

LEGISLATIVE FISCAL OFFICE
Fiscal Note



Fiscal Note On: **HB 1121** HLS 16RS 2118

Bill Text Version: **REENGROSSED**

Opp. Chamb. Action:

Proposed Amd.:

Sub. Bill For.:

REVISED

Date: May 23, 2016	8:53 AM	Author: LEGER
Dept./Agy.: Revenue		Analyst: Deborah Vivien
Subject: Notification and reporting for remote sellers		

TAX/SALES & USE RE SEE FISC NOTE GF RV See Note Page 1 of 1
Establish notification and reporting requirements relative to retail sales made in Louisiana by remote retailers

Current law requires dealers to report names and addresses of state residents with purchases of property or services of \$250 or more to the Secretary of Revenue upon request.

Proposed law retains current law, defines remote sellers/dealers and requires the remote sellers with gross receipts greater than \$50,000 who do not collect state and local sales tax (catalog) to notify the state resident purchaser that the sale is subject to use tax unless specifically exempt, and that LA use tax is paid annually on the individual income tax return or as stated by rule. In addition, annual reports of aggregate calendar year purchase amounts by each purchaser are required to be sent to the purchaser by January 31 and the department by March 1. Penalties for failure to comply are detailed in the bill but may be waived by the Secretary for reasonable cause. The Secretary has further legal remedy as stipulated in the bill and may publish rules outlining procedures and requirements.

EXPENDITURES	2016-17	2017-18	2018-19	2019-20	2020-21	5 -YEAR TOTAL
State Gen. Fd.	SEE BELOW	SEE BELOW	SEE BELOW	SEE BELOW	SEE BELOW	
Agy. Self-Gen.	\$0	\$0	\$0	\$0	\$0	\$0
Ded./Other	\$0	\$0	\$0	\$0	\$0	\$0
Federal Funds	\$0	\$0	\$0	\$0	\$0	\$0
Local Funds	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Annual Total						

REVENUES	2016-17	2017-18	2018-19	2019-20	2020-21	5 -YEAR TOTAL
State Gen. Fd.	SEE BELOW	SEE BELOW	SEE BELOW	SEE BELOW	SEE BELOW	
Agy. Self-Gen.	\$0	\$0	\$0	\$0	\$0	\$0
Ded./Other	\$0	\$0	\$0	\$0	\$0	\$0
Federal Funds	\$0	\$0	\$0	\$0	\$0	\$0
Local Funds	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Annual Total						

EXPENDITURE EXPLANATION

Should impacted remote retailers opt to collect and remit the tax, as occurred in Colorado after a Federal 10th Circuit Court of Appeals ruling, the department's additional responsibilities would be minimal. However, the Department originally indicated that the bill could require about \$100,000 to adapt the system including programming, testing and system development for the electronic filing, and about \$175,000-\$200,000 to implement annually thereafter, including 2 positions for oversight and data analysis to prepare for the possibility that the remote dealers will opt to report the customer name and their total amount of annual purchases to the department. Subsequent departmental assessment suggests these costs might be closer to \$90,000 annually. However, it is not clear what department will have to do in order to interpret and utilize the information mandated to be sent to them for enforcement purposes.* The department will also be required to register online retailers. Electronic filing mandates are authorized in the bill for larger dealers.

*If the department is only given a purchaser's name and an aggregate dollar amount of purchases as stated in the bill, significant effort could be required to legally connect that name with a specific taxpayer with certainty. Further, if the data only includes an aggregate value of purchases, it is not clear how the department will determine taxability in order to enforce use tax collections. Enforcement of the bill may require a relatively stringent process to determine an appropriate use tax assessment. Such effort could be costly relative to the use tax potential per taxpayer. However, the bill may help identify high volume purchasers which may allow for more efficient enforcement through audit, should retailers opt to send customer information to the department instead of collecting the tax.

REVENUE EXPLANATION

To the extent that notifications on remote sales and/or an annual report of sales compel purchasers to remit use tax that otherwise would not be remitted, or remote vendors remit sales tax directly, this bill will raise additional revenue. Sales tax is currently being collected as a result of similar legislation in Colorado in conjunction with a ruling in federal appeals court. Further, any penalties as authorized in the bill will increase self-generated revenue for the agency, though the fiscal note does not presume a rate of non-compliance.

It is not clear how the agency will utilize data which includes a single amount of calendar year purchases and a name from each remote retailer in order to assess use tax on a single taxpayer.

A recent federal district court ruling in Colorado indicates that tax-due notifications and annual reporting requirements placed upon remote sellers are binding and enforceable as federal law. The agency notes that Amazon disassociated with all affiliates upon passage of Act 22 of the 2016 ES1 instead of collecting the tax. However, the federal ruling in the Colorado case does imply that this provision may eventually be required in numerous locations which could force a more widespread compliance in order for these vendors to maintain marketshare. It is not known whether collections in Colorado were the result of the judgment or other situations that may have formed nexus in the state.

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| <u>Senate</u> | <u>Dual Referral Rules</u> | <u>House</u> |
| <input type="checkbox"/> 13.5.1 >= \$100,000 Annual Fiscal Cost {S&H} | <input type="checkbox"/> 6.8(F)(1) >= \$100,000 SGF Fiscal Cost {H & S} | |
| <input type="checkbox"/> 13.5.2 >= \$500,000 Annual Tax or Fee Change {S&H} | <input type="checkbox"/> 6.8(G) >= \$500,000 Tax or Fee Increase or a Net Fee Decrease {S} | |

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