

2016 Regular Session

HOUSE BILL NO. 1121

BY REPRESENTATIVE LEGER

TAX/SALES & USE: Establish notification and reporting requirements relative to retail sales made in Louisiana by remote retailers

1 AN ACT

2 To amend and reenact R.S. 47:302(U) and 309.1, relative to sales and use taxes; to provide  
3 with respect to certain sales of tangible personal property and taxable services in  
4 Louisiana; to require that certain notifications be provided to purchasers of such  
5 property and services for purposes of collection of use taxes under certain  
6 circumstances; to require the filing of annual statements by certain remote retailers  
7 concerning their sales in Louisiana; to provide for definitions; to provide for the  
8 powers and duties of the secretary of the Department of Revenue; to authorize  
9 rulemaking; to authorize the subpoena of certain information; to establish and  
10 authorize the assessment of penalties; to provide with respect to implementation and  
11 enforcement; to provide for effectiveness; and to provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. R.S. 47:302(U) and 309.1 are hereby amended and reenacted to read as  
14 follows:

15 §302. Imposition of tax

16 \* \* \*

17 U. Collection of consumer use tax. It is the duty of the secretary of the  
18 Department of Revenue to collect all taxes imposed pursuant to this Chapter and  
19 Chapters 2-A and 2-B of this Subtitle which may be due upon the sale by a remote  
20 ~~seller~~ retailer of tangible personal property or services in Louisiana. The secretary

1 is authorized and directed to employ all means available to ensure the collection of  
2 the tax in an equitable, efficient, and effective manner.

3 \* \* \*

4 §309.1. Dealers required to furnish list of purchasers Sales in Louisiana of tangible  
5 personal property and taxable services by a dealer or remote retailer; the  
6 provision of lists, notices, and statements by a dealer or remote retailer

7 A. Any dealer selling property or services, the aggregate value per sale of  
8 which exceeds two hundred fifty dollars, to residents of this state, where the property  
9 is delivered into this state or the beneficial use of ~~such services~~ the service occurs  
10 in this state, shall, upon request of the secretary, provide a list of such sales to the  
11 secretary of the Department of Revenue. The list shall include the names and  
12 addresses of the purchasers and the amount of the sale. The secretary shall pay to  
13 any dealer furnishing a list under this Section, an amount equal to the reasonable cost  
14 of reproducing the list.

15 B. Definitions. As used in this Section, the following words and phrases  
16 have the following meanings unless the context clearly indicates otherwise:

17 (1) "Engaging in business in Louisiana" means any of the following:

18 (a) The manufacture or production of tangible personal property for retail  
19 sale, or for use, consumption, or storage to be used or consumed in this state.

20 (b) The retail sale of tangible personal property for use, consumption, or  
21 storage to be used or consumed in this state.

22 (c) The lease or rental of tangible personal property for consideration,  
23 permitting the use or possession of the property without transferring the title thereto.

24 (d) The sale or furnishing of taxable services in this state.

25 (e) The regular or systematic solicitation of a market in Louisiana by the  
26 distribution of catalogs or periodicals, or by advertising by means of print, radio,  
27 television, mobile telecommunications, or any other type of digital media or  
28 communication system.

1           (2) "Louisiana purchaser" or "purchaser" means a person who purchases  
2           tangible personal property or taxable services in a transaction with a remote retailer  
3           for property or a service that is delivered for use or benefit in Louisiana, and no  
4           Louisiana sales and use tax was collected or paid on the transaction.

5           (3) "Remote retailer" or "retailer" means a retailer that purposefully avails  
6           itself in any way of the benefits of an economic market in Louisiana or who has any  
7           other minimum contacts with the state and who meets all of the following criteria:

8                   (a) Is not required by applicable law, ordinance, or regulation to register as  
9                   a dealer in Louisiana, and thus is not otherwise required to collect Louisiana sales  
10                  and use taxes.

11                   (b) Makes retail sales of tangible personal property or taxable services where  
12                  the property is delivered into Louisiana or the beneficial use of the service occurs in  
13                  Louisiana, and the cumulative annual gross receipts for the retailer and its affiliates  
14                  from those sales exceeds fifty thousand dollars per calendar year.

15                   (c) Does not collect and remit Louisiana sales and use tax with respect to  
16                  their retail sales in this state, including the tax imposed under R.S. 47:302(K).

17                  (4) "Secretary" means the secretary of the Department of Revenue.

