

2019 Regular Session

HOUSE BILL NO. 547

BY REPRESENTATIVE ABRAMSON

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

TAX/SALES & USE: Provides relative to collection of sales tax on remote sales

1 AN ACT

2 To amend and reenact R.S. 47:302(W)(3) and (6), 339(A)(2), (B)(3), (5) through (8),
3 340(E)(2) and (3), (F), (G)(1), and (H)(1) and Section 2 of Act No. 5 of the 2018
4 Second Extraordinary Session of the Legislature and to enact R.S. 47:340(E)(4),
5 (G)(6)(a) and (b), (11), (H)(15), and 1407(6), relative to the collection of certain
6 sales and use tax; to provide for definitions; to provide for certain requirements; to
7 provide for certain limitations; to provide for certain conditions; to provide for
8 applicability; to provide for an effective date; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 47:302(W)(3) and (6), 339(A)(2), (B)(3), (5) through (8), 340(E)(2)
11 and (3), (F), (G)(1), and (H)(1) are hereby amended and reenacted and R.S. 47:340(E)(4),
12 (G)(6)(a) and (b), (11), (H)(15) and 1407(6) are hereby enacted to read as follows:

13 §302. Imposition of tax

14 * * *

15 W.

16 * * *

17 (3) A refund request shall be filed in a manner to be determined by the
18 secretary, which may include electronic filing. The refund request may be made
19 once per calendar year, and shall be accompanied by ~~a copy of both of the following:~~

20 ~~(a) All~~ all relevant paid local use tax returns.

1 use taxes on remote sales sourced to Louisiana on the uniform Louisiana state and
 2 local sales and use tax base established by Louisiana law with respect to any federal
 3 law as may be enacted by the United States Congress authorizing states to require
 4 remote sellers to collect and remit state and local sales and use taxes on their sales
 5 in each state or ~~final ruling~~ a decision by the United States Supreme Court
 6 ~~authorizing states to require remote sellers to collect and remit state and local sales~~
 7 ~~and use taxes on their sales in each state,~~ overrules the physical presence requirement
 8 for a remote seller to collect and remit state and local sales and use tax on remote
 9 sales for delivery into the state, except those remote sellers who qualify for
 10 exceptions as may be provided by federal law.

11 * * *

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

14 * * *

15 (3) "Federal law" shall mean any federal law as may be enacted by the
 16 United States Congress authorizing states to require remote sellers, except those
 17 remote sellers who meet exceptions provided by federal law, to collect and remit
 18 sales and use taxes on remote sales for delivery into Louisiana or ~~final ruling a~~
 19 ~~decision~~ by the United States Supreme Court ~~authorizing states to require remote~~
 20 ~~sellers, except those remote sellers who meet exceptions provided by federal law, to~~
 21 ~~collect and remit sales and use taxes on remote sales sourced to Louisiana.~~ overrules
 22 the physical presence requirement for a remote seller to collect and remit state and
 23 local sales and use tax on remote sales for delivery into the state.

24 * * *

25 (5) ~~The term "non-remote sale" means a sale that is not a remote sale.~~ The
 26 term "remote sale" means a sale that is made by a remote seller for delivery into
 27 Louisiana. The term "non-remote sale" means a sale that is not a remote sale.

28 (6) ~~The term "non-remote seller" means a seller that is not a remote seller.~~
 29 The term "remote seller" means a seller who sells for sale at retail, use, consumption,

1 distribution, or for storage to be used for consumption or distribution any taxable
2 tangible personal property, products transferred electronically, or services for
3 delivery within Louisiana, but does not have physical presence in Louisiana, and is
4 not considered a dealer as defined by R.S. 47:301(4)(a) through (l). The term "non-
5 remote seller" means a seller that is not a remote seller.

6 (7) ~~The term "person" shall have the meaning as defined by federal law for~~
7 ~~purposes of remote sales but shall retain the meaning as provided in R.S. 47:301(8)~~
8 ~~for all other purposes in state and local sales and use tax law. The term "person"~~
9 ~~shall have the meaning provided for in R.S. 47:301(8) for all purposes in state and~~
10 ~~local sales and use tax law.~~

