2019 Regular Session

HOUSE BILL NO. 547

BY REPRESENTATIVE ABRAMSON

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana. TAX/SALES & USE: Provides relative to collection of sales tax on remote sales

1	AN ACT
2	To amend and reenact R.S. 47:302(W)(3) and (6), 339(A)(2), (B)(3), (5) through (8),
3	340(E)(2) and (3), (F), (G)(1), and (H)(1) and Section 2 of Act No. 5 of the 2018
4	Second Extraordinary Session of the Legislature and to enact R.S. 47:340(E)(4),
5	(G)(6)(a) and (b) , (11) , $(H)(15)$, and $1407(6)$, relative to the collection of certain
6	sales and use tax; to provide for definitions; to provide for certain requirements; to
7	provide for certain limitations; to provide for certain conditions; to provide for
8	applicability; to provide for an effective date; and to provide for related matters.
9	Be it enacted by the Legislature of Louisiana:
10	Section 1. R.S. 47:302(W)(3) and (6), 339(A)(2), (B)(3), (5) through (8), 340(E)(2)
11	and (3), (F), (G)(1), and (H)(1) are hereby amended and reenacted and R.S. 47:340(E)(4),
12	(G)(6)(a) and (b), (11), (H)(15) and 1407(6) are hereby enacted to read as follows:
13	§302. Imposition of tax
14	* * *
15	W.
16	* * *
17	(3) A refund request shall be filed in a manner to be determined by the
18	secretary, which may include electronic filing. The refund request may be made
19	once per calendar year, and shall be accompanied by a copy of both of the following:
20	(a) All all relevant paid local use tax returns.

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1	(b) An affidavit affirming that If the delivery and use of the taxable property
2	will occur in a parish in which there is no sales and use tax imposed by any local
3	taxing authority, which affidavit has been filed with the local sales and use tax
4	commission established under Paragraph (K)(6) of this Section. an affidavit
5	confirming such will be accepted in lieu of paid local use tax returns.
6	* * *
7	(6) Until the establishment of the Louisiana Sales and Use Tax Commission
8	for Remote Sellers pursuant to R.S. 47:339(A)(2) and (B)(3), Until the Louisiana
9	Sales and Use Tax Commission for Remote Sellers enforces collection and
10	remittance of state and local sales and use tax based on the applicable state and local
11	rates and bases, dealers as defined in R.S. 47:301(4)(m); shall specifically collect the
12	additional tax authorized by Subsection K of this Section and shall file all applicable
13	sales and use tax returns. In consultation with the commission, the secretary of the
14	Department of Revenue shall publish notification of the establishment date of the
15	Louisiana Sales and Use Tax Commission for Remote Sellers in a policy statement
16	as authorized by LAC 61:III.101. Notice of enforcement by the Louisiana Sales and
17	Use Tax Commission for Remote Sellers shall be published in a policy statement as
18	authorized by LAC 61:III.101 no later than thirty days prior to the effective date of
19	the enforcement.
20	* * *
21	§339. Louisiana Sales and Use Tax Commission for Remote Sellers
22	A. The Louisiana Sales and Use Tax Commission for Remote Sellers,
23	hereinafter referred to as "commission", is created and established within the
24	Department of Revenue for the administration and collection of the sales and use tax
25	imposed by the state and political subdivisions with respect to remote sales. The
26	commission shall:
27	* * *
28	(2) Serve as the single entity in Louisiana to require remote sellers and their
29	designated agents to collect from customers and remit to the commission, sales and

1	use taxes on remote sales sourced to Louisiana on the uniform Louisiana state and
2	local sales and use tax base established by Louisiana law with respect to any federal
3	law as may be enacted by the United States Congress authorizing states to require
4	remote sellers to collect and remit state and local sales and use taxes on their sales
5	in each state or final ruling a decision by the United States Supreme Court
6	authorizing states to require remote sellers to collect and remit state and local sales
7	and use taxes on their sales in each state, overrules the physical presence requirement
8	for a remote seller to collect and remit state and local sales and use tax on remote
9	sales for delivery into the state, except those remote sellers who qualify for
10	exceptions as may be provided by federal law.
11	* * *
12	B. As used in this Chapter, unless the context clearly indicates otherwise, the
13	following terms shall be defined as follows:
14	* * *
15	(3) "Federal law" shall mean any federal law as may be enacted by the
16	United States Congress authorizing states to require remote sellers, except those
17	remote sellers who meet exceptions provided by federal law, to collect and remit
18	sales and use taxes on remote sales for delivery into Louisiana or final ruling a
19	decision by the United States Supreme Court authorizing states to require remote
20	sellers, except those remote sellers who meet exceptions provided by federal law, to
21	collect and remit sales and use taxes on remote sales sourced to Louisiana. overrules
22	the physical presence requirement for a remote seller to collect and remit state and
23	local sales and use tax on remote sales for delivery into the state.
24	* * *
25	(5) The term "non-remote sale" means a sale that is not a remote sale. The
26	term "remote sale" means a sale that is made by a remote seller for delivery into
27	Louisiana. The term "non-remote sale" means a sale that is not a remote sale.
28	(6) The term "non-remote seller" means a seller that is not a remote seller.
29	The term "remote seller" means a seller who sells for sale at retail, use, consumption,

