

RÉSUMÉ DIGEST

ACT 360 (HB 547)

2019 Regular Session

Abramson

Existing law provides for the administration of tax collection related to remote seller transactions.

Existing law provides for a refund request process for taxpayers to voluntarily pay use tax. The process requires that a refund request be filed in a manner determined by the secretary of the Dept. of Revenue (DOR) once per calendar year. The request is required to be accompanied by all relevant paid local use tax returns.

Prior law required the refund request be accompanied by an affidavit filed with the local sales and use tax commission affirming delivery and use of the taxable property in a parish where no local use tax is levied.

New law provides that if delivery and use of the taxable property will occur in a parish where there is no sales and use tax imposed by a local taxing authority, an affidavit *confirming* no local use tax shall be accepted in lieu of local paid use tax returns.

Existing law requires the secretary of DOR in consultation with the commission to publish notification of the establishment date of the commission in a policy statement.

Prior law provided that until the establishment of the La. Sales and Use Tax Commission for Remote Sellers (the commission), dealers were required to collect the additional 4% tax paid in lieu of sales or use tax which could otherwise be levied and collected by a local political jurisdiction and to file all applicable sales and use tax returns.

New law provides that until the commission *enforces collection and remittance* of state and local use tax based on the applicable state and local rates and bases, dealers shall collect the additional 4% tax paid in lieu of sales or use tax which could otherwise be levied and collected by a local political jurisdiction of the state and shall file all applicable sales and use tax returns. Notice of enforcement by the commission shall be published in a policy statement no later than 30 days prior to the effective date of enforcement.

Existing law establishes the commission as an independent agency within DOR for the administration and collection of sales and use taxes related to remote sales. Further provides that the commission serves as the single entity in La. required under any potential federal law that may require remote sellers to collect and remit sales and use tax on remote sales.

Prior law defined federal law as any federal law enacted by the U.S. Congress or a final ruling by the U.S. Supreme Court authorizing states to require remote sellers to collect and remit state and local sales and use taxes except those remote sellers who may qualify for exceptions provided by federal law.

New law changes the definition of federal law to include any federal law enacted by the U. S. Congress or a decision by the U.S. Supreme Court that overrules the physical presence requirement for a remote seller to collect and remit state and local sales and use tax on remote sales for delivery into the state except those remote sellers who may qualify for exceptions provided by federal law.

Prior law defined "non-remote sales", "non-remote sellers" and "person". New law changes the definition from "non-remote sales" and "non-remote sellers" to "remote sale" and "remote seller" respectively and clarifies that the term "person" shall have the same meaning as in existing law.

Existing law requires the commission to remit all money collected pursuant to existing law on or before the 10th business day of the month following the month of collection.

Prior law required the monies collected to be remitted to the "appropriate taxing jurisdiction".

New law changes references from "appropriate taxing jurisdiction" to "appropriate state or local collector".

Existing law establishes a method of funding the commission's operations.

Prior law prohibited the commission from retaining funds from collections for the operation of the commission until a federal law authorizing states to require remote sellers to collect state and local sales and use taxes became effective.

New law changes the definition of federal law for purposes of existing law and prohibits the retention of monies to fund the operations of the commission until the newly defined federal law is created.

New law authorizes local collectors to retain the usual and customary percentage of the taxes they collect.

New law requires 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.

Existing law provides that the commission shall develop rules and procedures to carry out its purpose.

New law authorizes the commission or its agents and employees to utilize any provision of existing law related to general powers and duties of a revenue collector. Further authorizes any person aggrieved by any action taken related to the collection of tax under new law to have the same rights, including appeal or review, as provided in existing law.

New law requires a remote seller to submit an application for approval by the commission to collect state and local sales and use tax on sales for delivery into Louisiana no later than 30 days after surpassing certain criteria in existing law on a form prescribed by the commission. Once the application is approved by the commission, the remote seller shall commence collection of state and local sales and use tax no later than 60 days after surpassing certain criteria in existing law.

New law requires DOR to issue a policy statement specifying the time period in which remote sellers must register. The policy statement shall be issued no later than 30 days prior to the effective date of enforcement which shall in no event be later than July 1, 2020.

New law authorizes the commission to enter into voluntary disclosure agreements with remote sellers as to state and local sales and use taxes.

New law specifies 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.

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

Prior law regarding the applicability of the provisions related to the commission and collection of state and local sales and use taxes on remote sales, provided that the provisions applied 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.

New law repeals the contingent applicability provisions thereby giving the provisions of existing law applicability beginning July 1, 2019.

Effective August 1, 2019.

(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 2 E.S.; Adds R.S. 47:340(E)(4), (G)(6)(a) and (b), (11), (H)(15), and 1407(6))