11 (8) ~~"Sales and use taxes" and "taxes" shall mean the sales and use taxes~~
12 ~~levied by the state of Louisiana under the provisions of Title 47 of the Louisiana~~
13 ~~Revised Statutes of 1950 and the sales and use taxes levied by local taxing~~
14 ~~authorities in Louisiana under the provisions of the Constitution of Louisiana,~~
15 ~~statutory laws authorizing the imposition of such taxes, and local sales and use tax~~
16 ~~ordinances. "Sales and use taxes" and "taxes" shall mean the sales and use taxes~~
17 ~~levied by the state of Louisiana under the provisions of Title 47 of the Louisiana~~
18 ~~Revised Statutes of 1950, and the sales and use taxes levied by local taxing~~
19 ~~authorities in Louisiana under the provisions of the Constitution of Louisiana,~~
20 ~~statutory laws authorizing the imposition of such taxes, and local sales and use tax~~
21 ~~ordinances.~~

22 §340. Louisiana Sales and Use Tax Commission for Remote Sellers; members;
23 powers

24 * * *

25 E.

26 * * *

27 (2) The commission shall monthly remit monies, less any refunds and
28 amounts retained for expenses as defined in Paragraph (3) of this Subsection, to the
29 appropriate ~~taxing jurisdiction~~ state or local collector by electronic funds to the

1 designated bank account of that ~~jurisdiction~~ state or local collector on or before the
2 tenth business day of the month following the month of collection. Records of gross
3 collections, refunds, and amounts retained for expenses shall be made accessible to
4 the respective ~~jurisdiction~~ state or local collector on a monthly basis.

5 (3) The commission and its operations shall be funded by an amount equal
6 to actual expenses incurred which amount shall not exceed one percent of the total
7 amount of state and local sales and use tax collected on remote sales by the
8 commission. Subject to the limitations provided in this Paragraph, this amount shall
9 be retained by the commission on a monthly basis from current collections of state
10 and local sales tax on remote sales as collected by the commission prior to monthly
11 distribution to the state and local collectors. The commission shall have no authority
12 to retain these monies unless and until a federal law authorizing states to require
13 remote sellers and their agents to collect state and local sales and use taxes on their
14 sales in each state has been enacted and becomes effective: or a decision by the
15 United States Supreme Court overrules the physical presence requirement for a
16 remote seller to collect and remit state and local sales and use tax on remote sales for
17 delivery into the state. Upon distribution of the local sales and use tax collected
18 from remote sellers by the commission, the local collectors may retain the usual and
19 customary percentage of collections in accordance with local ordinances or
20 agreements.

21 (4) Upon the request of a state or local collector, the commission shall
22 provide taxpayer information and associated taxpayer history maintained by the
23 commission to the state or local collector in accordance with R.S. 47:1508.

24 F.(1) The commission shall develop rules and procedures in accordance with
25 the Administrative Procedure Act with respect to implementation of the provisions
26 of this Chapter. Unless contrary to a rule adopted in accordance with this Subsection,
27 the provisions of Chapter 18 of this Subtitle may be utilized by the commission, or
28 its duly authorized agents and employees, in the exercise of any power authorized

1 by this Section in the same manner that the provisions of Chapter 18 of this Subtitle
2 may be utilized by the secretary.

3 (2) The commission, or its duly authorized agents and employees, may take
4 any action related to the collection of tax within its jurisdiction that the secretary in
5 Chapter 18 of this Subtitle is authorized to take and any person aggrieved by any
6 such action shall have the same rights, including appeal or review as provided for in
7 Chapter 18 of this Subtitle.

8 (3) Any consideration of a request for refund and any appeal of the
9 commission's denial of a refund made to the Board of Tax Appeals shall occur in the
10 same manner and be subject to the same deadlines as provided for in Chapter 18 of
11 this Subtitle.

12 (4) The commission shall be considered a state collector for the purposes of
13 R.S. 47:1418(7)(d) and the related provisions of Chapter 17 of this Subtitle.

14 G. The commission shall have the power, duty, and authority:

15 (1) To serve as the single entity within the state of Louisiana responsible for
16 all state and local sales and use tax administration, return processing, and audits for
17 remote sales ~~sourced to~~ delivered into Louisiana.

18 * * *

19 (6) To require remote sellers to register with the commission.

20 (a) No later than thirty calendar days after surpassing either of the criteria
21 of R.S. 47:301(4)(m)(i), a remote seller shall submit an application for approval to
22 collect state and local sales and use tax on remote sales for delivery into Louisiana
23 to the commission on a form prescribed by the commission. A remote seller shall
24 commence collection of state and local sales and use tax, once notified the
25 commission has approved the application, no later than sixty days after surpassing
26 either of the criteria of R.S. 47:301(4)(m)(i).

27 (b) The commission shall publish the date remote sellers are required to be
28 registered by policy statement as authorized by LAC 61:III.101 no later than thirty

1 days prior to the effective date of the enforcement. In no event shall the date of
2 enforcement be later than July 1, 2020.

