

LEGISLATIVE FISCAL OFFICE

Fiscal Note



Fiscal Note On: **HB 536** HLS 15RS 1251
 Bill Text Version: **ENGROSSED**
 Opp. Chamb. Action:
 Proposed Amd.:
 Sub. Bill For.:

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Dept./Agy.: Revenue **Analyst:** Deborah Vivien
Subject: Sales Tax on Remote Sellers

TAX/SALES-USE, STATE EG SEE FISC NOTE GF RV See Note Page 1 of 1
 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

Current law: For purposes of sales tax collection, a dealer is defined in detail in R.S. 47:301(4), sections (a)-(l). The U.S. Supreme Court has found that a business with a physical presence in the state has established a nexus and is responsible for the collection and remittance of state and local sales tax. State law requires the taxed property to rest in the state.
Proposed law expands the definition of dealer by establishing nexus through an affiliate arrangement used to solicit business through an independent contractor or any other representative, including internet sales. Any company with an affiliated agent who sells the same or similar products under the same or similar name greater than \$50,000 per year in the state would be considered dealers for state and local sales tax purposes. These companies would then be obligated to collect and remit sales tax on behalf of the state and local governments, including internet transactions mailed to the state. The bill also contains ownership criteria and allows quarterly local use tax distribution. The bill removes the provision requiring the taxable tangible personal property to rest in the state. Effective with tax periods on or after 7/1/15.

EXPENDITURES	2015-16	2016-17	2017-18	2018-19	2019-20	5 -YEAR TOTAL
State Gen. Fd.	\$0	\$0	\$0	\$0	\$0	\$0
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	\$0	\$0	\$0	\$0	\$0	\$0
Annual Total	\$0	\$0	\$0	\$0	\$0	\$0

REVENUES	2015-16	2016-17	2017-18	2018-19	2019-20	5 -YEAR TOTAL
State Gen. Fd.	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	SEE BELOW					
Annual Total						

EXPENDITURE EXPLANATION

There is no anticipated direct material effect on governmental expenditures as a result of this measure. However, the consumer use tax distributed to the parishes is currently appropriated as SGR through the Department of Revenue budget, even though collections are deposited to the SGF. Under current budgeting practice, any additional distribution to the parishes as a result of this bill will reduce SGR available to operate the department.

REVENUE EXPLANATION

This bill does not change overall legal tax liabilities but attempts to change collections by expanding the definition of a dealer to remote sellers (internet sales) obligating them to collect state and local (4%) sales tax on each transaction mailed to the state. In cases where sales tax is not collected by the seller during the sales transaction, the consumer is still obligated to pay the use tax by filing with the Department of Revenue.

This bill specifically names as dealers those internet sellers that have affiliates in the state linked to the independent contractor's site for a commission on sales. Smaller sellers with sales in the state less than \$50,000 items are excluded, per determination of the Secretary of Revenue. This bill directs larger internet sellers to collect and remit state and local sales tax since those in-state affiliates establish a physical presence or nexus. Currently, many large online retailers are collecting and remitting sales tax in the absence of legislation such as this, but a few large ones are not, including Amazon.com and Overstock.com. Vermont, Rhode Island, Maine, Missouri, Colorado and Arkansas have passed legislation similar to this bill, and Amazon and other large online retailers severed their affiliate ties in those states to avoid collecting taxes. While states with warehouses, research/administrative offices, or partial ownership of local businesses by Amazon have been successful in collecting sales tax, those conditions do not appear to be present in LA, and it is the expectation that affiliate relationships will also be severed in LA. Most states have not been able to report collections data associated with these sales, and the few that have are significantly larger than Louisiana in both population and median household income. Louisiana is unlikely to be able to exert a comparable degree of market leverage on these firms to compel compliance, unless the conditions mentioned above exist.

While the magnitude of potential effect is speculative, and without federal legislation or significant voluntary compliance is unlikely to occur, based on the collections experience in GA and adjusted for tax rate and population size, potential collections for state government in LA could be as high as \$17 million with a like amount for local governments, should Amazon and other remote sellers voluntarily comply.

A secondary impact of this bill may be validation of procurement processing companies (PPCs) as establishing nexus through affiliates in the collection of LA state sales tax on transactions occurring out of state. In Act 800 of 2012, PPCs are to be rebated a negotiated portion of sales tax generated through affiliate's title possession instead of location of sale. LA appears to be the only state allowing this arrangement, and the interaction of PPCs with the state tax base and with other states is untested.

Annual collections of consumer use tax in FY 14 were \$1.7M for individuals and \$382M for corporations.

- Senate Dual Referral Rules House
- 13.5.1 >= \$100,000 Annual Fiscal Cost {S&H}
 - 13.5.2 >= \$500,000 Annual Tax or Fee Change {S&H}
 - 6.8(F)(1) >= \$100,000 SGF Fiscal Cost {H & S}
 - 6.8(F)(2) >= \$500,000 Rev. Red. to State {H & S}
 - 6.8(G) >= \$500,000 Tax or Fee Increase or a Net Fee Decrease {S}

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