## **ACT No. 360**

HOUSE BILL NO. 547

1

## BY REPRESENTATIVE ABRAMSON

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.				
21	(b) An affidavit affirming that If the delivery and use of the taxable property				
22	will occur in a parish in which there is no sales and use tax imposed by any local				
23	taxing authority, which affidavit has been filed with the local sales and use tax				

AN ACT

Page 1 of 8

CODING: Words in struck through type are deletions from existing law; words  $\underline{\text{underscored}}$  are additions.

commission established under Paragraph (K)(6) of this Section. an affidavit confirming such will be accepted in lieu of paid local use tax returns.

3 \* \* \*

(6) Until the establishment of the Louisiana Sales and Use Tax Commission for Remote Sellers pursuant to R.S. 47:339(A)(2) and (B)(3), Until the Louisiana Sales and Use Tax Commission for Remote Sellers enforces collection and remittance of state and local sales and use tax based on the applicable state and local rates and bases, dealers as defined in R.S. 47:301(4)(m); shall specifically collect the additional tax authorized by Subsection K of this Section and shall file all applicable sales and use tax returns. In consultation with the commission, the secretary of the Department of Revenue shall publish notification of the establishment date of the Louisiana Sales and Use Tax Commission for Remote Sellers in a policy statement as authorized by LAC 61:HI.101. Notice of enforcement by the Louisiana Sales and Use Tax Commission for Remote Sellers shall be published in a policy statement as authorized by LAC 61:HI.101 no later than thirty days prior to the effective date of the enforcement.

\* \* \*

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

A. The Louisiana Sales and Use Tax Commission for Remote Sellers, hereinafter referred to as "commission", is 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. The commission shall:

24 \* \* \*

(2) Serve as the single entity in Louisiana to require remote sellers and their designated agents to collect from customers and remit to the commission, sales and use taxes on remote sales sourced to Louisiana on the uniform Louisiana state and local sales and use tax base established by Louisiana law with respect to any federal law as may be enacted by the United States Congress <u>authorizing states to require</u> remote sellers to collect and remit state and local sales and use taxes on their sales

in each state or final ruling a decision by the United States Supreme Court authorizing states to require remote sellers to collect and remit state and local sales and use taxes on their sales in each state, overrules the physical presence requirement for a remote seller to collect and remit state and local sales and use tax on remote sales for delivery into the state, except those remote sellers who qualify for exceptions as may be provided by federal law.

\* \*

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

\* \* \*

United States Congress <u>authorizing states to require remote sellers</u>, except those remote sellers who meet exceptions provided by federal law, to collect and remit sales and use taxes on remote sales for delivery into Louisiana or final ruling a decision by the United States Supreme Court authorizing states to require remote sellers, except those remote sellers who meet exceptions provided by federal law, to collect and remit sales and use taxes on remote sales sourced to Louisiana. overrules the physical presence requirement for a remote seller to collect and remit state and local sales and use tax on remote sales for delivery into the state.

\* \* \*

- (5) The term "non-remote sale" means a sale that is not a remote sale. The term "remote sale" means a sale that is made by a remote seller for delivery into Louisiana. The term "non-remote sale" means a sale that is not a remote sale.
- (6) The term "non-remote seller" means a seller that is not a remote seller. The term "remote seller" means a seller who 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 Louisiana, but does not have physical presence in Louisiana, and is not considered a dealer as defined by R.S. 47:301(4)(a) through (l). The term "non-remote seller" means a seller that is not a remote seller.

1	(7) The term "person" shall have the meaning as defined by federal law for
2	purposes of remote sales but shall retain the meaning as provided in R.S. 47:301(8)
3	for all other purposes in state and local sales and use tax law. The term "person"
4	shall have the meaning provided for in R.S. 47:301(8) for all purposes in state and
5	local sales and use tax law.
6	(8) "Sales and use taxes" and "taxes" shall mean the sales and use taxes
7	levied by the state of Louisiana under the provisions of Title 47 of the Louisiana
8	Revised Statutes of 1950 and the sales and use taxes levied by local taxing
9	authorities in Louisiana under the provisions of the Constitution of Louisiana,
10	statutory laws authorizing the imposition of such taxes, and local sales and use tax
11	ordinances. "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.
17	§340. Louisiana Sales and Use Tax Commission for Remote Sellers; members;
18	powers
19	* * *
20	E.
21	* * *
22	(2) The commission shall monthly remit monies, less any refunds and
23	amounts retained for expenses as defined in Paragraph (3) of this Subsection, to the
24	appropriate taxing jurisdiction state or local collector by electronic funds to the
25	designated bank account of that jurisdiction state or local collector on or before the
26	tenth business day of the month following the month of collection. Records of gross
27	collections, refunds, and amounts retained for expenses shall be made accessible to
28	the respective jurisdiction state or local collector on a monthly basis.
29	(3) The commission and its operations shall be funded by an amount equal

