

2017 Regular Session

HOUSE BILL NO. 63

BY REPRESENTATIVE LANCE HARRIS

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

TAX/SALES-USE, STATE: Requires the advanced collection of state sales and use tax

1 AN ACT

2 To enact R.S. 47:306(B), relative to collection of advance sales tax; to require the collection
3 of advanced sales tax; to provide for the disposition of the tax; to authorize the
4 secretary of the Department of Revenue to promulgate rules; to provide for
5 exemptions; to provide for requirements and limitations; to authorize certain
6 deductions; to provide for an effective date; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 47:306(B) is hereby enacted to read as follows:

9 §306. Returns and payment of tax; penalty for absorption

10 * * *

11 B. Collection by wholesalers. (1)(a) Notwithstanding the provisions of
12 Subsection A of this Section or any other provision of this Chapter to the contrary,
13 every manufacturer, wholesaler, jobber, or supplier who sells for resale to any person
14 any article of tangible personal property, the retail sale of which is taxable under this
15 Chapter, shall collect as advance sales tax a percent of the sales price of the article
16 equal to the sales tax levied on the article by this Chapter.

17 (b) The collection of tax on motor vehicles shall be in accordance with the
18 provisions of R.S. 47:303(B).

19 (c) The secretary of the Department of Revenue shall promulgate rules and
20 regulations necessary to implement the provisions of this Subsection.

1 (2)(a) The amount paid by dealers to manufacturers, wholesalers, jobbers,
2 or suppliers shall be advance payment of the Louisiana sales tax that the dealer is
3 required to collect upon the sale at retail, and the advance payment is required only
4 as a means of facilitating collection of the sales tax.

5 (b) Manufacturers, wholesalers, jobbers, and suppliers who collect advance
6 sales tax from a dealer pursuant to this Paragraph shall remit the tax to the collector
7 of revenue in the manner provided hereinabove for dealers and in accordance with
8 the rules and regulations prescribed by the collector.

9 (3) In making returns to the collector, dealers who have paid advance sales
10 tax shall deduct from the total tax collected upon the retail sale of the article of
11 tangible personal property the amount of advance sales tax paid by the dealer during
12 the reporting period, provided the dealer claiming the refund or credit has retained
13 the invoices evidencing the amount of tax paid. If the amount of advance sales tax
14 paid during any reporting period is greater than the tax collected by the dealer for the
15 reporting period, the excess amount paid shall be allowed as a refund or credit
16 against the tax collected by the dealer during the succeeding period or periods.

17 (4) Manufacturers, wholesalers, jobbers, and suppliers collecting advance
18 sales taxes as hereinabove provided shall be allowed a deduction from the amount
19 of advance sales tax collected and remitted to the secretary in the amount provided
20 for in Subparagraph (3)(a) of Subsection (A) of this Section as compensation for the
21 collection. This compensation shall be allowed only if the payment of the
22 manufacturer, wholesaler, jobber, or supplier is timely paid and the return is timely
23 filed.

24 (5) Parishes, municipalities, school boards, and other local governing
25 authorities that levy a sales tax are prohibited from requiring manufacturers,
26 wholesalers, jobbers, or suppliers to collect advance local sales taxes from dealers.

27 (6) Absorption of the tax as defined in this Section by any retailer,
28 wholesaler, manufacturer, or other supplier shall constitute a misdemeanor and, upon

1 conviction, shall be punishable by a fine of not more than two thousand dollars, or
2 by imprisonment in the parish jail for not more than two years, or both.

3 (7) The provisions of this Subsection shall not apply to the sale of
4 telecommunication services, as defined in R.S. 47:301(14)(i).

