rest.¹⁵⁹ The decrease is a reflection of the changing times—for example, as less is spent on paper and envelopes to write letters, more is spent on internet access to send emails.¹⁶⁰ Louisiana has not modernized its sales tax to include many of the services more prevalent in today's economy.¹⁶¹

Louisiana must address the narrow tax base to which the sales tax is applied to improve the revenue-raising ability of the tax. The current base limits the state and has caused the tax rate to be continually increased to meet revenue demands.¹⁶² Louisiana must determine the proper tax base to efficiently administer the sales tax.

C. Administration

A well-designed sales tax is one that does not have an unduly complex or burdensome administration.¹⁶³ Efficient administration can be difficult to achieve when the state is trying to meet other tax goals, such as equity.¹⁶⁴ Administrative difficulties arise; for example, issues arising from a line for tickets at the movies¹⁶⁵—a movie ticket line moves quickly when there is one basic admission price, but moves slower when there are separate charges for children, adults, seniors, veterans, and students.¹⁶⁶

156. *Id.*

157. *Expanding Louisiana's Sales Tax—A Little from Everyone Means a Lot for Louisiana*, LA. BUDGET PROJECT (Apr. 2011), <http://www.labudget.org/wp-content/uploads/2011/10/Expanding-Louisianas-Sales-Tax.Paper-5-FINAL.pdf> [<https://perma.cc/EDK3-6B4E>].

158. Drenkard, *supra* note 5, at 43.

159. *Id.*

160. *Expanding Louisiana's Sales Tax*, *supra* note 157.

161. Drenkard, *supra* note 5, at 43.

162. *Id.*

163. Harley Duncan, *Administrative Mechanisms to Aid in the Coordination of State and Local Retail Sales Taxes with a Federal Value-Added Tax*, 63 TAX L. REV. 713, 717 (2010).

164. SLEMROD & BAKIJA, *supra* note 86, at 165.

165. *Id.*

166. *Id.*

The line will move even slower still when the theater requires identification to confirm that the purchaser falls in to a particular class.¹⁶⁷

Louisiana's sales tax suffers from similar administrative deficiencies.¹⁶⁸ Necessities exist that all citizens must buy, so an exemption from the sales tax on such items promotes fairness.¹⁶⁹ The government also seeks to encourage certain transactions in various industries, so it creates sales tax exemptions on transactions common within certain industries to provide a benefit.¹⁷⁰ The government continues to reach goals through the sales tax, resulting in 204 exemptions to the state sales tax.¹⁷¹ In addition to narrowing the tax base, exemptions make the sales tax complex for retailers to which the government assigns collecting the tax.¹⁷²

The bifurcated system used to implement the sales tax at the state and local levels further compounds administrative difficulties in Louisiana—one of only two states to use such a system.¹⁷³ Exemptions applicable at the state level may not be applicable at the local level.¹⁷⁴ Further, rates and the tax base may differ not only at the state and local levels, but also from city to city within individual parishes.¹⁷⁵ Each of these components together has made Louisiana's sales tax one of the most difficult on businesses in the country.¹⁷⁶

Issues of duplicative collection and administration arise from the use of such a bifurcated system.¹⁷⁷ The Public Affairs Research Council of

167. *Id.*

168. TASK FORCE, *supra* note 2, at 33.

169. An example of such an exemption is the exemption on food for home consumption, the purpose of which is stated to be to “provide financial relief to the general public on food purchases.” *Id.* at 251–58, 359.

170. Examples include: (1) cable television installation and repair services are exempt from the sales tax by Louisiana Revised Statutes § 47:305.16; (2) qualifying seafood-processors may purchase materials, supplies, and repair services exempt from the sales tax under Louisiana Revised Statutes § 47:205.20(C); and (3) the first \$50,000 of the sales price on qualifying farm equipment is exempt from sales tax under Louisiana Revised Statutes § 7:305.25. LA. DEP'T OF REVENUE, *supra* note 67, at 325, 327–28.

171. *Id.* at 251–58.

172. Duncan, *supra* note 163, at 718.

173. Louisiana administers a sales tax at both the state and local levels, meaning local-level agencies and state-level agencies both conduct collections. Louisiana is one of the few states with such a system. Drenkard, *supra* note 5.

