

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 provide with respect  
10 to implementation and enforcement; to provide for effectiveness; and to provide for  
11 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) "Louisiana purchaser" or "purchaser" means a person who purchases  
18 tangible personal property or taxable services in a transaction with a remote retailer  
19 for property or a service that is delivered for use or benefit in Louisiana, and no  
20 Louisiana sales and use tax was collected or paid on the transaction.

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

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

27 (b) Makes retail sales of tangible personal property or taxable services where  
28 the property is delivered into Louisiana or the beneficial use of the service occurs in

1        Louisiana, and the cumulative annual gross receipts for the retailer and its affiliates  
2        from those sales exceeds fifty thousand dollars per calendar year.

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

5                (3) "Secretary" means the secretary of the Department of Revenue.

6                C. Notification of purchaser. (1) At the time of sale, the remote retailer  
7        shall notify the Louisiana purchaser that the purchase is subject to Louisiana use tax  
8        unless it is specifically exempt, and that there is no exemption specifically based on  
9        the fact that a purchase is made over the internet, by catalog, or by other remote  
10       means. Further, the sale notice shall include a statement that Louisiana law requires  
11       that use tax liability be paid annually on the individual income tax return, or through  
12       other means as may be required by administrative rule by the secretary in accordance  
13       with the Administrative Procedure Act, hereinafter referred to as "administrative  
14       rule".

15               (2) By January thirty-first of each year, a remote retailer shall send to each  
16       Louisiana purchaser who has purchased property or services from the retailer in the  
17       immediately preceding calendar year an annual notice containing the total amount  
18       paid by the purchaser for purchases in that preceding calendar year, and other  
19       information required by the secretary as established through administrative rule. If  
20       available, the annual notice shall include a listing of the dates and amounts of  
21       purchases, and if known by the retailer, whether the property or service is exempt  
22       from sales and use taxes. The annual notice shall clearly disclose the name of the  
23       retailer and shall state that Louisiana use tax may be due on the purchases made from  
24       the retailer and that Louisiana law requires the payment of an individual's use tax  
25       liability on the individual income tax return or through other means as may be  
26       required by administrative rule. The notification shall be sent by first class mail and  
27       shall not be included with any other shipment or mailing from the retailer. Further,  
28       the exterior of the envelope in which the notice is sent shall include the words  
29       "IMPORTANT TAX DOCUMENT ENCLOSED".

1           D. Annual statement submitted by remote retailer. By March first of each  
2           year a remote retailer who made retail sales of tangible personal property or taxable  
3           services to Louisiana purchasers in the immediately preceding calendar year shall  
4           file with the secretary an annual statement for each purchaser which includes the  
5           total amount paid by the purchaser to that retailer in the immediately preceding  
6           calendar year. Under no circumstances shall the statement contain detail as to  
7           specific property or services purchased, but it shall include the total amount paid.  
8           The statement shall be submitted on forms to be developed and provided by the  
9           secretary. The secretary is authorized to require the electronic filing of statements  
10           by a remote retailer who had sales in Louisiana in excess of one hundred thousand  
11           dollars in the immediately preceding calendar year.

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

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

- 1           G. The secretary may establish specific procedures and requirements  
 2           concerning purchaser notifications and the filing of annual statements through rules  
 3           promulgated in accordance with the Administrative Procedure Act.  
 4           Section 2. This Act shall become effective on July 1, 2017.

## 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 1121 Re-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 "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.

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.

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 year.

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 July 1, 2017.

(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.

#### The House Floor Amendments to the reengrossed bill:

1. Delete the definition of "engaging in business in Louisiana" from proposed law.
2. Delete the penalty provisions of proposed law for failure of a retailer to provide a notice of sale to a consumer, failure of a remote retailer to send an annual notice of sales in the preceding calendar year to a consumer, and failure of a remote retailer to submit an annual statement of retail sales to a consumer of purchases in the preceding calendar year.
3. Delete the definition of "reasonable cause" for purposes of the secretary of the Dept. of Revenue assessing a penalty.
4. Change the effective date of proposed law from upon signature of the governor to July 1, 2017.