5 (8) Any dealer, fifty percent or more of whose sales are made to industrial
6 users, shall be exempt from the payment of advance sales taxes and shall be issued
7 an exemption identification number by the Department of Revenue. For purposes
8 of this Paragraph, an "industrial user" shall be a business engaged in the manufacture
9 of tangible personal property for sale, whose sales are primarily to other dealers for
10 resale. A "contractor" shall be a business that constructs, alters, repairs, improves,
11 or demolishes fixed structures, either directly or indirectly. A dealer who is exempt
12 from the payment of advance sales under this Paragraph shall collect the taxes due
13 on the sales made by the dealer and remit the taxes to the state as otherwise required
14 by this Chapter.

15 (9)(a) Notwithstanding any other provision of law to the contrary, the sale
16 of tangible personal property by a manufacturer to an out-of-state wholesale dealer
17 in building materials who has not been issued an exemption identification number,
18 but that has delivered by drop shipment to Louisiana, shall be exempt from advance
19 sales tax if the out-of-state wholesale dealer subsequently transfers the property to
20 a wholesale dealer in building materials that has been issued an exemption
21 identification number. The manufacturer shall note on the invoice the transitory
22 nature of the sale and the exemption identification number of the wholesale dealer
23 receiving the property.

24 (b) For purposes of this Subsection, a "wholesale dealer" is any person
25 whose retail sales, as defined by this Chapter, constitute less than fifty percent of
26 total yearly sales. Sales made in interstate commerce or sales where delivery is made
27 outside the territorial jurisdiction of the state of Louisiana are not considered retail
28 sales for the purposes of determining whether a person qualifies as a wholesaler.

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.

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 63 Original

2017 Regular Session

Lance Harris

Abstract: Requires advance payment of sales tax to be collected and remitted by certain wholesalers and authorizes compensation for those wholesalers collecting advance sales tax.

Present law provides for returns and monthly or quarterly payment of sales tax by dealers. Further requires certain reporting relative to sales by dealers. Authorizes a vendor's compensation of 0.935% of the sales tax remitted, but no more than \$1,500 per month, by a dealer for timely remitting the sales tax. Requires registration by certain nonresident contractors. Provides for payment of the tax by a licensed vehicle dealer.

Proposed law retains present law but requires collection of advance sales tax by manufacturers, wholesalers, jobbers, and suppliers from any retail sale that would be taxable under the provisions of present law.

Proposed law provides an exemption for the advance payment of sales tax for dealers whose sales are comprised of more than 50% to industrial users.

Proposed law defines "industrial user" as a business engaged in the manufacture of tangible personal property for sale, whose sales are primarily to other dealers for resale.

Proposed law exempts certain out-of-state wholesale dealers from payment of advance sales tax when transferring property to wholesale dealers who have an exemption identification number. Further defines "wholesale dealer" as a dealer who has at least 50% of sales that do not constitute retail sales.

Proposed law requires the advance payment amount collected by the wholesaler from the dealer to be the same amount the dealer would be required to collect upon the sale of the item.

Proposed law authorizes dealers to deduct out of the sales tax collected upon the retail sale of an item that amount of advance sales tax paid by the dealer to the wholesaler for the item.

Proposed law authorizes vendor's compensation in present law for manufacturers, wholesalers, jobbers, and suppliers collecting advance sales tax.

Proposed law prohibits local governing bodies from requiring advance sales tax collection.

Proposed law prohibits absorption of the tax by any retailer, wholesaler, manufacturer, or other supplier. Proposed law establishes a misdemeanor crime for absorption, punishable by a fine of not more than \$2,000, not more than two years in parish jail, or both.

Proposed law authorizes the secretary of the Dept. of Revenue to issue exemption identification numbers for certain dealers. To be eligible to receive an exemption identification number, a dealer must meet the following requirements:

- (1) Be registered and filing sales tax returns for a minimum of one year.
- (2) Have sales over a 12 consecutive month period of \$3 million or more.
- (3) Have timely filed returns for the same period.

Proposed law grants the secretary discretion in determining eligibility. Further authorizes the secretary to refuse the issuance of an exemption identification number.

Proposed law authorizes the secretary to promulgate rules to administer advance sale tax implementation.

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

(Adds R.S. 47:306(B))