174. TASK FORCE, *supra* note 2, at 33.

175. *Id.*

176. Louisiana's sales tax is rated 50th in the country for simplicity for businesses. Drenkard, *supra* note 5.

177. *Id.*

Louisiana (“PAR Louisiana”) has argued that the sales tax collection system in Louisiana is outdated, inefficient, and out of line with the best practices in most other states.¹⁷⁸ PAR Louisiana asserts that the bifurcated collection system has created an unnecessary burden on businesses, especially those that operate in multiple parishes.¹⁷⁹ Loss of revenues results from poor, inconsistent, and inequitable enforcement of an outdated system.¹⁸⁰ The added costs on businesses come from the difficulties of filtering through multiple tax bases to find out which transactions were taxable in different jurisdictions.¹⁸¹ The overly difficult process provides businesses more incentive to avoid collecting the tax on certain transactions if businesses are unsure of the proper way to administer the tax, resulting in the state losing money.¹⁸²

Louisiana’s sales tax structure also poorly positions the state to collect sales tax on internet purchases from out-of-state vendors.¹⁸³ Legislators have introduced laws at the federal level to allow states to require out-of-state vendors to collect state sales tax, but no such legislation has been passed yet.¹⁸⁴ The Marketplace Fairness Act (“MFA”) is one such piece of legislation.¹⁸⁵ The law would allow states to require out-of-state sellers to collect sales tax, but only if the state’s sales tax system was sufficiently simple, so as not to place too much of a burden on the out-of-state vendors.¹⁸⁶ It is unclear how much revenue Louisiana could potentially lose if it were unable to collect the sales tax because of its own complicated system, but the state would be at a disadvantage compared to other states that can collect the tax.¹⁸⁷

Louisiana should unify and simplify its state and local sales tax system for the benefit of local businesses that must collect the tax. The current system creates an unfriendly business climate that makes the state uncompetitive when trying to bring in new businesses that are able to

178. *Louisiana’s Taxes: Problems, Solutions, and the Controversy of Reform*, PUB. AFFAIRS RES. COUNCIL 3 (Apr. 2013), <http://parlouisiana.org/wp-content/uploads/2016/03/Louisianas-Taxes-Problems-Solutions-and-the-Controversy-of-Reform.pdf> [<https://perma.cc/T7CK-8LVG>].

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.*

183. Drenkard, *supra* note 5.

184. *Id.*

185. *Id.*

186. *Id.*

187. *Id.*

choose other states,¹⁸⁸ and Louisiana should thus take several steps to improve the sales tax's equity, efficiency, and administration.

III. HOW LOUISIANA CAN IMPROVE THE STATE AND LOCAL TAX SYSTEM

Louisiana's current state and local sales tax system is regressive, insufficient to raise revenue, and unnecessarily difficult to administer.¹⁸⁹ Lawmakers must improve the state and local sales tax and remedy these issues. An overhauled tax system should feature a broad base combined with low rates.¹⁹⁰ To improve the equity and efficiency of the state and local sales tax, Louisiana should broaden the base by expanding it to include more services and removing certain exemptions. The state could then lower the current sales tax rate without losing a considerable amount of its revenue. Lowering the rate would also combat Louisiana's notoriety as the state with the highest sales tax in the nation.¹⁹¹ The state can improve the administrability of Louisiana's state and local sales tax by discontinuing the current multiple-collector system and instead having one sales tax collector for both the state and local levels. Louisiana should also unify the tax base as much as possible at the state and local levels so that businesses can be sure which taxes they are responsible for collecting, making collection an easier responsibility.

A. Broadening the Base and Lowering the Rate

A narrow tax base has limited the revenue-raising abilities of Louisiana's state and local sales tax.¹⁹² Louisiana should expand the sales tax to more services than are currently applicable. An expansion of the sales tax base to include more services has been a common tactic in states throughout the country that want to improve the revenue-raising ability of their sales taxes.¹⁹³ Hawaii, South Dakota, and New Mexico have comprehensive sales taxes that include most services.¹⁹⁴ Maine and New Jersey, although not taxing services comprehensively, have expanded their

188. *Id.*

189. *Id.*

190. Michele E. Hendrix & George R. Zodrow, *Sales Taxation of Services: An Economic Perspective*, 30 FLA. ST. U. L. REV. 411, 414 (2003).

191. *Id.*

192. Drenkard, *supra* note 5.

193. *Expanding Louisiana's Sales Tax*, *supra* note 157.