1	distribution, or for storage to be used for consumption or distribution any taxable
2	tangible personal property, products transferred electronically, or services for
3	delivery within Louisiana, but does not have physical presence in Louisiana, and is
4	not considered a dealer as defined by R.S. 47:301(4)(a) through (l). The term "non-
5	remote seller" means a seller that is not a remote seller.
6	(7) The term "person" shall have the meaning as defined by federal law for
7	purposes of remote sales but shall retain the meaning as provided in R.S. 47:301(8)
8	for all other purposes in state and local sales and use tax law. The term "person"
9	shall have the meaning provided for in R.S. 47:301(8) for all purposes in state and
10	local sales and use tax law.
11	(8) "Sales and use taxes" and "taxes" shall mean the sales and use taxes
12	levied by the state of Louisiana under the provisions of Title 47 of the Louisiana
13	Revised Statutes of 1950 and the sales and use taxes levied by local taxing
14	authorities in Louisiana under the provisions of the Constitution of Louisiana,
15	statutory laws authorizing the imposition of such taxes, and local sales and use tax
16	ordinances. "Sales and use taxes" and "taxes" shall mean the sales and use taxes
17	levied by the state of Louisiana under the provisions of Title 47 of the Louisiana
18	Revised Statutes of 1950, and the sales and use taxes levied by local taxing
19	authorities in Louisiana under the provisions of the Constitution of Louisiana,
20	statutory laws authorizing the imposition of such taxes, and local sales and use tax
21	ordinances.
22	§340. Louisiana Sales and Use Tax Commission for Remote Sellers; members;
23	powers
24	* * *
25	E.
26	* * *
27	(2) The commission shall monthly remit monies, less any refunds and
28	amounts retained for expenses as defined in Paragraph (3) of this Subsection, to the
29	appropriate taxing jurisdiction state or local collector by electronic funds to the

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designated bank account of that jurisdiction state or local collector on or before the
 tenth business day of the month following the month of collection. Records of gross
 collections, refunds, and amounts retained for expenses shall be made accessible to
 the respective jurisdiction state or local collector on a monthly basis.

5 (3) The commission and its operations shall be funded by an amount equal 6 to actual expenses incurred which amount shall not exceed one percent of the total 7 amount of state and local sales and use tax collected on remote sales by the 8 commission. Subject to the limitations provided in this Paragraph, this amount shall 9 be retained by the commission on a monthly basis from current collections of state 10 and local sales tax on remote sales as collected by the commission prior to monthly 11 distribution to the state and local collectors. The commission shall have no authority 12 to retain these monies unless and until a federal law authorizing states to require 13 remote sellers and their agents to collect state and local sales and use taxes on their 14 sales in each state has been enacted and becomes effective- or a decision by the 15 United States Supreme Court overrules the physical presence requirement for a 16 remote seller to collect and remit state and local sales and use tax on remote sales for 17 delivery into the state. Upon distribution of the local sales and use tax collected 18 from remote sellers by the commission, the local collectors may retain the usual and 19 customary percentage of collections in accordance with local ordinances or 20 agreements.

(4) Upon the request of a state or local collector, the commission shall
 provide taxpayer information and associated taxpayer history maintained by the
 commission to the state or local collector in accordance with R.S. 47:1508.