18                  C. Notification of purchaser. (1) At the time of sale, the remote retailer  
19                  shall notify the Louisiana purchaser that the purchase is subject to Louisiana use tax  
20                  unless it is specifically exempt, and that there is no exemption specifically based on  
21                  the fact that a purchase is made over the internet, by catalog, or by other remote  
22                  means. Further, the sale notice shall include a statement that Louisiana law requires  
23                  that use tax liability be paid annually on the individual income tax return, or through  
24                  other means as may be required by administrative rule by the secretary in accordance  
25                  with the Administrative Procedure Act, hereinafter referred to as "administrative  
26                  rule". Failure to provide a sale notice shall subject the retailer to a penalty of five  
27                  dollars for each failure; however, all or a portion of the penalty may be waived by  
28                  the secretary if the retailer shows reasonable cause for the failure.

1           (2) By January thirty-first of each year, a remote retailer shall send to each  
2           Louisiana purchaser who has purchased property or services from the retailer in the  
3           immediately preceding calendar year an annual notice containing the total amount  
4           paid by the purchaser for purchases in that preceding calendar year, and other  
5           information required by the secretary as established through administrative rule. If  
6           available, the annual notice shall include a listing of the dates and amounts of  
7           purchasers, and if known by the retailer, whether the property or service is exempt  
8           from sales and use taxes. The annual notice shall clearly disclose the name of the  
9           retailer and shall state that Louisiana use tax may be due on the purchases made from  
10           the retailer and that Louisiana law requires the payment of an individual's use tax  
11           liability on the individual income tax return or through other means as may be  
12           required by administrative rule. The notification shall be sent by first class mail and  
13           shall not be included with any other shipment or mailing from the retailer. Further,  
14           the exterior of the envelope in which the notice is sent shall include the words  
15           "IMPORTANT TAX DOCUMENT ENCLOSED". Failure to send an annual notice  
16           shall subject the retailer to a penalty of ten dollars for each failure; however, all or  
17           a portion of the penalty may be waived by the secretary if the retailer shows  
18           reasonable cause for the failure.

19           D. Annual statement submitted by remote retailer. By March first of each  
20           year a remote retailer who made retail sales of tangible personal property or taxable  
21           services to Louisiana purchasers in the immediately preceding calendar year shall  
22           file with the secretary an annual statement for each purchaser which includes the  
23           total amount paid by the purchaser to that retailer in the immediately preceding  
24           calendar year. Under no circumstances shall the statement contain detail as to  
25           specific property or services purchased, but it shall include the total amount paid.  
26           The statement shall be submitted on forms to be developed and provided by the  
27           secretary. The secretary is authorized to require the electronic filing of statements  
28           by a remote retailer who had sales in Louisiana in excess of one hundred thousand  
29           dollars in the immediately preceding calendar year. Failure to submit an annual

1 statement shall subject the retailer to a penalty of ten dollars for each purchaser for  
2 whom an annual statement was not submitted; however, all or a portion of the  
3 penalty may be waived by the secretary if the retailer shows reasonable cause for the  
4 failure.

5 E. Powers and Duties of the secretary. (1) In addition to the powers and  
6 duties of the secretary established under Chapter 18 of Subtitle II of this Title, the  
7 secretary may, by subpoena, compel witnesses and the production of documents for  
8 purposes of enforcement of the requirements of this Section relative to the required  
9 notices and annual statements concerning taxable transactions occurring in Louisiana  
10 which involve a remote retailer. The secretary may also seek letters rogatory when  
11 appropriate for the enforcement of this Section. If the retailer fails to respond to the  
12 subpoena, the secretary may request that the subpoena be enforced on the order of  
13 a court.

14 (2) With respect to all penalties assessable under this Section, the conditions  
15 for assessment of the penalty and a definition of "reasonable cause" shall be  
16 established by the secretary through administrative rule.

17 ~~B. Any dealer~~ F. Any dealer or remote retailer selling property or services  
18 to residents of this state, where the property is delivered into this state or the  
19 beneficial use of the service occurs in this state, is considered to have consented to  
20 the jurisdiction of the courts of ~~this state~~ Louisiana and the Board of Tax Appeals for  
21 the exclusive purpose of enforcing this Section. Notwithstanding any other provision  
22 of law to the contrary, service of process upon dealers subject to this Section may be  
23 made by service outside this state in the same manner provided for service within  
24 this state with the same force and effect as though service had been made within this  
25 state.