3 * * *

4 (11) To enter into voluntary disclosure agreements with remote sellers as to
5 state and local sales and use taxes.

6 H. Nothing in this Chapter shall be construed to:

7 (1) Authorize or require any expenditure unless and until a federal law
8 authorizing states to require remote sellers and their agents to collect state and local
9 sales and use taxes on their sales in each state has been enacted and becomes
10 effective: or a decision by the United States Supreme Court overrules the physical
11 presence requirement for a remote seller to collect and remit state and local sales and
12 use tax on remote sales for delivery into the state.

13 * * *

14 (15) The sums of money collected by the remote seller for payment of sales
15 and use taxes imposed by the state and local taxing authorities shall, at all times, be
16 and remain the property of the respective taxing authorities and deemed held in trust
17 for taxing authorities, including while in the possession of the commission.

18 * * *

19 §1407. Jurisdiction of the board

20 The jurisdiction of the board shall extend to the following:

21 * * *

22 (6) All matters relating to appeals of administrative hearings, assessments,
23 and refund denials by the Louisiana Sales and Use Tax Commission for Remote
24 Sellers.

25 Section 2. Section 2 of Act No. 5 of the 2018 Second Extraordinary Session of the
26 Legislature is hereby amended and reenacted to read as follows:

27 * * *

28 Section 2. The provisions of this Act shall apply to all taxable periods
29 beginning on or after ~~the date of the final ruling by the United States Supreme Court~~

Proposed law retains present law but expands the definition of federal law for the purposes of this Section. Proposed law also provides that local collectors may be allowed to retain the usual and customary percentage of the taxes they collect.

Present law provides that the commission shall develop rules and procedures to carry out its purpose. Proposed law retains present law and expands the actions in which the commission is allow to take.

Present law provides for the powers and duties of the commission including requiring remote sellers to register with the commission. Proposed law retains present law but provides that administrative laws will specify the time period in which remote sellers must register, which shall in no event be later than July 1, 2020.

Present law provides that the commission remit all money collected to the appropriate taxing jurisdiction on or before the 10th business day of the month following the month of collection. Proposed law retains present law but replaces the phrase "appropriate taxing jurisdiction" with "appropriate state or local collector".

Proposed law requires a rule that upon the request of a state or local collector, the commission shall provide taxpayer information and taxpayer history to the state and local collector.

Proposed law states that money collected on behalf of a remote seller for sales and use taxes shall remain the property of the respective taxing authority and is deemed to be held in trust, including while the money is in the possession of the commission.

Present law provides for the jurisdiction of the Board of Tax Appeals. Proposed law expands the Board of Tax Appeal's jurisdiction to all matters related to the commission.

Present law, regarding the applicability of the provisions of present law relative to the commission and collection of state and local sales and use taxes on remote sales provides that the provisions of present law apply to all taxable periods beginning on or after the date of the final ruling by the U.S. Supreme Court in *South Dakota v. Wayfair Inc, Overstock.com, Inc., and Newegg Inc.*, finding South Dakota 2016 Senate Bill No. 106 constitutional.

Proposed law repeals the contingent applicability provisions thereby giving the provisions of present law immediate applicability.

(Amends R.S. 47:302(W)(3) and (6), 339(A)(2), (B)(3), (5)-(8), 340(E)(2) and (3), (F), (G)(1), and (H)(1) and §2 of Act No. 5 of the 2018 2nd E.S.; Adds R.S. 47:340(E)(4), (G)(6)(a) and (b), (11), (H)(15), and 1407(6))

Summary of Amendments Adopted by House

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

1. Change the bill from one that enacts provisions related to marketplace facilitator collection of state and local sales tax to one that clarifies refund request processes and administrative provisions related to the collection of taxes from remote sellers.
2. Remove definitions of marketplace, marketplace facilitator, and marketplace seller.
3. Change the entity in which the La. Sales and Use Tax Commission for Remote Sellers remits local taxes to from "appropriate taxing jurisdiction" to "appropriate state or local collector".

4. Impose a requirement that upon the request of a state or local collector the La. Sales and Use Tax Commission for Remote Seller Commission shall provide taxpayer information to the state and local collector.
5. Require the La. Sales and Use Tax Commission for Remote Sellers to publish a date in which remote sellers are required to register as authorized by administrative rules, no later than 30 days prior to the effective date of enforcement and in no event later than July 1, 2020.
6. Establish that money collected by the remote sellers for payment of sales and use tax shall be and remain the property of the respective taxing authorities and deemed held in trust for the taxing authorities.
7. Make technical changes.