TAX/SALES & USE: Provides criteria for the definition of "dealer" for purposes of the sales tax imposed on transactions involving a remote seller (Item #26)

AN ACT

To amend and reenact R.S. 47:339(A)(2) and (B)(3) and to enact R.S. 47:301(4)(m), relative to sales and use tax; to provide with respect to collection and reporting of sales and use taxes; to provide for the definition of dealer; to provide for effectiveness; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 47:339(A)(2) and (B)(3) are hereby amended and reenacted and R.S. 47:301(4)(m) is hereby enacted to read as follows:

§301. Definitions

As used in this Chapter the following words, terms, and phrases have the meanings ascribed to them in this Section, unless the context clearly indicates a different meaning:

* * *

(4) "Dealer" includes every person who manufactures or produces tangible personal property for sale at retail, for use, or consumption, or distribution, or for storage to be used or consumed in a taxing jurisdiction. "Dealer" is further defined to mean:

* * *

(m)(i) Any person who sells for delivery into Louisiana tangible personal property, products transferred electronically, or service and who does not have a
physical presence in Louisiana, if during the previous or current calendar year either
of the following criteria was met:

   (aa) The person's gross revenue for sales delivered into Louisiana has
exceeded one hundred thousand dollars from sales of tangible personal property,
products transferred electronically, or services; or

   (bb) The person sold for delivery into Louisiana tangible personal property,
products transferred electronically, or services in two hundred or more separate
transactions.

   (ii) A person without a physical presence in Louisiana may voluntarily
register for and collect state and local sales and use taxes as a dealer, even if they do
not meet the criteria established in Item (i) of this Subparagraph.

   * * *

§339. Louisiana Sales and Use Tax Commission for Remote Sellers

   A. The Louisiana Sales and Use Tax Commission for Remote Sellers,
hereinafter referred to as "commission", is created and established within the
Department of Revenue for the administration and collection of the sales and use tax
imposed by the state and political subdivisions with respect to remote sales. The
commission shall:

   * * *

   (2) With Serve as the single entity in Louisiana to require remote sellers and
their designated agents to collect from customers and remit to the commission, sales
and use taxes on remote sales sourced to Louisiana on the uniform Louisiana state
and local sales and use tax base established by Louisiana law with respect to any
federal law as may be enacted by the United States Congress or final ruling by the
United States Supreme Court authorizing states to require remote sellers to collect
and remit state and local sales and use taxes on their sales in each state, except those
remote sellers who qualify for the small-seller exceptions as may be provided by
federal law, serve as the single entity in Louisiana to require remote sellers and their
designated agents to collect from customers and remit to the commission sales and
use taxes on remote sales sourced to Louisiana on the uniform Louisiana state and
local sales and use tax base established by Louisiana law.

B. As used in this Chapter, unless the context clearly indicates otherwise, the
following terms shall be defined as follows:

(3) "Federal law" shall mean any federal law as may be enacted by the United
States Congress or final ruling by the United States Supreme Court authorizing states
to require remote sellers, except those remote sellers who meet the small seller
exceptions of federal law, to collect and remit sales and use taxes on
remote sales sourced to Louisiana.

Section 2. The provisions of this Act shall apply to all taxable periods beginning on
or after the date of the final ruling by the United States Supreme Court in South Dakota v.
finding South Dakota 2016 Senate Bill 106 constitutional.

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

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)]

HB 17 Engrossed 2018 Second Extraordinary Session Foil

Abstract: Establishes criteria for the definition of "dealer" for purposes of registration of
remote sellers as collectors of state tax.

Present law defines "dealer" for purposes of state and local sales and use taxes as a person
who manufactures or produces tangible personal property for sale at retail, for use or
consumption, or distribution, or for storage to be used or consumed in a taxing jurisdiction.
Proposed law retains present law and further defines "dealer" as a person who does not have a physical presence in the state and who sells for delivery into La. tangible personal property, products transferred electronically, or services, if either:

1) The person's gross revenue from sales in La. exceeds $100,000; or

2) The person engaged in 200 or more separate transactions in La.

Proposed law also provides that a person may voluntarily register as a dealer for purposes of collecting the additional sales tax regardless of their revenue or number of sales.

Present law requires that the La. Sales and Use Tax Commission for Remote Sellers (commission), serve as the single entity in La. to require remote sellers to collect and remit sales and use taxes on remote sales sourced to La. pursuant to federal law authorizing states to require remote sellers.

Proposed law retains present law and includes final rulings by the U. S. Supreme Court as a source of authority by which states may be authorized to require remote sellers to collect and remit sales and use taxes.

(Amends R.S. 47:339(A)(2) and (B)(3); Adds R.S. 47:301(4)(m))

Summary of Amendments Adopted by House

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

1. Add final rulings by the U. S. Supreme Court as a source of authority by which states may be authorized to require remote sellers to collect and remit sales and use taxes, and by which the La. Sales and Use Tax Commission may exercise its authority as the single entity in La. to require the collection and remittance of the taxes.

2. Technical.

CODING: Words in struck through type are deletions from existing law; words underscored are additions.