194. *Id.*

sales taxes to include more personal care services.¹⁹⁵ Maine expanded its sales taxes in 2009 to include services such as entertainment admissions, auto and equipment repairs, and laundry and car washes, generating a 4.4% increase in sales tax collections.¹⁹⁶ New Jersey was able to achieve a 5% increase in sales tax receipts by expanding its sales tax base to include a dozen new services in 2006.¹⁹⁷

Louisiana has several options to expand its sales tax base. The goal of expanding the base should be for the state to lower the sales tax rate without sacrificing the currently expected revenue from the sales tax.¹⁹⁸ The low rate ensures that the tax does not have a severe impact on any individual and instead follows the principle of taking a little from everyone to provide benefit to all.¹⁹⁹ The state can achieve this goal through a “maximum option” that would involve making the sales tax base broad to lower the rate as much as possible but still meet revenue expectations.²⁰⁰

For Fiscal Year 2018, Louisiana expected the sales tax to produce about \$3.9 billion with a 4.45% rate in place.²⁰¹ Louisiana should broaden the tax base and apply the full sales tax rate to purchases that have been exempt or partially exempt from the sales tax. The base expansion could include food for home consumption, prescription drugs, and residential utilities—three of the most valuable exemptions from the sales tax.²⁰² The base expansion could also include the expanded base that Act 26 of the First Special Session of 2016 instilled, which amended many exemptions. The expanded base also could include purchases of manufacturing machinery, equipment, and industrial utilities. Finally, the base could expand to include more services, such as the sales tax on personal and data services that Texas applies to its sales tax base.²⁰³ A 5% sales tax rate using this expanded base could potentially increase revenue by about \$2 billion up to \$5.9 billion.²⁰⁴ The state would make the same \$3.9 billion in revenue

195. Michael Mazerov, *Expanding Sales Taxation of Services: Options and Issues*, in CENTER ON BUDGET AND POLICY PRIORITIES (Aug. 2009).

196. *Expanding Louisiana's Sales Tax*, *supra* note 157.

197. *Id.*

198. TASK FORCE, *supra* note 2, at 42.

199. *Expanding Louisiana's Sales Tax*, *supra* note 157.

200. TASK FORCE, *supra* note 2, at 42.

201. *Official Revenue Forecast*, LA. FISCAL OFF. (2018), <http://lfo.louisiana.gov/files/revenue/REC%2004-12-18%20APPROVED%20SGF.pdf> [<https://perma.cc/P62P-CEJE>].

202. The Louisiana Constitution has included these exemptions since 2002. *General Sales & Use Tax*, *supra* note 54, at 11.

203. TASK FORCE, *supra* note 2, at 42.

204. *Id.*

originally expected by lowering the rate down to 3.4%.²⁰⁵ Louisiana should move its state tax rate down to 3.4% by either lessening its reliance on the sales tax for revenue and instead looking to other taxes for more revenue²⁰⁶ or by eliminating minor tax exemptions located within the “other” category previously described.²⁰⁷ Louisiana should lower its sales tax rate as much as possible but maintain expected revenue levels.

Although the maximum solution presents an opportunity to broaden the tax base and lower the tax rate as much as possible, issues with this strategy exist. The primary concern is the feasibility of incorporating the changes into the state sales tax system with political and economic pressures.²⁰⁸ A similar undertaking, on a smaller scale, such as seeking to return the tax rate to the 4% rate that was in place prior to the increase in 2016,²⁰⁹ may be a better path to avoid the political and economic impacts of such drastic change.

Louisiana could attain a sales tax rate of 4% with equal revenue expectations from an expansion of the tax base. In addition to the standard sales tax base, Louisiana should keep the expanded sales tax base from 2016; remove the food-for-home-consumption exemption at the state level but allow it to remain at the local level; remove the exemption on residential utilities; and add the services former Governor Bobby Jindal suggested in 2013.²¹⁰ The state would add about \$400 million by removing the exemption on food for home consumption, around \$200 million by removing the exemption on residential utilities, and about \$145 million by expanding the tax base to include those services;²¹¹ the state could achieve

205. *Id.*

206. For example, Louisiana could seek more revenue from the income tax, as was the case with the Stelly Plan, which reduced the state’s reliance on the sales tax for revenue and increased reliance on the state income tax. Kalinka, *supra* note 22.

