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## DIGEST

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HB 536 Engrossed

2015 Regular Session

Patrick Williams

**Abstract** For purposes of collection of sales and use taxes by a remote seller, expands the definition of "dealer" to include persons who have certain substantial relationships and similarities with La. retailers, transact business in a certain manner, or who engage in business in La. through the use of certain affiliated agents.

Present law levies an additional 4% state sales and use tax to be collected only by dealers who qualify as a dealer in La. solely by virtue of engaging in regular or systematic solicitation of a consumer market in La. by the distribution of catalogs, and other print media, radio, television, and other electronic and digital media.

Proposed law retains present law and adds methods of engaging in regular business in La. including oral presentations and telemarketing.

Present law provides various definitions of "dealer" with respect to sales and use tax law and defines "engaging in business in a taxing jurisdiction".

Proposed law specifies that present law regarding the levy and collection of the additional 4% sales and use tax shall apply to persons who are defined as dealers pursuant to proposed law.

Proposed law retains present law but expands the definition of "engaging in business in the taxing jurisdiction" to include:

- (1) The solicitation of business through an independent contractor or any other representative pursuant to an agreement with a La. resident under which the resident, for a commission, referral fee, or other consideration of any kind, directly or indirectly refers potential customers, whether by website link, personal presentation, telemarketing, or otherwise, to the seller.
- (2) For purposes of qualification as a "dealer" through an agreement with a La. resident to maintain a business in La., the presumption that a person is a dealer, based upon annual gross receipts from sales of property delivered in La. that exceed \$50,000, is rebuttable if the person can demonstrate that he cannot reasonably be expected to have gross receipts in excess of \$50,000 in the following 12 months.

Proposed law retains present law but expands the definition of "dealer" to include a person who meets any of the following criteria:

- (1) Sells the same or substantially similar line of products as a La. retailer under the same or substantially similar business name.
- (2) The facilities or employees of the La. retailer are used to advertise or promote sales by the person to La. purchasers and to support the maintenance of a market in La.
- (3) Holds a substantial ownership interest, directly or through a subsidiary, in a retailer maintaining sales locations in La. or who is owned in whole or in substantial part by a retailer maintaining sales locations in La.

Proposed law requires persons who meet the definition of a dealer under proposed law to electronically file tax returns and remittances to the state and local taxing authorities.

Proposed law prohibits the determination that certain business activities establishes a person as a dealer for purposes of sales and use tax from being used in a determination of whether the person is liable for the payment of state income or franchise taxes.

Proposed law provides that if the U.S. Congress enacts legislation authorizing states to require a remote seller to collect sales taxes on taxable transactions, the federal law shall preempt the provisions of proposed law. Further, directs the secretary of the Dept. of Revenue to promulgate rules to carry out the provisions of the federal law within 90 days of its effectiveness.

Applicable to tax periods beginning on and after July 1, 2015.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 47:302(U) and 305(E); Adds R.S. 47:302(V))

## Summary of Amendments Adopted by House

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

1. Add to the definition of "dealer" with respect to methods of transacting and solicitation of business.
2. Change the threshold level of sales activity for purposes of the definition of "dealer" from a cumulative total of \$250,000 or 100 sales of tangible personal property in one year to \$50,000 in sales of tangible personal property in one year.
3. Specify that the provisions of proposed law shall apply to tax periods beginning on and after July 1, 2015.
4. Add provisions that if the U.S. Congress enacts legislation authorizing states to require a remote seller to collect sales taxes on taxable transactions, the federal law shall preempt the provisions of proposed law. Further, directs the secretary of the Dept. of Revenue to promulgate rules to carry out the provisions of the federal law within 90 days of its effectiveness.