

RÉSUMÉ DIGEST

HB 555

2015 Regular Session

Fannin

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 would have expanded 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 would have limited the collection of the tax from such dealers to the Dept. of Revenue, and would have prohibited 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.

Proposed law would have allowed any taxpayer from whom a dealer had actually collected and remitted the additional state 4% sales and use tax in lieu of the local sales and use tax to obtain a refund if, within 30 days from the remittance of the tax, the taxpayer had provided the secretary with either of the following:

- (1) A certified copy of a use tax return that had been filed with the relevant parish sales and use tax collector concerning the same transaction, together with the proof of payment of all state and local use taxes due on the transaction.
- (2) A certified copy of an affidavit that had been filed with the local sales and use tax commission affirming that the delivery and all use of the property subject to tax would be in a parish where no use tax is imposed by any local taxing authority.

Proposed law would have prohibited a determination that certain business activities establish a person as a dealer for purposes of sales and use tax from being used in a determination of whether the person would be 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 would have changed the frequency of distributions by the secretary to the parishes from annually to quarterly.

Proposed law would have provided that if the U.S. Congress enacted legislation authorizing states to require a remote seller to collect sales and use taxes on taxable transactions, the federal law would preempt the provisions of proposed law. Further, the secretary of the Dept. of Revenue would have been directed 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, would have been required to consult with the local 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.

Would have been applicable to tax periods beginning on and after July 1, 2015.

Would have been effective upon signature of governor or lapse of time for gubernatorial action.

(Proposed to amend R.S. 47:302(K)(5) and (7)(a) and (U); Proposed to add R.S. 47:302(V))

VETO MESSAGE: "House Bill No. 555 expands the definition of a dealer to include any company that uses a domiciled affiliate to conduct business in the state. The idea of "affiliated nexus" has been litigated in several states, forcing those states to change their laws to conform with the court's respective decision and creating financial instability as a result. In 2011, I expressed my opposition to similar legislation, House Bill No. 641, which failed to pass.

Until Congress acts on the federal level to address the Commerce clause issues with affiliate nexus and establish a uniform law on how states should handle companies that have no physical presence within their borders, House bill No. 555 exposes Louisiana to expensive litigation that has budgetary implications for critical services like healthcare and higher education."