
The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Riley Boudreaux.

DIGEST

SB 199 Original 2015 Regular Session Gallot

In-Lieu Sales Tax

Present constitution authorizes "local governmental subdivisions" (defined as parishes and municipalities) and school boards to levy sales and use taxes.

Present constitution authorizes the legislature to grant tax authority to political subdivisions and special districts.

Proposed constitutional amendment authorizes the state to provide by law for the levy and collection of an additional sales and use tax at the same rate as the state sales and use tax upon sales into the state by vendors who engage in the regular or systematic solicitation of consumers in this state, but who have no employees, solicitors, agents, inventory, sales locations, or other business assets in the state. The tax is to be levied and collected in the same manner as is provided by law for the levy and collection of the state sales tax. The avails of the tax must be distributed to each political subdivision in the manner provided by law. Such taxable transactions are excluded from the sales tax of political subdivisions.

Dedication of Internet and Mail-Order Sales Tax

Proposed constitutional amendment requires the secretary of the Department of Revenue to provide written notification to the commissioner of administration and to the chairs of the Senate Committee on Finance and the House Committee on Appropriations of the following:

- (1) The effective date of any federal law which the secretary determines will directly or indirectly cause or require vendors located out-of-state to collect and remit Louisiana state sales and use tax on their Internet, mail-order, or other sales into the state.
- (2) That he has determined that the provisions of the proposed constitutional amendment expanding the definition of "dealer" (below) has caused a substantial increase in the collections of state sales and use tax on Internet, mail-order, or other sales into the state.

Proposed constitutional amendment creates the Out-of-State Sales Tax Collection Fund in the state treasury to receive the estimated amount of state sales and use taxes collected from vendors located out-of-state on Internet, mail-order, or other sales into the state because of such federal law or because of the provisions of the proposed constitutional amendment expanding the definition of "dealer" (below).

Proposed constitutional amendment provides that the money in the fund shall be appropriated by the

legislature to be allocated and restricted to the following purposes:

- (1) 75% shall be used for public institutions of higher education for operational expenses.
- (2) The remaining 25% shall be used for the provision of health care services.

Proposed constitutional amendment provides that interest earnings on the fund shall be credited to the fund and all unexpended and unencumbered monies in the fund at the end of the fiscal year shall remain in the fund.

Redefining "Dealer" to Include Internet and Mail-Order Sales

Proposed law, in addition to present law existing on the effective date of the proposed constitutional amendment, in order to expedite the collection of the sales tax and use tax on Internet and mail-order sales, requires the following individuals or entities to be considered a "dealer" responsible for collecting any use tax in the manner provided for by law:

- (1) Any seller, or seller's subsidiary, transacting business in this state at a place or a location of business, or by having an independent contractor or any individual or entity operating under the authority of or through an agreement with him irrespective of whether such place or location of business, or independent contractor, person, or entity is located in this state permanently or temporarily, or whether such seller or seller's subsidiary is qualified to do business in this state.
- (2) Any seller soliciting business through or pursuant to an agreement with a Louisiana resident or business under which the resident or business, for consideration as an independent contractor or representative, refers potential customers, whether by link on an Internet website or otherwise, to the seller, or the seller's entity's subsidiary.
- (3) Any seller for four quarterly periods has a cumulative total of sales in this state exceeding \$250,000 and more than 100 sales delivered in this state, unless the seller cannot reasonably be expected to have the same delivered in this state for the next succeeding four quarterly periods.
- (4) Any seller who:
 - (a) Sells the same or substantially similar line of products as a Louisiana retailer under the same or a substantially similar business name, using the same trademarks, service marks, or trade names that are the same or substantially similar to those used by the Louisiana retailer.
 - (b) Uses the facilities or employees of a Louisiana retailer to advertise or promote sales to Louisiana purchasers, or to facilitate returns, issuance of refunds or credits, or adjustments on property sold by the seller.

- (c) Solicits business and develops and maintains a market in Louisiana through an agent, salesman, independent contractor, solicitor, or other representative pursuant to an agreement with a Louisiana resident or business, hereinafter referred to collectively as "affiliated agent", under which the affiliated agent, for consideration engages in activities in this state that inure to the benefit of the seller in the seller's development or maintenance of a market for its goods or services in the state, to the extent that those activities of the affiliated agent are sufficient to satisfy the nexus requirement of the U. S. Constitution. The activities of the affiliated agent includes referral of potential customers to the seller, either directly or indirectly, whether by link on an Internet website or otherwise.
- (5) The secretary of the Department of Revenue is to presume that the criteria for a "dealer" (above) applies to any seller which holds a substantial ownership interest, directly or through a subsidiary, in a retailer maintaining sales locations in Louisiana; or to any entity which is owned in whole or in substantial part by a retailer maintaining sales locations in Louisiana, or by a parent or subsidiary thereof.
- "Substantial ownership interest" is defined as affiliated sellers with respect to each other where one of such sellers has an ownership interest of more than 5%, whether direct or indirect, in the other, or where an ownership interest of more than 5%, whether direct or indirect, is held in each of such sellers by another seller or by a group of other sellers, which are affiliated sellers with respect to each other.
- (6) Such "dealers" must file all applicable sales tax returns and remittances through electronic filing options available for such purposes as provided by law.
- (7) The provisions of this portion of the proposed constitutional amendment shall not be used in the determination of whether such sellers are liable for the payment of income and franchise taxes.
- (8) Changes affecting any of the provisions of this portion of the proposed constitutional amendment may be made by a law enacted by a favorable vote of 2/3 of the elected members of each house of the legislature.

Effective January 1, 2016.

Specifies submission of the amendment to the voters at the statewide election to be held on October 24, 2015.

(Adds Const. Art. VII, Sec. 2.4)