

2015 Regular Session

HOUSE BILL NO. 536

BY REPRESENTATIVES PATRICK WILLIAMS, BURRELL, COX, GAINES, HALL,
JACKSON, JAMES, TERRY LANDRY, PIERRE, SMITH, AND ALFRED
WILLIAMS

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

TAX/SALES-USE, STATE: Provides for the definition of a dealer for purposes of collection of sales and use taxes due on sales made in Louisiana by a remote dealer

1 AN ACT

2 To amend and reenact R.S. 47:302(U) and 305(E) and to enact R.S. 47:302(V), relative to
3 sales and use tax; to provide with respect to the collection and remittance of sales
4 and use tax; to provide for the definition of dealer; to provide a method for reporting
5 and remitting taxes by certain dealers; to provide for effectiveness; and to provide
6 for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 47:302(U) and 305(E) are hereby amended and reenacted, and R.S.
9 47:302(V) is hereby enacted, to read as follows:

10 §302. Imposition of tax

11 * * *

12
13 U. It is the duty of the secretary of the Department of Revenue to collect all
14 taxes imposed pursuant to this Chapter and Chapters 2-A and 2-B of this Subtitle
15 which may be due upon the sale by a remote ~~seller~~ dealer of tangible personal
16 property or services in Louisiana. The secretary is authorized and directed to employ
17 all means available to ensure the collection of the tax in an equitable, efficient, and
18 effective manner.

1 V. In addition to the definition of "dealer" as provided in R.S. 47:301(4), for
2 purposes of the consumer use tax, the term "dealer" includes every person who
3 manufactures or produces tangible personal property for sale at retail, for use, or
4 consumption, or distribution, or for storage to be used or consumed in a taxing
5 jurisdiction. "Dealer" is further defined to mean:

6 (1) Any person engaging in business in the taxing jurisdiction which shall
7 include:

8 (a) Any of the following methods of transacting business:

9 (i) Maintaining directly, indirectly, or through a subsidiary, an office,
10 distribution house, sales house, warehouse, or other place or location of business.

11 (ii) Having an agent, salesman, independent contractor, or solicitor operating
12 within the taxing jurisdiction under the authority of or through an agreement with the
13 person or its subsidiary irrespective of whether the place of business, agent,
14 salesman, or solicitor is located in the taxing jurisdiction permanently or temporarily
15 or whether the person or subsidiary is qualified to do business in the taxing
16 jurisdiction.

17 (iii) Making deliveries of tangible personal property into the taxing
18 jurisdiction other than by a common or contract carrier.

19 (b) The solicitation of business through an independent contractor or any
20 other representative pursuant to an agreement with a Louisiana resident or business
21 under which the resident or business, for a commission, referral fee, or other
22 consideration of any kind, directly or indirectly refers potential customers, whether
23 by link on an internet website, an in-person oral presentation, telemarketing, or
24 otherwise to the seller. If the cumulative gross receipts from sales of tangible
25 personal property to customers in this state who are referred to the person through
26 such an agreement exceeds fifty thousand dollars during the preceding twelve
27 months, the presumption regarding the status of that person as a dealer may be
28 rebutted if the person can demonstrate, to the satisfaction of the secretary, that he

1 cannot reasonably be expected to have gross receipts in excess of fifty thousand
2 dollars for the succeeding twelve months.

3 (2) Any person selling tangible personal property or services, the use of
4 which is taxed pursuant to this Chapter, who:

5 (a) Sells the same or substantially similar line of products as a Louisiana
6 retailer under the same or substantially similar business name, using the same
7 trademarks, service marks, or trade names that are the same or substantially similar
8 to those used by the Louisiana retailer.

9 (b) Uses the facilities or employees of a Louisiana retailer to advertise or
10 promote sales by the person to Louisiana purchasers, or to facilitate returns, issuance
11 of refunds or credits, or adjustments on property sold by the person.

12 (c) Solicits business and develops and maintains a market in Louisiana
13 through an agent, salesman, independent contractor, solicitor, or other representative
14 pursuant to an agreement with a Louisiana resident or business, hereinafter referred
15 to collectively as "affiliated agent" under which the affiliated agent, for a
16 commission, referral fee, or other consideration of any kind engages in activities in
17 this state that inure to the benefit of the person in the person's development or
18 maintenance of a market for its goods or services in the state, to the extent that those
19 activities of the affiliated agent are sufficient to satisfy the nexus requirement of the
20 United States Constitution. For purposes of this Subparagraph, such activities of the
21 affiliated agent shall include referral of potential customers to the person, either
22 directly or indirectly, whether by link on an internet website or otherwise.

23 (3) In addition to those persons established as dealers according to Paragraph
24 (2) of this Subsection, the provisions of this Subsection shall be presumed by the
25 taxing authority to apply to any person who holds a substantial ownership interest,
26 directly or through a subsidiary, in a retailer maintaining sales locations in Louisiana;
27 or to any person who is owned in whole or in substantial part by a retailer
28 maintaining sales locations in Louisiana, or by a parent or subsidiary thereof.

1 federal jurisprudence as to sales in interstate commerce promoted through the use of
2 catalogs and other means of sales promotions enables the enforcement of this
3 Chapter or any other law or local ordinance imposing a sales tax against vendors that
4 have no other nexus with the taxing jurisdiction, the following provisions shall apply
5 to such sales on which sales and use tax would not otherwise be collected.

6 * * *

7 Section 2. The provisions of this Act shall apply to tax periods beginning on and
8 after July 1, 2015. If the United States Congress enacts legislation authorizing states to
9 require a remote seller to collect sales taxes on taxable transactions, such legislation shall
10 preempt the provisions of R.S. 47:302(V) and the Department of Revenue shall have the
11 authority to promulgate regulations under the Louisiana Administrative Procedure Act to
12 carry out the provisions of the federal legislation. The Department of Revenue shall begin
13 to promulgate such rules within ninety days of the effective date of the federal legislation.

14 Section 3. This Act shall become effective upon signature by the governor or, if not
15 signed by the governor, upon expiration of the time for bills to become law without signature
16 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
17 vetoed by the governor and subsequently approved by the legislature, this Act shall become
18 effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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.