207. TASK FORCE, *supra* note 2, at 42.

208. *Id.*

209. *Id.*

210. Services the state would tax from the 2013 proposal include: (1) scenic and sightseeing transportation services and support activities for transportation; (2) veterinary services; (3) cable and other subscription services; (4) performing arts; (5) promotional services for performing arts and sports and public figures; (6) independent artists, writers and performers; (7) museum, heritage, zoo, and recreational services; (8) personal care services; and (9) other personal services. James Richardson, Steven Sheffrin & James Alm, *Income and Sales Tax Options: Broad Base and Low Rates*, LA. DEP’T REVENUE, <http://revenue.louisiana.gov/Miscellaneous/Income%20and%20Sales%20Tax%20Options%20-%20Broad%20Base%20and%20Low%20Rates.pdf> [https://perma.cc/C5GU-A9TR] (last visited Dec. 15, 2018).

211. *Id.*

the same expected \$4.3 billion. The state would need to remove fewer constitutional exemptions with this option than the maximum option. The constitutional exemptions cause the state to lose the most revenue, making it difficult to allow for any significant lowering of the tax rate without removing at least some constitutional exemptions.²¹²

Adding additional services would likely cause political controversy.²¹³ A stated purpose underlines each exemption in Louisiana.²¹⁴ To remove exemptions, legislators must be convinced that the purpose is no longer valid, or that the exemption does not properly serve its intended purpose.²¹⁵ Convincing legislators that they must remove the exemptions requires proper analysis of the exemptions.²¹⁶ Analysts must record sufficient data about the exemptions to provide proof to the legislators that the exemptions are not necessary.²¹⁷ The addition of services into the tax base creates administrative difficulties as well.²¹⁸ Government administrative and enforcement costs would increase with new services, as would compliance costs vendors incur that were not previously included in the tax base.²¹⁹ The administrative costs come from new businesses that will have to register and learn how to properly collect the tax.²²⁰ The benefits gained from the change to the tax base outweigh the burden imposed.²²¹

Adding services to the tax base, however, has benefits aside from the added revenue.²²² The additional services help to make the sales tax more progressive²²³ when high-income households disproportionately consume the added services.²²⁴ The tax base should include services that high-income citizens more frequently consume, thereby helping to make the sales tax less regressive.²²⁵

212. *Primer on State Tax Structure in Louisiana*, *supra* note 60, at 11.

213. Joseph R. Crosby, *Sales Tax on Services Theory & Challenges*, LA. HOUSE REPRESENTATIVES (Nov. 18, 2015), <http://house.louisiana.gov/tsmc/Documents/2015/Nov/Crosby%20-%20Louisiana%20Sales%20Tax%20Streamlining%20and%20Modernization%20Commission%20Presentation%2018%20Nov%202015.pdf> [<https://perma.cc/4NH2-JJYZ>].

214. LA. DEP'T OF REVENUE, *supra* note 67.

215. *Id.*

216. TASK FORCE, *supra* note 2, at 70.

217. *Id.*

218. Crosby, *supra* note 213.

219. Hendrix & Zodrow, *supra* note 190, at 431.

220. *Id.*

221. *Id.*

222. *Id.* at 419.

223. *Id.*

224. *Id.*

225. Richardson, Sheffrin & Alm, *supra* note 210.

Adding services to the tax base also improves its revenue stability.²²⁶ Revenue variability of a narrowly based sales tax—which excludes food for home consumption, personal and repair services, recreational services, and motor vehicle fuels—is nearly twice that of a more broad-based sales tax.²²⁷ Adding services to the tax base thus improves revenue stability because of the increase in services as a portion of consumer spending over time.²²⁸

An expanded base will allow Louisiana's sales tax to become more progressive, efficient, and stable, and allow the state to be less prone to a future budget deficit crisis.²²⁹ The more efficient sales tax will benefit the state and its citizens, but the state must also make additional improvements to the administration of the sales tax to make Louisiana competitive in the eyes of potential businesses.²³⁰

B. Unifying the State and Local Tax Base and Collection System

The benefits gained from an expanded tax base and lower rate will be diminished if Louisiana does not also improve the administration of the sales tax.²³¹ The state and local sales tax administration system should be made simpler for business and taxpayers. Louisiana should therefore implement a uniform sales tax administration and collection system.²³² The current system of collecting the sales tax at both the state and local level is inconsistent with the most effective practices across the country.²³³ Unifying both the sales tax collection system and the tax base between state and local governments is also required before Louisiana may collect state and local sales taxes on internet purchases outside of the state should the legislature remove the current prohibition on such collections.²³⁴

Louisiana must take several steps to become compliant under the MFA and thus able to require out-of-state sellers to collect sales tax.²³⁵ The most effective way to achieve tax streamlining and to satisfy the MFA is to create an independent, joint-run state-local sales tax authority composed

226. Hendrix & Zodrow, *supra* note 190, at 418.

227. Richard F. Dye, *Growth and Variability of State Individual Income and General Sales Taxes*, 44 NAT'L TAX J. 55, 58–60 (1991).

