

2022 Regular Session

SENATE BILL NO. 235

BY SENATOR ALLAIN

TAX/LOCAL. Authorizes parishes to contract with the Louisiana Sales and Use Tax Commission for Remote Sellers for the collection of local sales and use tax. (1/1/23)

1 AN ACT

2 To amend and reenact R.S. 47:340(E)(3) and (5), (G)(1) through (5), the introductory
3 paragraph of (G)(6), (G)(8), and (11), (H)(3), (12), and (13), and (I), to enact R.S.
4 47:339.1, and to repeal R.S. 47:340(H)(15), relative to the administration of local
5 sales and use taxes; to provide for the powers and duties of the Louisiana Sales and
6 Use Tax Commission for Remote Sellers; to authorize the commission to collect
7 local sales and use taxes for collectors that enter into contracts with the commission;
8 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. 47:340(E)(3) and (5), (G)(1) through (5), the introductory paragraph
11 of (G)(6), (G)(8), and (11), (H)(3), (12), and (13), and (I) are hereby amended and reenacted
12 and R.S. 47:339.1 is hereby enacted to read as follows:

13 **§339.1. Louisiana Sales and Use Tax Commission for Remote Sellers;**

14 **nonremote sales**

15 **A. In addition to the duties of the commission pursuant to R.S. 47:339,**

16 **the commission shall:**

17 **(1) Develop a single electronic return for all state and local sales and use**

1 taxes in consultation with the Louisiana Uniform Local Sales Tax Board and the
2 Department of Revenue.

3 (2) Have the authority to enter into contracts with collectors of local sales
4 and use tax and state sales and use tax for the collection of tax from qualifying
5 nonremote sellers. The tax monies received pursuant to these contracts shall, at
6 all times, be and remain the property of the respective taxing authorities.

7 (3) Provide the minimum tax administration, collection, and payment
8 requirements required by federal law with respect to the collection and
9 remittance of sales and use tax imposed on nonremote sales that the commission
10 is authorized by contract to collect.

11 (4) Establish a fiscal agent for the purpose of nonremote sales and use tax
12 remittances.

13 B. Definitions.

14 (1) "Local taxing authority" and "local" means those parishes,
15 municipalities, special tax districts, political subdivisions, parish governing
16 bodies, and school boards who are authorized under the provisions of the
17 Constitution of Louisiana, the Louisiana Revised Statutes of 1950, and
18 jurisprudence to levy and collect local sales and use taxes.

19 (2) The term "nonremote sale" means a sale that is made by a nonremote
20 seller that is not a remote sale.

21 (3) The term "nonremote seller" means a seller that is not a remote
22 seller.

23 (4) The term "remote sale" means a sale that is made by a remote seller
24 for delivery into Louisiana.

25 (5) The term "remote seller" means a seller who sells for sale at retail,
26 use, consumption, distribution, or for storage to be used for consumption or
27 distribution any taxable tangible personal property, products transferred
28 electronically, or services for delivery within Louisiana, but does not have a
29 physical presence in Louisiana. The term "remote seller" includes

1 "marketplace facilitators" as defined in R.S. 47:340.1.

2 (6) The term "qualifying nonremote sale" means a sale by a qualifying
3 nonremote seller in a parish that has entered into a contract for collection by
4 the commission pursuant to Paragraph (A)(2) of this Section.

5 (7) The term "qualifying nonremote seller" means a nonremote seller
6 that has a physical location in this state and is registered to file and remit local
7 sales and use taxes pursuant to a local ordinance in two or more parishes.

8 (8) "Sales and use taxes" and "taxes" shall mean the sales and use taxes
9 levied by the state of Louisiana under the provisions of Title 47 of the Louisiana
10 Revised Statutes of 1950, and the sales and use taxes levied by local taxing
11 authorities in Louisiana under the provisions of the Constitution of Louisiana,
12 statutory laws authorizing the imposition of such taxes, and local sales and use
13 tax ordinances.

14 C. (1) Notwithstanding the provisions of Subsection A of this Section, the
15 commission shall not begin development of the single electronic return and the
16 implementation of the other duties set forth in Subsection A of this Section until
17 either a local collector or the Department of Revenue executes a contract
18 pursuant to this Section with the commission. Once a contract is executed, the
19 single electronic return shall be available to taxpayers on the first day of the
20 second calendar quarter after the contract is executed.

21 (2) If the commission certifies at a joint meeting of the Senate Committee
22 on Revenue and Fiscal Affairs and the House Committee on Ways and Means
23 that the commission has insufficient funds available from R.S. 47:340(E)(3) to
24 meet the deadline set forth in Paragraph (1) of this Subsection for the
25 development, the commission may request an extension of the deadline from the
26 committees until funds are available either through R.S. 47:340(E)(3) or an
27 appropriation.

