

## SENATE SUMMARY OF HOUSE AMENDMENTS

SB 138

2020 Regular Session

Allain

**KEYWORD AND SUMMARY AS RETURNED TO THE SENATE**

TAX/SALES. Provides for sales and use tax collection by marketplace facilitators.  
(7/1/20)

**SUMMARY OF HOUSE AMENDMENTS TO THE SENATE BILL**

1. Removes exclusion of "service suppliers" as defined in R.S. 33:9125(6)(b) from the definition of marketplace seller.
2. Adds authority for a marketplace facilitator and the marketplace seller to contractually agree to have the marketplace seller and its affiliates collect and remit all applicable taxes and fees under certain enumerated circumstances.

**DIGEST OF THE SENATE BILL AS RETURNED TO THE SENATE**

SB 138 Reengrossed

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Present law establishes the La. Sales and Use Tax Commission for Remote Sellers (the commission) as an independent agency within the Dept. of Revenue for the administration and collection of sales and use taxes related to remote sales.

Proposed law authorizes remote sellers that have fewer than 200 sales or less than \$100,000 of gross sales into La. to collect as a direct marketer pursuant to present law. However, once either of these sales thresholds are met, the remote seller must collect state and local sales and use tax on remote sales for delivery into the state and remit to the commission.

Proposed law requires state and local sales and use tax collected by the remote seller to be paid monthly and returns transmitted to the commission on forms prescribed, prepared, and furnished by the commission.

Proposed law provides that delinquent taxes are subject to interest and penalties and requires the commission to collect interest and penalties on delinquent taxes and distribute such collections to the state or local collector.

Proposed law authorizes vendor's compensation as a deduction against tax due if the return is filed timely and all tax shown due on the return is remitted on or before the 20th of the month following the month of collection. The commission must apply each taxing jurisdiction's specific rate of vendor's compensation as a deduction against tax due and reduce the monthly distribution accordingly.

Present law defines non-remote sales, non-remote sellers, sales and use taxes, and taxes.

Proposed law retains present law but also provides definitions specific to the commission for affiliate, marketplace, marketplace facilitator, marketplace seller, remote sale, and remote seller as follows:

- (1) "Affiliate" means an entity that owns more than five percent of the other entity or both entities are subject to the control of a common entity that owns more than five percent of each of the other entities.
- (2) "Marketplace" means any physical or electronic platform or forum, owned, operated, or otherwise controlled by the marketplace facilitator through which a marketplace seller may sell or offer for sale tangible personal property or sales of services for delivery into La.

(3) "Marketplace facilitator" means any person that facilitates a sale for a marketplace seller through a marketplace, owned, operated, or otherwise controlled by the person, by any of the following:

- (a) Offering for sale through any means, by a marketplace seller, tangible personal property, or sales of services for delivery into La.
- (b) Collecting payment from the purchaser and transmitting all or part of the payment to the marketplace seller, regardless of whether the person receives compensation or other consideration in exchange for facilitating the sale or providing any other service directly or indirectly through any agreement or arrangement with one or more third parties.

"Marketplace facilitator" does not include any of the following:

- (a) Third party payment processors.
- (b) A platform or forum that provides advertising services.
- (c) A derivatives clearing organization, a designated contract market, foreign board of trade or swap execution facility, registered with the Commodity Futures Trading Commission (CFTC registered platforms), and any clearing members, futures commission merchants, or brokers when using the services of CFTC registered platforms.
- (d) Any person who offers or facilitates the furnishing of sleeping rooms, cottages or cabins by hotels or rental cars by rental car companies.

(4) "Marketplace seller" means a person who sells or offers for sale tangible personal property or sale of services for delivery into La. through a marketplace that is owned, operated, or controlled by a marketplace facilitator.

(5) "Remote sale" means a sale made by a remote seller or a sale facilitated by a marketplace facilitator.

(6) "Remote seller" means a seller that does not have a physical presence in La. and that sells for sale at retail, use, consumption, distribution, or for storage to be used for consumption or distribution any taxable tangible personal property, products transferred electronically, or services for delivery within La.

Proposed law provides that marketplace facilitators must register with the commission and must collect and remit state and local sales and use tax on all taxable remote sales for delivery into La. which the marketplace facilitator transacts on its own behalf or facilitates on behalf of a marketplace seller.

Proposed law provides that a marketplace facilitator has the same rights and duties as a remote seller.

Proposed law provides an exception to the sales and use tax filing obligation for marketplace facilitators that had fewer than 200 sales or less than \$100,000 of gross sales into La. for the prior or current calendar year; however, once either of these sales thresholds are met, the filing and collection obligation begins.

Proposed law permits marketplace facilitators who do not meet either of the sales thresholds to voluntarily register with the commission for collection and filing of sales and use taxes.

Proposed law provides that a marketplace facilitator must register with the commission within 30 days of meeting either of the two sales thresholds and begin collection of sales and use tax within 60 days of meeting either threshold.

Proposed law provides that the marketplace facilitator shall be responsible for the determination of taxability of remote sales for delivery into La.

Proposed law relieves marketplace facilitators from any liability for failure to collect sales and use tax if the failure is due to insufficient information from the marketplace seller and further provides that the marketplace seller will then be liable for any tax due.

Proposed law does not relieve marketplace facilitators from liability for failure to collect sales and use tax if the facilitator and the marketplace seller are affiliates, and the facilitator and the seller are considered to be affiliated if one entity owns more than five percent of the other entity or both entities are subject to the control of a common entity that owns more than five percent of each of the entities.

Proposed law provides for the administrative requirements of filing a monthly return and remitting tax collected to the commission.

Proposed law provides that marketplace sellers shall not be subject to audit for remote sales facilitated by the marketplace facilitator unless the facilitator is seeking relief from liability by asserting that it had insufficient information from the marketplace seller.

Proposed law prohibits class actions against marketplace facilitators even with respect to refund claims unless the marketplace facilitator intentionally collected sales and use tax on remote sales without regard to applicable state and local sales tax law.

Proposed law specifically provides that it shall not prohibit a marketplace facilitator and the marketplace seller from contractually agreeing to have the marketplace seller and its affiliates collect and remit all applicable taxes and fees if the marketplace seller meets all of the following requirements:

(1) The marketplace seller has annual United States gross sales over one billion dollars, including the gross sales of any affiliates, and in the case of franchised entities, including the combined sales of all franchisees of a single franchisor.

(2) The marketplace seller, or its affiliates, is a service supplier that provides commercial mobile radio service or is a seller that sells a prepaid service that provides 911 access.

(3) The marketplace seller provides evidence to the marketplace facilitator that it is registered as a dealer defined by law with the state and local collectors as defined by law.

(4) The marketplace seller notifies the commission in a manner prescribed by the commission that the marketplace seller and its affiliates will collect and remit all applicable taxes and fees on its sales through the marketplace and is liable for failure to collect or remit applicable taxes and fees on its sales.

Proposed law repeals the provision of law defining dealers to include persons who engage in regular or systematic solicitation of a consumer market in the taxing jurisdiction by the distribution of catalogs, periodicals, advertising fliers, or other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system.

Effective July 1, 2020.

(Amends R.S. 47:302(V)(2) and 339(B)(7); Adds R.S. 47:340(G)(6)(c) and (d) and 340.1; Repeals R.S. 47:301(4)(I))

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