F.(1) The commission shall develop rules and procedures in accordance with
the Administrative Procedure Act with respect to implementation of the provisions
of this Chapter. <u>Unless contrary to a rule adopted in accordance with this Subsection</u>,
the provisions of Chapter 18 of this Subtitle may be utilized by the commission, or
its duly authorized agents and employees, in the exercise of any power authorized

1	by this Section in the same manner that the provisions of Chapter 18 of this Subtitle
2	may be utilized by the secretary.
3	(2) The commission, or its duly authorized agents and employees, may take
4	any action related to the collection of tax within its jurisdiction that the secretary in
5	Chapter 18 of this Subtitle is authorized to take and any person aggrieved by any
6	such action shall have the same rights, including appeal or review as provided for in
7	Chapter 18 of this Subtitle.
8	(3) Any consideration of a request for refund and any appeal of the
9	commission's denial of a refund made to the Board of Tax Appeals shall occur in the
10	same manner and be subject to the same deadlines as provided for in Chapter 18 of
11	this Subtitle.
12	(4) The commission shall be considered a state collector for the purposes of (4)
13	R.S. 47:1418(7)(d) and the related provisions of Chapter 17 of this Subtitle.
14	G. The commission shall have the power, duty, and authority:
15	(1) To serve as the single entity within the state of Louisiana responsible for
16	all state and local sales and use tax administration, return processing, and audits for
17	remote sales sourced to delivered into Louisiana.
18	* * *
19	(6) To require remote sellers to register with the commission.
20	(a) No later than thirty calendar days after surpassing either of the criteria
21	of R.S. 47:301(4)(m)(i), a remote seller shall submit an application for approval to
22	collect state and local sales and use tax on remote sales for delivery into Louisiana
23	to the commission on a form prescribed by the commission. A remote seller shall
24	commence collection of state and local sales and use tax, once notified the
25	commission has approved the application, no later than sixty days after surpassing
26	either of the criteria of R.S. 47:301(4)(m)(i).
27	(b) The commission shall publish the date remote sellers are required to be
28	registered by policy statement as authorized by LAC 61:III.101 no later than thirty

1	days prior to the effective date of the enforcement. In no event shall the date of
2	enforcement be later than July 1, 2020.
3	* * *
4	(11) To enter into voluntary disclosure agreements with remote sellers as to
5	state and local sales and use taxes.
6	H. Nothing in this Chapter shall be construed to:
7	(1) Authorize or require any expenditure unless and until a federal law
8	authorizing states to require remote sellers and their agents to collect state and local
9	sales and use taxes on their sales in each state has been enacted and becomes
10	effective: or a decision by the United Sates Supreme Court overrules the physical
11	presence requirement for a remote seller to collect and remit state and local sales and
12	use tax on remote sales for delivery into the state.
13	* * *
14	(15) The sums of money collected by the remote seller for payment of sales
15	and use taxes imposed by the state and local taxing authorities shall, at all times, be
16	and remain the property of the respective taxing authorities and deemed held in trust
17	for taxing authorities, including while in the possession of the commission.
18	* * *
19	§1407. Jurisdiction of the board
20	The jurisdiction of the board shall extend to the following:
21	* * *
22	(6) All matters relating to appeals of administrative hearings, assessments,
23	and refund denials by the Louisiana Sales and Use Tax Commission for Remote
24	Sellers.
25	Section 2. Section 2 of Act No. 5 of the 2018 Second Extraordinary Session of the
26	Legislature is hereby amended and reenacted to read as follows:
27	* * *
28	Section 2. The provisions of this Act shall apply to all taxable periods
29	beginning on or after the date of the final ruling by the United States Supreme Court

1	i n South Dakota v.	Wayfair Inc.	Quarstock Com	Inc and Ma	nwaaa Ina No	<u>, 17 /0/</u>
1	m Soum Dukolu v.	<i>mayjun me</i> , v	oversiden.com,	me., unu m	$\frac{1}{10000000000000000000000000000000000$, <u>, , , ,</u> -

- 2 (U.S. filed October 2, 2017) finding South Dakota 2016 Senate Bill No. 106
- 3 constitutional. July 1, 2019.

4 * * *

- 5 Section 3. The provisions of this Act shall be applicable to all taxable periods
- 6 beginning on or after July 1, 2019.

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 547 Engrossed	2019 Regular Session	Abramson
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Abstract: Provides for the administration of tax collection related to remote seller transactions.

<u>Present law</u> establishes the La. Sales and Use Tax Commission for Remote Sellers hereinafter "commission" as an independent agency within the Dept. of Revenue for the administration and collection of sales and use taxes related to remote sales.

<u>Present law</u> provides that the commission serves as the single entity in La. required under any potential federal law that may require remote sellers to collect and remit sales and use tax on remote sales. <u>Proposed law</u> expands the definition of federal law for the purposes of present law and proposed law.

<u>Present law</u> provides for a refund procedure for taxpayers to voluntarily pay use tax. Further provides that a refund request is filed in a manner determined by the secretary of the Dept. of Revenue (DOR) and accompanied by documentation along with an affidavit confirming delivery and use of the taxable property in a parish where no local use tax is levied.