30

to actual expenses incurred which amount shall not exceed one percent of the total

amount of state and local sales and use tax collected on remote sales by the commission. Subject to the limitations provided in this Paragraph, this amount shall be retained by the commission on a monthly basis from current collections of state and local sales tax on remote sales as collected by the commission prior to monthly distribution to the state and local collectors. The commission shall have no authority to retain these monies unless and until a federal law authorizing states to require remote sellers and their agents to collect state and local sales and use taxes on their sales in each state has been enacted and becomes effective: or a decision by 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 on remote sales for delivery into the state. Upon distribution of the local sales and use tax collected from remote sellers by the commission, the local collectors may retain the usual and customary percentage of collections in accordance with local ordinances or 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 by this Section in the same manner that the provisions of Chapter 18 of this Subtitle may be utilized by the secretary.

(2) The commission, or its duly authorized agents and employees, may take any action related to the collection of tax within its jurisdiction that the secretary in Chapter 18 of this Subtitle is authorized to take and any person aggrieved by any such action shall have the same rights, including appeal or review as provided for in Chapter 18 of this Subtitle.

1	(3) Any consideration of a request for retund and any appear of the		
2	commission's denial of a refund made to the Board of Tax Appeals shall occur in the		
3	same manner and be subject to the same deadlines as provided for in Chapter 18 o		
4	this Subtitle.		
5	(4) The commission shall be considered a state collector for the purposes of		
6	R.S. 47:1418(7)(d) and the related provisions of Chapter 17 of this Subtitle.		
7	G. The commission shall have the power, duty, and authority:		
8	(1) To serve as the single entity within the state of Louisiana responsible for		
9	all state and local sales and use tax administration, return processing, and audits for		
10	remote sales sourced to delivered into Louisiana.		
11	* * *		
12	(6) To require remote sellers to register with the commission.		
13	(a) No later than thirty calendar days after surpassing either of the criteria		
14	of R.S. 47:301(4)(m)(i), a remote seller shall submit an application for approval to		
15	collect state and local sales and use tax on remote sales for delivery into Louisiana		
16	to the commission on a form prescribed by the commission. A remote seller shall		
17	commence collection of state and local sales and use tax, once notified the		
18	commission has approved the application, no later than sixty days after surpassing		
19	either of the criteria of R.S. 47:301(4)(m)(i).		
20	(b) The commission shall publish the date remote sellers are required to be		
21	registered by policy statement as authorized by LAC 61:III.101 no later than thirty		
22	days prior to the effective date of the enforcement. In no event shall the date of		
23	enforcement be later than July 1, 2020.		
24	* * *		
25	(11) To enter into voluntary disclosure agreements with remote sellers as to		
26	state and local sales and use taxes.		
27	H. Nothing in this Chapter shall be construed to:		
28	(1) Authorize or require any expenditure unless and until a federal law		
29	authorizing states to require remote sellers and their agents to collect state and local		
30	sales and use taxes on their sales in each state has been enacted and becomes		

effective: or a decision by the United Sates Supreme Court overrules the physical

presence requirement for a remote seller to collect and remit state and local sales and

use tax on remote sales for delivery into the state.

\* \* \*

(15) The sums of money collected by the remote seller for payment of sales

(15) The sums of money collected by the remote seller for payment of sales and use taxes imposed by the state and local taxing authorities shall, at all times, be and remain the property of the respective taxing authorities and deemed held in trust for taxing authorities, including while in the possession of the commission.

\* \* \*

§1407. Jurisdiction of the board

6

7

8

9

10

11

13

14

15

16

17

19

20

21

22

23

The jurisdiction of the board shall extend to the following:

\* \* \*

(6) All matters relating to appeals of administrative hearings, assessments, and refund denials by the Louisiana Sales and Use Tax Commission for Remote Sellers.

Section 2. Section 2 of Act No. 5 of the 2018 Second Extraordinary Session of the Legislature is hereby amended and reenacted to read as follows:

18 \* \* \*

Section 2. The provisions of this Act shall apply to all taxable periods beginning on or after the date of the final ruling by the United States Supreme Court in South Dakota v. Wayfair Inc, Overstock.Com, Inc., and Newegg Inc., No. 17-494 (U.S. filed October 2, 2017) finding South Dakota 2016 Senate Bill No. 106 constitutional. July 1, 2019.

24 \* \* \*

1	Section 3.	The provisions of this Act shall be applicable to all taxable periods	
2	beginning on or af	ter July 1, 2019.	
		SPEAKER OF THE HOUSE OF REPRESENTATIVES	
		PRESIDENT OF THE SENATE	
		GOVERNOR OF THE STATE OF LOUISIANA	

**ENROLLED** 

HB NO. 547

APPROVED: \_\_\_\_\_