26 G. The secretary may establish specific procedures and requirements  
27 concerning purchaser notifications and the filing of annual statements through rules  
28 promulgated in accordance with the Administrative Procedure Act.

1 Section 2. This Act shall become effective upon signature by the governor or, if not  
 2 signed by the governor, upon expiration of the time for bills to become law without signature  
 3 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
 4 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
 5 effective on the day following such approval.

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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)]

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HB 1121 Reengrossed

2016 Regular Session

Leger

**Abstract:** Requires annual notifications to purchasers and the Dept. of Revenue by remote retailers who make sales in La. in excess of \$50,000 per year.

Present law authorizes the secretary of the Dept. of Revenue (secretary) to require that a dealer furnish a list to the secretary concerning their sales of property and services which exceed \$250. The secretary is authorized to compensate a dealer for the preparation and submission of the list.

Proposed law retains present law.

Proposed law establishes requirements for the provision of notices to consumer and annual statements to the Dept. of Revenue concerning sales by remote retailers of property delivered into La. or services occurring in La.

Proposed law establishes definitions for "engaging in business in Louisiana", "Louisiana purchaser", and "remote retailer".

Proposed law excludes from the requirements of proposed law remote retailers who make retail sales in La. whose cumulative annual gross receipts from those sales is less than \$50,000 per calendar year.

Proposed law requires, at the time of sale, that the remote retailer notify the La. purchaser that their purchase is subject to La. use tax unless it is specifically exempt, and that there is no exemption specifically based on the fact that a purchase is made over the Internet, by catalog, or by other remote means. A retailer is subject to a \$5 penalty for each failure to provide this sales notice; however, all or a portion of the penalty may be waived by the secretary if the retailer shows reasonable cause for the failure.

Proposed law requires a remote retailer to send, by Jan. 31<sup>st</sup> of each year, an annual notice to all La. purchasers who made purchases from them in the immediately preceding calendar year. The annual notice shall report the total amount paid for purchases in that preceding calendar year, and other information required by the secretary through administrative rule. If available, this notice may include a listing of the dates and amounts of purchases, and whether the property or service is exempt from sales and use taxes. A retailer is subject to a penalty of \$10 for each annual notice which was not sent; however, all or a portion of the penalty may be waived by the secretary if the retailer shows reasonable cause for the failure.

Proposed law requires a remote retailer who made retail sales of tangible personal property or taxable services to La. purchasers in the immediately preceding calendar year to file with

the secretary an annual statement with regard to each purchaser by March first of each year. The statement shall provide the total amount paid by the purchaser to that retailer in the immediately preceding calendar year, but shall not contain any detail as to specific property or services purchased. The secretary is authorized to require the electronic filing of annual statements by a remote retailer who had sales in La. in excess of \$100,000 in the immediately preceding calendar. A retailer is subject to a penalty of \$10 for each annual statement that was not sent; however, all or a portion of the penalty may be waived by the secretary if the retailer shows reasonable cause for the failure.

Proposed law establishes powers of the secretary for purposes of enforcement of proposed law which include the authority to subpoena or compel witnesses and the production of documents. The secretary is also authorized to seek letters rogatory when appropriate, and in the event of the failure by a retailer to respond to a subpoena, the secretary may request that the subpoena be enforced through a court order.

Present law provides that any dealer selling property or services to residents of La., where the property is delivered into the state or the beneficial use of the service occurs in the state, is considered to have consented to the jurisdiction of the courts of La. for the exclusive purpose of enforcing present law. Further, service of process upon dealers subject to present law may be made by service outside of La. in the same manner provided for service within the state with the same force and effect as though service had been made within the state.

Proposed law retains present law and adds jurisdiction for the Board of Tax Appeals.

Proposed law authorizes rulemaking in accordance with the Administrative Procedure Act regarding procedures and requirements concerning purchaser notifications and the filing of annual statements.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 47:302(U) and 309.1)

#### Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Ways and Means to the original bill:

1. Remove requirement for the promulgation of rules necessary for proposed law to be implemented.
2. Authorize rulemaking for procedures and requirements concerning purchaser notifications and the filing of annual statements.
3. Establish Jan. 31<sup>st</sup> of each year as the deadline by which a remote dealer is required to send annual notice to La. purchasers required in proposed law.
4. Establish March 1<sup>st</sup> of each year as the deadline by which a remote dealer has to file the annual statement required by proposed law with the Secretary.