

LEGISLATIVE FISCAL OFFICE
Fiscal Note



Fiscal Note On: **HB 30** HLS 161ES 77
 Bill Text Version: **ORIGINAL**
 Opp. Chamb. Action:
 Proposed Amd.:
 Sub. Bill For.:

| | |
|---|--------------------------------|
| Date: February 15, 2016 8:57 AM | Author: LEGER |
| Dept./Agy.: Revenue | |
| Subject: Sales Tax on Remote Sellers | Analyst: Deborah Vivien |

TAX/SALES & USE OR SEE FISC NOTE GF RV See Note Page 1 of 1
 Provides for the 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.

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 of 8%, including internet transactions mailed to the state. The bill also contains ownership criteria and allows quarterly local use tax distribution of the 4% local share. The bill directs local use tax distributions to be paid from the current collections of the tax and provides for refund methods to avoid over-taxation. Effective with tax periods beginning on or after 4/1/16.

| EXPENDITURES | 2016-17 | 2017-18 | 2018-19 | 2019-20 | 2020-21 | 5 -YEAR TOTAL |
|---------------------|-----------|-----------|-----------|-----------|-----------|---------------|
| State Gen. Fd. | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Agy. Self-Gen. | SEE BELOW | SEE BELOW | SEE BELOW | SEE BELOW | SEE BELOW | |
| 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 | | | | | | |

| REVENUES | 2016-17 | 2017-18 | 2018-19 | 2019-20 | 2020-21 | 5 -YEAR TOTAL |
|---------------------|-----------|-----------|-----------|-----------|-----------|---------------|
| State Gen. Fd. | SEE BELOW | SEE BELOW | SEE BELOW | SEE BELOW | 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 | SEE BELOW | SEE BELOW | SEE BELOW | SEE BELOW | |
| Annual Total | | | | | | |

EXPENDITURE EXPLANATION

The consumer use tax distributed to the parishes is currently appropriated as SGR fee revenue through the Department of Revenue budget, even though collections are deposited to the SGF. The bill appears to require that the distribution to local parishes and the Board of Tax Appeals (about \$0.8M) be paid from the current collections of the tax without appropriation (SGF revenue), rather than as an appropriation from the Department's SGR fee revenue, as has been current practice for several years, consequently increasing the availability of SGR fee revenue to support the Department's operations.

REVENUE EXPLANATION

This bill does not change overall legal tax liabilities but attempts to enhance collections by expanding the definition of a dealer to include remote sellers (internet sales) obligating them to collect state and local sales tax on every transaction with an order mailed to the state (based on the catalog tax of 4% state, 4% local). 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 Dept. of Revenue. Annual collections of consumer use tax in FY 15 were about \$1.7M for individuals and \$307M for corporations.

The 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 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. In the past, other states 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 due to the establishment of nexus, those conditions do not appear to be present in LA, and it is expected 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.

The bill appears to require that the distribution to local parishes and the Board of Tax Appeals (about \$0.8M) be paid from the current collections of the tax without appropriation (SGF revenue), rather than as an appropriation from the Department's SGR fee revenue, as has been current practice for several years. This would work to diminish any collections available to the state general fund.

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| <u>Senate</u> | <u>Dual Referral Rules</u> | <u>House</u> |
| <input type="checkbox"/> 13.5.1 >= \$100,000 Annual Fiscal Cost {S&H} | <input type="checkbox"/> 6.8(F)(1) >= \$100,000 SGF Fiscal Cost {H & S} | |
| <input type="checkbox"/> 13.5.2 >= \$500,000 Annual Tax or Fee Change {S&H} | <input type="checkbox"/> 6.8(G) >= \$500,000 Tax or Fee Increase or a Net Fee Decrease {S} | |

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