

2018 Second Extraordinary Session

SENATE BILL NO. 8

BY SENATOR MORRELL

TAX/TAXATION. Defines the term dealer for purposes of collecting and remitting use tax on remote sales. (Item #26) (gov sig)

1 AN ACT

2 To amend and reenact R.S. 47:302(V)(1), relative to sales tax administration; to provide a
3 definition of dealer for purposes of the sales tax on online and catalog sales; to
4 provide for an effective date; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 47:302(V)(1) is hereby amended and reenacted to read as follows:

7 §302. Imposition of tax

8 * * *

9 V.(1) In addition to the definition of "dealer" as provided in R.S. 47:301(4)
10 for purposes of the ~~consumer use tax~~ **levied pursuant to Subsection K of this**
11 **Section**, the term "dealer" includes every person who manufactures or produces
12 tangible personal property for sale at retail, for use or consumption, or distribution,
13 or for storage to be used or consumed in a taxing jurisdiction. "Dealer" is further
14 defined to mean:

15 **(a)(i) Any person selling tangible personal property, products transferred**
16 **electronically, or services for delivery into Louisiana, who does not have a**
17 **physical presence in the state, provided that during the previous calendar year**

1 or the current calendar year, either of the following criteria was met:

2 (aa) The person's gross revenue from the sale of tangible personal
3 property, any product transferred electronically, or services delivered into
4 Louisiana exceeds one hundred thousand dollars.

5 (bb) The person sold tangible personal property, transferred products
6 electronically, or delivered services into Louisiana in two hundred or more
7 separate transactions.

8 (ii) A person who does not have a physical presence in the state may
9 voluntarily register for and collect sales taxes pursuant to R.S. 47:302(K), even
10 if that person does not meet either of the criteria of Item (i) of this
11 Subparagraph.

12 (b) Any person engaging in business in the taxing jurisdiction which shall
13 mean the solicitation of business through an independent contractor or any other
14 representative pursuant to an agreement with a Louisiana resident or business under
15 which the resident or business, for a commission, referral fee, or other consideration
16 of any kind, directly or indirectly, refers potential customers, whether by link on an
17 internet website, an in-person oral presentation, telemarketing, or otherwise to the
18 seller. If the cumulative gross receipts from sales of tangible personal property to
19 customers in this state who are referred to the person through such an agreement
20 exceeds fifty thousand dollars during the preceding twelve months, the presumption
21 regarding the status of that person as a dealer may be rebutted if the person can
22 demonstrate, to the satisfaction of the secretary, that he cannot reasonably be
23 expected to have gross receipts in excess of fifty thousand dollars for the succeeding
24 twelve months.

25 ~~(b)~~(c) Any person selling tangible personal property or services, the use of
26 which is taxed pursuant to this Chapter Subtitle, who:

27 (i) Sells the same or a substantially similar line of products as a Louisiana
28 retailer under the same or substantially similar business name, using the same
29 trademarks, service marks, or trade names that are the same or substantially similar

1 to those used by the Louisiana retailer.

2 (ii) Solicits business and develops and maintains a market in Louisiana
3 through an agent, salesman, independent contractor, solicitor, or other representative
4 pursuant to an agreement with a Louisiana resident or business, ~~hereinafter~~ referred
5 to collectively as an "affiliated agent", under which the affiliated agent, for a
6 commission, referral fee, or other consideration of any kind engages in activities in
7 this state that inure to the benefit of the person in the person's development or
8 maintenance of a market for its goods or services in the state, to the extent that those
9 activities of the affiliated agent are sufficient to satisfy the nexus requirement of the
10 United States Constitution. For purposes of this Subparagraph, such activities of the
11 affiliated agent shall include referral of potential customers to the person, either
12 directly or indirectly, whether by link on an internet website or otherwise.

13 ~~(e)~~**(d)** In addition to those persons established as dealers according to
14 Subparagraph ~~(b)~~**(c)** of this Paragraph, the provisions of this Subsection shall be
15 presumed by a taxing authority to apply to any person who holds a substantial
16 ownership interest, directly or through a subsidiary, in a retailer maintaining sales
17 locations in Louisiana, or to any person who is owned in whole or in substantial part
18 by a retailer maintaining sales locations in Louisiana, or by a parent or subsidiary
19 thereof. For purposes of this Paragraph, "substantial ownership interest" means
20 affiliated persons with respect to each other where one of such persons has an
21 ownership interest of more than five percent, whether direct or indirect, in the other,
22 or where an ownership interest of more than five percent, whether direct or indirect,
23 is held in each of such persons by another person or by a group of other persons
24 which are affiliated persons with respect to each other.

25 * * *

26 Section 2. The provisions of this Act shall apply to all taxable periods beginning on
27 or after the date of the final ruling by the United States Supreme Court in *South Dakota. v.*
28 *Wayfair Inc., Overstock.Com, Inc., and Newegg Inc.*, No. 17-494 (U.S. filed Oct. 2, 2017)
29 finding that South Dakota 2016 Senate Bill 106 does not violate the commerce clause of the

1 Constitution of the United States of America.

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

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Leonore Heavey.

DIGEST

SB 8 Original

2018 Second Extraordinary Session

Morrell

Present law requires those individuals and businesses defined as "dealers" to collect and remit the catalog tax from Louisiana customers.

Proposed law adds to the definition of "dealer" those individuals or businesses not physically present in the state, but that who sell over \$100,000 of goods or services into the state, who engage in 200 or more separate transactions with Louisiana customers, or who voluntarily register to collect and remit the catalog tax.

Proposed law's effectiveness is contingent upon the United States Supreme Court rendering a decision in favor of the state of South Dakota in *South Dakota v. Wayfair, Inc.*

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

(Amends R.S. 47:302(V)(1))