<u>Proposed law</u> retains <u>present law</u> but provides that when delivery and use of taxable property occurs in a parish where there is no local use tax, an affidavit confirming no local use tax will be accepted in lieu of local paid use tax returns.

<u>Present law</u> provides that until the establishment of the commission, dealers are required to collect tax and to file all returns.

<u>Proposed law</u> changes <u>present law</u> by requiring dealers to collect tax and file returns until the commission enforces the collection and remittance of state and local sales tax and that notice by the commission to commence enforcement shall be published no later than 30 days prior to the date of enforcement.

<u>Present law</u> defines "non-remote sales", "non-remote sellers", "person", "sales and use taxes" and "taxes". <u>Proposed law</u> retains <u>present law</u> but also changes the definitions of "remote sale", "remote seller" and "person."

<u>Present law</u> establishes a method of funding the commission's operations, however the commission shall not be authorized to use these funds unless and until a federal law authorizes states to require remote sellers to collect state and local sales and use taxes becomes effective.

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<u>Proposed law</u> retains <u>present law</u> but expands the definition of federal law for the purposes of this Section. <u>Proposed law</u> also provides that local collectors may be allowed to retain the usual and customary percentage of the taxes they collect.

<u>Present law</u> provides that the commission shall develop rules and procedures to carry out its purpose. <u>Proposed law</u> retains <u>present law</u> and expands the actions in which the commission is allow to take.

<u>Present law</u> provides for the powers and duties of the commission including requiring remote sellers to register with the commission. <u>Proposed law</u> retains <u>present law</u> but provides that administrative laws will specify the time period in which remote sellers must register, which shall in no event be later than July 1, 2020.

<u>Present law</u> provides that the commission remit all money collected to the appropriate taxing jurisdiction on or before the 10th business day of the month following the month of collection. <u>Proposed law</u> retains <u>present law</u> but replaces the phrase "appropriate taxing jurisdiction" with "appropriate state or local collector".

<u>Proposed law</u> requires a rule that upon the request of a state or local collector, the commission shall provide taxpayer information and taxpayer history to the state and local collector.

<u>Proposed law</u> states that money collected on behalf of a remote seller for sales and use taxes shall remain the property of the respective taxing authority and is deemed to be held in trust, including while the money is in the possession of the commission.

<u>Present law</u> provides for the jurisdiction of the Board of Tax Appeals. <u>Proposed law</u> expands the Board of Tax Appeal's jurisdiction to all matters related to the commission.

<u>Present law</u>, regarding the applicability of the provisions of <u>present law</u> relative to the commission and collection of state and local sales and use taxes on remote sales provides that the provisions of <u>present law</u> apply to all taxable periods beginning on or after the date of the final ruling by the U.S. Supreme Court in *South Dakota v. Wayfair Inc, Overstock.com, Inc., and Newegg Inc.,* finding South Dakota 2016 Senate Bill No. 106 constitutional.

<u>Proposed law</u> repeals the contingent applicability provisions thereby giving the provisions of present law immediate applicability.

(Amends R.S. 47:302(W)(3) and (6), 339(A)(2), (B)(3), (5)-(8), 340(E)(2) and (3), (F), (G)(1), and (H)(1) and §2 of Act No. 5 of the 2018 2nd E.S.; Adds R.S. 47:340(E)(4), (G)(6)(a) and (b), (11), (H)(15), and 1407(6))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Ways and Means to the <u>original</u> bill:

- 1. Change the bill <u>from</u> one that enacts provisions related to marketplace facilitator collection of state and local sales tax to one that clarifies refund request processes and administrative provisions related to the collection of taxes from remote sellers.
- 2. Remove definitions of marketplace, marketplace facilitator, and marketplace seller.
- 3. Change the entity in which the La. Sales and Use Tax Commission for Remote Sellers remits local taxes to <u>from</u> "appropriate taxing jurisdiction" to "appropriate state or local collector".

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- 4. Impose a requirement that upon the request of a state or local collector the La. Sales and Use Tax Commission for Remote Seller Commission shall provide taxpayer information to the state and local collector.
- 5. Require the La. Sales and Use Tax Commission for Remote Sellers to publish a date in which remote sellers are required to register as authorized by administrative rules, no later than 30 days prior to the effective date of enforcement and in no event later than July 1, 2020.
- 6. Establish that money collected by the remote sellers for payment of sales and use tax shall be and remain the property of the respective taxing authorities and deemed held in trust for the taxing authorities.
- 7. Make technical changes.

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