28 §340. Louisiana Sales and Use Tax Commission for Remote Sellers; members;

29 powers

1 * * *

2 E. * * *

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

19 * * *

20 (5)(a) If use tax collections pursuant to R.S. 47:302(K) yield insufficient
 21 revenue to fulfill the dedication for the adjudication of local sales and use tax matters
 22 that is made pursuant to R.S. 47:302(K)(7) for interagency transfers to the
 23 Department of State Civil Service, Board of Tax Appeals, Local Tax Division, ~~and~~
 24 ~~there is no means of financing available to satisfy the dedication pursuant to R.S.~~
 25 ~~47:337.102(I)(3);~~ the remaining amount necessary to satisfy the dedication shall be
 26 considered an actual expense of this commission pursuant to Paragraph (3) of this
 27 Subsection, and payment of the interagency transfer due shall be made from local
 28 sales and use tax collections of the commission **within the first thirty days of the**
 29 **fiscal year.**

1 (6) To require remote sellers **and qualifying nonremote sellers** to register
2 with the commission.

3 * * *

4 (8) To enter into agreements to waive or suspend prescription with remote
5 sellers as to state and local taxes **and with qualifying nonremote sellers.**

6 * * *

7 (11) To enter into voluntary disclosure agreements with remote sellers as to
8 state and local sales and use taxes **and with qualifying nonremote sellers.**

9 H. Nothing in this Chapter shall be construed to:

10 * * *

11 (3) Authorize the commission to exercise any right or perform any function
12 presently exercised by local sales and use tax authorities under present law **except**
13 **as provided in contracts entered into pursuant to R.S. 47:339.1.**

14 * * *

15 (12) Authorize the commission to serve as a central state collection agency
16 for local sales and use taxes **except as provided in contracts entered into pursuant**
17 **to R.S. 47:339.1.**

18 (13) Limit any statutory and ordinal provisions in place as of June 16, 2017,
19 that require dealers and taxpayers, with respect to non-remote sales, to pay and remit
20 directly to the single sales and use tax collector in each parish the sales and use taxes
21 due to each local taxing authority within each parish **except as provided in**
22 **contracts entered into pursuant to R.S. 47:339.1.**

23 * * *

24 ~~(15)~~ **I.** The sums of money collected by ~~the remote seller~~ **remote sellers and**
25 **nonremote sellers and remitted to the commission pursuant to R.S. 47:339 and**
26 **339.1** for payment of sales and use taxes imposed by the state and local taxing
27 authorities shall, at all times, be and remain the property of the respective taxing
28 authorities and deemed held in trust for taxing authorities, including while in the
29 possession of the commission.

1 ~~I. The Louisiana State Law Institute is hereby authorized and requested to~~
 2 ~~review all statutes which contain phrases being changed by this Chapter and in all~~
 3 ~~locations it deems appropriate change the references, particularly those that apply to~~
 4 ~~the levy and collection of state and local sales and use taxes.~~

5 Section 2. R.S. 47:340(H)(15) is hereby repealed.

6 Section 3. On or before January 31, 2023, the Department of Revenue, the Louisiana
 7 Uniform Local Sales Tax Board, and the Louisiana Sales and Use Tax Commission for
 8 Remote Sellers shall jointly submit an informational report on the benefits, challenges,
 9 savings, and costs associated with the development, implementation, and maintenance of a
 10 combined state and local sales and use tax return for remote and nonremote sales and the
 11 designation of a centralized processor of state and local sales tax returns and remittances.
 12 The report shall include information on best practices from other states in which a single
 13 entity receives and remits revenues directly to all taxing authorities in the state and
 14 information on the feasibility of remitting local sales and use taxes daily as received from
 15 dealers to the local sales tax collectors. The report shall be submitted to the Senate
 16 Committee on Revenue and Fiscal Affairs and the House Committee on Ways and Means.
 17 Following publication of the report, interested stakeholders shall be invited to provide
 18 written comments within forty-five days of publication which shall be added as an appendix
 19 to the report and submitted to the committees.

20 Section 4. This Act shall become effective on January 1, 2023; if vetoed by the
 21 governor and subsequently approved by the legislature, this Act shall become effective on
 22 the day following such approval by the legislature or January 1, 2023, whichever is later.

The original instrument was prepared by Leonore Heavey. The following
 digest, which does not constitute a part of the legislative instrument, was
 prepared by Thomas L. Tyler.

DIGEST

SB 235 Re-Reengrossed 2022 Regular Session Allain

Present law provides for the Louisiana Sales and Use Tax Commission for Remote Sellers, hereinafter referred to as "commission", created and established within the Department of Revenue for the administration and collection of the sales and use tax imposed by the state and political subdivisions with respect to remote sales.

Proposed law retains present law with respect to remote sellers, requires that the commission

not begin development of the single electronic return for all state and local sales and use taxes in consultation with the Uniform Local Sales Tax Board and the Department of Revenue. Provides that once a contract is executed, the single electronic return shall be available to taxpayers on the first day of the second calendar quarter after the contract is executed.

Proposed law provides that if the commission certifies at a joint meeting of the Senate Committee on Revenue and Fiscal Affairs and the House Committee on Ways and Means that the commission has insufficient funds available from the monies available to the commission from the amounts for the commission from the one percent of total state and local sales and uses taxes collected to meet the deadline set forth in proposed law for the development of the single electronic return, the commission may request an extension of the deadline from the committees until funds are available either through proposed law or an appropriation.

