

2018 Second Extraordinary Session

HOUSE BILL NO. 17

BY REPRESENTATIVE FOIL

TAX/SALES & USE: Provides criteria for the definition of "dealer" for purposes of the sales tax imposed on transactions involving a remote seller (Item #26)

1 AN ACT

2 To amend and reenact R.S. 47:339(A)(2) and (B)(3) and to enact R.S. 47:301(4)(m), relative
3 to sales and use tax; to provide with respect to collection and reporting of sales and
4 use taxes; to provide for the definition of dealer; to provide for effectiveness; and to
5 provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 47:339(A)(2) and (B)(3) are hereby amended and reenacted and R.S.
8 47:301(4)(m) is hereby enacted to read as follows:

9 §301. Definitions

10 As used in this Chapter the following words, terms, and phrases have the
11 meanings ascribed to them in this Section, unless the context clearly indicates a
12 different meaning:

13 * * *

14 (4) "Dealer" includes every person who manufactures or produces tangible
15 personal property for sale at retail, for use, or consumption, or distribution, or for
16 storage to be used or consumed in a taxing jurisdiction. "Dealer" is further defined
17 to mean:

18 * * *

19 (m)(i) Any person who sells for delivery into Louisiana tangible personal
20 property, products transferred electronically, or service, and who does not have a

1 physical presence in Louisiana, if during the previous or current calendar year either
2 of the following criteria was met:

3 (aa) The person's gross revenue for sales delivered into Louisiana has
4 exceeded one hundred thousand dollars from sales of tangible personal property,
5 products transferred electronically, or services.

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

9 (ii) A person without a physical presence in Louisiana may voluntarily
10 register for and collect state and local sales and use taxes as a dealer, even if they do
11 not meet the criteria established in Item (i) of this Subparagraph.

12 * * *

13 §339. Louisiana Sales and Use Tax Commission for Remote Sellers

14 A. The Louisiana Sales and Use Tax Commission for Remote Sellers,
15 hereinafter referred to as "commission", is created and established within the
16 Department of Revenue for the administration and collection of the sales and use tax
17 imposed by the state and political subdivisions with respect to remote sales. The
18 commission shall:

19 * * *

20 (2) ~~With~~ Serve as the single entity in Louisiana to require remote sellers and
21 their designated agents to collect from customers and remit to the commission, sales
22 and use taxes on remote sales sourced to Louisiana on the uniform Louisiana state
23 and local sales and use tax base established by Louisiana law with respect to any
24 federal law as may be enacted by the United States Congress or final ruling by the
25 United States Supreme Court authorizing states to require remote sellers to collect
26 and remit state and local sales and use taxes on their sales in each state, except those
27 remote sellers who qualify for ~~the small-seller~~ exceptions as may be provided by
28 federal law, ~~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.~~

3 * * *

4 B. As used in this Chapter, unless the context clearly indicates otherwise, the
5 following terms shall be defined as follows:

6 * * *

7 (3) "Federal law" shall mean any federal law as may be enacted by the
8 United States Congress or final ruling by the United States Supreme Court
9 authorizing states to require remote sellers, except those remote sellers who meet ~~the~~
10 ~~small seller~~ exceptions of provided by federal law, to collect and remit sales and use
11 taxes on remote sales sourced to Louisiana.

12 * * *

13 Section 2. The provisions of this Act shall apply to all taxable periods beginning on
14 or after the date of the final ruling by the United States Supreme Court in *South Dakota v.*
15 *Wayfair Inc, Overstock.Com, Inc., and Newegg Inc.*, No. 17-494 (U.S. filed October 2, 2017)
16 finding South Dakota 2016 Senate Bill No. 106 constitutional.

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

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 17 Reengrossed 2018 Second Extraordinary Session Foil

Abstract: Establishes criteria for the definition of "dealer" for purposes of registration of remote sellers as collectors of state tax.

Present law defines "dealer" for purposes of state and local sales and use taxes as a 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.

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

Proposed law retains present law and further defines "dealer" as a person who does not have a physical presence in the state and who sells for delivery into La. tangible personal property, products transferred electronically, or services, if either:

- (1) The person's gross revenue from sales in La. exceeds \$100,000; or
- (2) The person engaged in 200 or more separate transactions in La.

Proposed law also provides that a person may voluntarily register as a dealer for purposes of collecting the additional sales tax regardless of their revenue or number of sales.

Present law requires that the La. Sales and Use Tax Commission for Remote Sellers (commission), serve as the single entity in La. to require remote sellers to collect and remit sales and use taxes on remote sales sourced to La. pursuant to federal law authorizing states to require remote sellers.

Proposed law retains present law and includes final rulings by the U. S. Supreme Court as a source of authority by which states may be authorized to require remote sellers to collect and remit sales and use taxes.

(Amends R.S. 47:339(A)(2) and (B)(3); Adds R.S. 47:301(4)(m))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Ways and Means to the original bill:

1. Add final rulings by the U. S. Supreme Court as a source of authority by which states may be authorized to require remote sellers to collect and remit sales and use taxes, and by which the La. Sales and Use Tax Commission may exercise its authority as the single entity in La. to require the collection and remittance of the taxes.
2. Technical.