228. Hendrix & Zodrow, *supra* note 190, at 419.

229. Drenkard, *supra* note 5.

230. *Id.*

231. *Id.*

232. *Id.*

233. *Louisiana's Taxes*, *supra* note 178, at 3.

234. Drenkard, *supra* note 5, at 52.

235. *Id.*

of representatives from local tax collection bodies and the state DOR.²³⁶ In 2013, Arizona changed its tax collection system, which was similar to Louisiana's current system, by terminating the right of municipalities to perform separate audits on taxpayers.²³⁷ Instead, a single state-level entity must perform all audits of taxpayers with multiple locations in Arizona.²³⁸ Louisiana should follow Arizona's lead and create a single authority to administer and collect both state and local sales taxes to streamline the sales tax collection system, making it easier to administer.

A single-collector system may cause issues with local jurisdictions.²³⁹ Sales taxes are an important source of revenue for local authorities, and removing some of their power over the tax may cause concerns²⁴⁰ about whether the collecting entity will efficiently and accurately remit the sales tax that belongs to local jurisdictions.²⁴¹ The single-entity collector, however, should include members who have the best interests of local jurisdictions in mind to prevent unfairness towards the localities. Concerns from local jurisdictions should be quelled by the fact that Louisiana is one of only two states that still allow collection of the sales tax at the local level²⁴²—the unified method works throughout nearly the entire country, and Louisiana should also follow this method.²⁴³

Along with unifying the collections and auditing system, the state should unify the tax base between state and locals. This step is necessary to be able to require out-of-state vendors to collect the sales tax and would greatly decrease the burden on vendors within the state.²⁴⁴ Removing the state-level exemption on food and prescription drugs is in line with this unification. The legislature should remove optional exemptions at the local level so that the tax base may be consistent across jurisdictions.²⁴⁵ A consistent tax base will lessen the burden on vendors who make sales in multiple jurisdictions and must decipher which transactions are taxable in each of the jurisdictions.²⁴⁶

236. *Id.*

237. *Arizona Enacts Transaction Privilege Tax Changes*, GRANT THORNTON LLP (Aug. 9, 2013).

238. *Id.*

239. Richardson, Sheffrin & Alm, *supra* note 210.

240. *Id.*

241. *Id.*

242. Drenkard, *supra* note 5.

243. *Id.*

244. *Id.* at 55.

245. *Id.*

246. *Id.*

CONCLUSION

Louisiana's current state and local sales tax falls short in three major areas of tax evaluation.²⁴⁷ The sales tax is regressive because of the higher burden it places on low-income citizens as compared to high-income citizens.²⁴⁸ The state loses nearly the same amount of revenue as it earns because of the many exemptions from taxation and because of the lack of services included in the tax base.²⁴⁹ The tax is rated as one of the worst in the nation for simplicity and administrability.²⁵⁰ The deficiencies of the sales tax have become more prevalent as Louisiana has answered recent budget deficits by increasing the sales tax rate.²⁵¹ Louisiana should implement tax reform within the state and local sales tax to improve revenues and make the tax competitive with other states.

An expansion of the tax base and reduction of the tax rate will allow the tax to better meet the tax goals. Removing exclusions will simplify the sales tax system and improve revenue raising; adding more services to the tax base will also improve the revenue-raising ability of the tax with the added benefits of increasing revenue stability and making the sales tax slightly more progressive. The state should conduct the collection and auditing process of the state and local sales tax in compliance with the MFA so that Louisiana may collect sales tax from out-of-state vendors if the Louisiana Legislature passes legislation allowing collection. Updating the state and local sales tax system under the requirements of the MFA will also make tax collection simpler and align Louisiana with the best practices most states use.²⁵² Following these guidelines will also help Louisiana to avoid massive budget deficits in the future like those strangling the state's spending ability today.

*Hayden O. Bigby**

247. TASK FORCE, *supra* note 2.

248. *Sales Tax Holidays*, *supra* note 75.

249. *Primer on State Tax Structure in Louisiana*, *supra* note 60, at 251–58.

250. Drenkard, *supra* note 5.

251. TASK FORCE, *supra* note 2, at 29.

252. Drenkard, *supra* note 5.

* J.D./D.C.L. 2019. Paul M. Hebert Law Center, Louisiana State University.