Proposed law defines "qualifying nonremote seller" as a nonremote seller that has a physical location in this state and is registered to file and remit local sales and use taxes pursuant to a local ordinance in two or more parishes.

Proposed law authorizes the commission to request an extension of the January 1, 2024 deadline if there is insufficient funding to carry out its new duties established under proposed law.

Present law funds the commission for its actual expenses with up to 1% of the tax collected from remote sales.

Proposed law authorizes the commission to retain up to 1% of all taxes it collects from both remote and nonremote sales to fund its operations.

Present law provides for funding of the Board of Tax Appeals and further provides that if consumer use tax collections yield insufficient revenue to fulfill dedications for interagency transfers to the Dept. of State Civil Service, Board of Tax Appeals, Local Tax Division, that the remaining funds first be an obligation of the Louisiana Uniform Local Sales Tax Board (the board), and if the board does not have sufficient funds, that the balance shall be an obligation of the commission as a necessary expense of the commission.

Proposed law removes the requirement that the board provide any deficit funding for the Local Tax Division.

Present law provides for the powers and duties of the commission with respect to remote sales and remote sellers.

Proposed law retains the commission's present law powers and duties and extends them to nonremote sales that the commission is authorized under proposed law by contract to collect.

Present law provides for limitations on the authority of the commission with respect to sales other than remote sales.

Proposed law retains the present law limitations on nonremote sales except for those nonremote sales that the commission is authorized under proposed law by contract to collect.

Present law provides that taxes on remote sales collected by the commission shall, at all times, be and remain the property of the respective taxing authorities and deemed held in trust for taxing authorities by the commission.

Proposed law retains present law and extends the provisions to taxes collected on nonremote sales that the commission is authorized under proposed law by contract to collect.

Proposed law deletes obsolete language in present law that authorized the Law Institute to change references.

Proposed law deletes obsolete language in present law and that conditioned the authority of the commission to collect sales and use tax on the passage of a federal law authorizing states to require remote sellers and their agents to collect state and local sales and use taxes or when the United States Supreme Court overrules the physical presence requirement for a remote seller to collect and remit state and local sales and use tax.

Proposed law, on or before January 31, 2023, requires the Department of Revenue, the Louisiana Uniform Local Sales Tax Board, and the Louisiana Sales and Use Tax Commission for Remote Sellers to jointly submit an informational report on the benefits, challenges, savings, and costs associated with the development, implementation, and maintenance of a combined state and local sales and use tax return for remote and nonremote sales and the designation of a centralized processor of state and local sales tax returns and remittances. Requires that the report include information on best practices from other states in which a single entity receives and remits revenues directly to all taxing authorities in the state and information on the feasibility of remitting local sales and use taxes daily as received from dealers to the local sales tax collectors. Requires submission of the report to the Senate Committee on Revenue and Fiscal Affairs and the House Committee on Ways and Means and that after publication of the report, allows interested stakeholders to provide written comments within 45 days of publication which shall be added as an appendix to the report and submitted to the committees.

Effective January 1, 2023.

(Amends R.S. 47:340(E)(3) and (5), (G)(1) - (5), (6) (intro para), (8), and (11), (H)(3), (12), and (13), and (I); adds R.S. 47:339.1; repeals R.S. 47:340(H)(15))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Revenue and Fiscal Affairs to the original bill

1. Requires the commission to develop a single electronic return for all local taxing authorities in consultation with the Uniform Local Sales Tax Board and the Dept. of Revenue by January 1, 2024.
2. Authorizes the commission to request an extension of the January 1, 2024 deadline if there is insufficient funding to carry out its new duties.
3. Removes provision that beginning January 1, 2023, agreements to collect remote sales tax under present law shall be suspended for all taxing authorities until their collector has entered into an agreement for the collection of tax on nonremote sales.
4. Removes the requirement that the Louisiana Uniform Local Sales Tax Board provide any deficit funding for the Local Tax Division of the BTA.
5. Provides for technical changes.

Committee Amendments Proposed by Senate Committee on Finance to the engrossed bill

1. Requires the commission to develop a single electronic return that includes state sales and use tax in addition to taxes collected by local taxing authorities.

2. Authorizes the Dept. of Revenue to contract with the commission for the collection of state sales and use tax on nonremote sales.
3. Removes obsolete provisions that conditioned the ability of the commission to collect sales and use tax on remote sales.
4. Provides for technical changes.

Senate Floor Amendments to reengrossed bill

1. Removes "no later than January 1, 2024" the time by which the commission is to act under proposed law.
2. Adds provisions for the commission not begin development of the single electronic return until either a local collector or the revenue department executes a contract under proposed law.
3. Add provisions for submission of a informational jointly by the Department of Revenue, the Louisiana Uniform Local Sales Tax Board, and the Louisiana Sales and Use Tax Commission for Remote Sellers.