

2015 Regular Session

HOUSE BILL NO. 555

BY REPRESENTATIVE FANNIN

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

TAX/SALES-USE, STATE: Provides relative to the collection of state 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(K)(5), (7)(a) and (U) and to enact R.S. 47:302(V),

3 relative to sales and use tax; to provide with respect to the collection and remittance

4 of sales and use tax; to provide for the definition of dealer; to provide a method for

5 reporting and remitting taxes by certain dealers; to provide for effectiveness; and to

6 provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 47:302(K)(5), (7)(a) and (U) are hereby amended and reenacted and

9 R.S. 47:302(V) is hereby enacted to read as follows:

10 §302. Imposition of tax

11 * * *

12 K.

13 * * *

14 (5) The tax levied under this Subsection shall be levied and collected only

15 from vendors who qualify as a "dealer" in this state solely by virtue of engaging in

16 regular or systematic solicitation of a consumer market in this state by the

17 distribution of catalogs, periodicals, advertising fliers, or other advertising, or by

18 means of print, radio, or television media, including but not limited to television

19 shopping channels, by mail, telegraphy, telephone, computer database, cable, optic,

1 microwave, or other communication system. A vendor who qualifies as a dealer in
2 this state as provided in R.S. 47:301(4) is prohibited from collecting the tax imposed
3 under this Subsection in lieu of collecting the sales and use tax imposed by a political
4 subdivision of this state which tax is remitted directly to the political subdivision.

5 * * *

6 (7)(a) ~~Pursuant to an appropriation by the legislature, the~~ From the current
7 collections of the tax collected under this Subsection, the secretary shall make the
8 following distributions:

9 (i) The secretary shall annually provide for an interagency transfer in the
10 amount of one hundred and thirty-two thousand dollars to the Department of State
11 Civil Service, Board of Tax Appeals, to be expended exclusively for the purposes of
12 its Local Tax Division, ~~and thereafter distribute the proceeds of the tax.~~

13 (ii) All monies remaining after satisfaction of the requirements of Item (i)
14 of this Subparagraph shall be distributed quarterly to the central local sales and use
15 tax collector or, if none, the parish governing authority according to population. The
16 central local sales and use tax collector or the parish governing authority shall at no
17 charge distribute the tax proceeds received from the secretary to each political
18 subdivision within the parish which levies a sales and use tax or receives a portion
19 of the proceeds of a parishwide sales and use tax levy, in accordance with each such
20 political subdivision's pro rata share of local sales and use tax receipts collected on
21 all other transactions subject to local sales and use taxes during the most recent state
22 fiscal year for which data is available within thirty days of receipt of the proceeds.

23 * * *

24 U. Collection of Consumer Use Tax. It is the duty of the secretary of the
25 Department of Revenue to collect all taxes imposed pursuant to this Chapter and
26 Chapters 2-A and 2-B of this Subtitle which may be due upon the sale by a remote
27 ~~seller~~ dealer of tangible personal property or services in Louisiana. The secretary is
28 authorized and directed to employ all means available to ensure the collection of the
29 tax in an equitable, efficient, and 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 mean the solicitation of business through an independent contractor or any other
8 representative pursuant to an agreement with a Louisiana resident or business under
9 which the resident or business, for a commission, referral fee, or other consideration
10 of any kind, directly or indirectly refers potential customers, whether by link on an
11 Internet website, an in-person oral presentation, telemarketing, or otherwise to the
12 seller. If the cumulative gross receipts from sales of tangible personal property to
13 customers in this state who are referred to the person through such an agreement
14 exceeds fifty thousand dollars during the preceding twelve months, the presumption
15 regarding the status of that person as a dealer may be rebutted if the person can
16 demonstrate, to the satisfaction of the secretary, that he cannot reasonably be
17 expected to have gross receipts in excess of fifty thousand dollars for the succeeding
18 twelve months.

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

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

25 (b) Solicits business and develops and maintains a market in Louisiana
26 through an agent, salesman, independent contractor, solicitor, or other representative
27 pursuant to an agreement with a Louisiana resident or business, hereinafter referred
28 to collectively as an "affiliated agent", under which the affiliated agent, for a
29 commission, referral fee, or other consideration of any kind engages in activities in

1 Section 2. The provisions of this Act shall apply to tax periods beginning on and
 2 after July 1, 2015. If the United States Congress enacts legislation authorizing states to
 3 require a remote seller to collect sales taxes on taxable transactions, such legislation shall
 4 preempt the provisions of R.S. 47:302(V) and the Department of Revenue shall have the
 5 authority to promulgate, after consultation with the sales and use tax commission established
 6 under R.S. 47:302(K)(6), regulations under the Louisiana Administrative Procedure Act to
 7 carry out the provisions of the federal legislation. The Department of Revenue shall begin
 8 to promulgate such rules within ninety days of the effective date of the federal legislation.

9 Section 3. This Act shall become effective upon signature by the governor or, if not
 10 signed by the governor, upon expiration of the time for bills to become law without signature
 11 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 12 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 13 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 555 Reengrossed

2015 Regular Session

Fannin

Abstract: For purposes of collection of the additional 4% state sales and use tax by a remote dealer, expands the definition of "dealer" to include persons who have certain substantial relationships and similarities with La. retailers, engage in business using certain agreements with a La. resident, 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 a person who qualifies 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.

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 retains present law and expands the definition of dealer for purposes of the collection of the additional 4% state sales and use tax to include the following activities and attributes:

- (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. 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.
- (2) Sale of the same or a substantially similar line of products as a La. retailer under the same or substantially similar business name.
 - (3) Holding 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.
 - (4) Solicitation of business or maintenance of a market in La. through an agent, salesman, independent contractor, or other representative (affiliated agent), through an agreement with the dealer.

Proposed law prohibits a La. retailer from collecting the additional 4% state sales and use tax in lieu of the sales and use tax levied by a political subdivision and remitted to the political subdivision.

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.

Present law requires the secretary of the Dept. of Revenue to annually distribute the avails of the tax to parish governing authorities based on population, which monies are then distributed to the local taxing authorities in the respective parish.

Proposed law retains present law, but changes the frequency of distributions by the secretary to the parishes from annually to quarterly.

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. However, the Dept. of Revenue, for purposes of the promulgation of the rules, shall consult with the sales and use tax commission established under present law for purposes of the distribution of the proceeds of the additional 4% state sales and use tax to the parishes.

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(K)(5), (7)(a) and (U); 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.

The House Floor Amendments to the engrossed bill:

1. Add a prohibition that a La. retailer shall not collect the additional 4% state sales and use tax in lieu of collecting the sales and use tax imposed by a political subdivision.
2. Change the frequency for the distribution of the proceeds of the additional 4% state sales and use tax by the Dept. of Revenue to parishes from annually to quarterly.
3. Add a requirement that before promulgation of rules for purposes of implementing federal law with regard to collection of state and local sales and use taxes on sales involving remote dealers, the Dept. of Revenue shall consult with the sales and use tax commission for purposes of the distribution of the proceeds of the additional 4% state sales and use tax to the parishes.