2015 Regular Session

HOUSE BILL NO. 555

BY REPRESENTATIVE FANNIN

1	AN ACT
2	To amend and reenact R.S. 47:302(K)(5) and (7)(a) and (U) and to enact R.S. 47:302(V),
3	relative to sales and use tax; to provide with respect to the collection and remittance
4	of sales and use tax; to provide for the definition of dealer; to provide a method for
5	reporting and remitting taxes by certain dealers; to authorize tax refunds under
6	certain circumstances; to provide for effectiveness; and to provide for related
7	matters.
8	Be it enacted by the Legislature of Louisiana:
9	Section 1. R.S. 47:302(K)(5) and (7)(a) and (U) are hereby amended and reenacted
10	and R.S. 47:302(V) is hereby enacted to read as follows:
11	§302. Imposition of tax
12	* * *
13	K.
14	* * *
15	(5) The tax levied under this Subsection shall be levied and collected only
16	from vendors who qualify as a "dealer" in this state solely by virtue of engaging in
17	regular or systematic solicitation of a consumer market in this state by the
18	distribution of catalogs, periodicals, advertising fliers, or other advertising, or by
19	means of print, radio, or television media, including but not limited to television
20	shopping channels, by mail, telegraphy, telephone, computer database, cable, optic,
21	microwave, or other communication system. The tax shall be collected in
22	accordance with the provisions of Subsection U of this Section. A vendor who
23	qualifies as a dealer in this state as provided in R.S. 47:301(4) is prohibited from
24	collecting the tax imposed under this Subsection in lieu of collecting the sales and

use tax imposed by a political subdivision of this state which tax is remitted directly
to the political subdivision.

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(7)(a) Pursuant to an appropriation by the legislature, the From the current collections of the tax collected under this Subsection, the secretary shall make the following distributions:

(i) The secretary shall annually provide for an interagency transfer in the amount of one hundred and thirty-two thousand dollars to the Department of State Civil Service, Board of Tax Appeals, to be expended exclusively for the purposes of its Local Tax Division, and thereafter distribute the proceeds of the tax.

(ii) All monies remaining after satisfaction of the requirements of Item (i) of this Subparagraph shall be distributed quarterly to the central local sales and use tax collector or, if none, the parish governing authority according to population. The central local sales and use tax collector or the parish governing authority shall at no charge distribute the tax proceeds received from the secretary to each political subdivision within the parish which levies a sales and use tax or receives a portion of the proceeds of a parishwide sales and use tax levy, in accordance with each such political subdivision's pro rata share of local sales and use tax receipts collected on all other transactions subject to local sales and use taxes during the most recent state fiscal year for which data is available within thirty days of receipt of the proceeds.

* * *

U. Collection of Consumer Use Tax. (1) It is the duty of the secretary of the Department of Revenue to collect all taxes imposed pursuant to this Chapter and Chapters 2-A and 2-B of this Subtitle which may be due upon the sale by a remote seller dealer of tangible personal property or services in Louisiana. The secretary is authorized and directed to employ all means available to ensure the collection of the tax in an equitable, efficient, and effective manner.

(2) Any taxpayer from whom a dealer has actually collected and remitted the tax due pursuant to Subsection K of this Section may obtain a refund if within thirty

days from the remittance of the tax they provide the secretary with either of the following:

(a) A certified copy of a use tax return that has been filed with the relevant parish sales and use tax collector concerning the same transaction, together with the proof of payment of all state and local use taxes due on the transaction.

(b) A certified copy of an affidavit that has been filed with the sales and use tax commission established pursuant to Paragraph (K)(6) of this Section, in a form prescribed by the commission, affirming that the delivery and all use of the property subject to tax will be in a parish with no use tax imposed by any local taxing authority.

V. In addition to the definition of "dealer" as provided in R.S. 47:301(4) for purposes of the consumer use tax, the term "dealer" includes every person who manufactures or produces tangible personal property for sale at retail, for use or consumption, or distribution, or for storage to be used or consumed in a taxing jurisdiction. "Dealer" is further defined to mean:

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

(2) Any person selling tangible personal property or services, the use of which is taxed pursuant to this Chapter, who:

(a) Sells the same or a substantially similar line of products as a Louisiana retailer under the same or a substantially similar business name, using the same trademarks, service marks, or trade names that are the same or substantially similar to those used by the Louisiana retailer.

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

(3) In addition to those persons established as dealers according to Paragraph (2) of this Subsection, the provisions of this Subsection shall be presumed by the taxing authority to apply to any person who holds a substantial ownership interest, directly or through a subsidiary, in a retailer maintaining sales locations in Louisiana, or to any person who is owned in whole or in substantial part by a retailer maintaining sales locations in Louisiana, or by a parent or subsidiary thereof. For the purposes of this Paragraph, "substantial ownership interest" means affiliated persons with respect to each other where one of such persons has an ownership interest of more than five percent, whether direct or indirect, in the other, or where an ownership interest of more than five percent, whether direct or indirect, is held in each of such persons by another person or by a group of other persons which are affiliated persons with respect to each other.

(4) A dealer, as defined in and for the purposes of this Subsection, shall file all applicable sales and use tax returns and remittances through the electronic filing

options available for such purposes. Further, such dealer shall specifically collect the tax authorized by R.S. 47:302(K)(5).

(5) The provisions of this Subsection holding that certain business activities conducted by certain persons establishes the person as a dealer for the purposes of sales and use tax levied by the state shall not be used in the determination of whether such persons are liable for the payment of income and franchise taxes levied by the state.

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Section 2. The provisions of this Act shall apply to tax periods beginning on and after July 1, 2015. If the United States Congress enacts legislation authorizing states to require a remote seller to collect sales taxes on taxable transactions, such legislation shall preempt the provisions of R.S. 47:302(V) and the Department of Revenue shall have the authority to promulgate, after consultation with the sales and use tax commission established under R.S. 47:302(K)(6), regulations under the Louisiana Administrative Procedure Act to carry out the provisions of the federal legislation. The Department of Revenue shall begin to promulgate such rules within ninety days of the effective date of the federal legislation.

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

SPEAKER OF THE HOUSE OF REPRESENTATIVES
PRESIDENT OF THE SENATE

APPROVED:

GOVERNOR OF THE STATE OF LOUISIANA