

SENATE BILL NO. 138

BY SENATOR ALLAIN

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AN ACT

To amend and reenact R.S. 47:302(V)(2) and 339(B)(7), to enact R.S. 47:340(G)(6)(c) and (d) and R.S. 47:340.1, and to repeal R.S. 47:301(4)(l), relative to tax collection; to provide for requirements to file tax returns; to provide for compensation to remote sellers; to provide for the collection of sales and use tax from marketplace facilitators and remote sellers; to provide for definitions; to provide for certain conditions and limitations; to provide for applicability; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 47:302(V)(2) and 339(B)(7) are hereby amended and reenacted and R.S. 47:340(G)(6)(c) and (d) and R.S. 47:340.1 are hereby enacted to read as follows:

§302. Imposition of tax

\* \* \*

V. \* \* \*

(2) 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 Paragraph (K)(5) of this Section.~~ **If neither the dealer nor any of its affiliates as defined in R.S. 47:340.1, meet the economic nexus thresholds set forth in R.S. 47:301(4)(m)(i)(aa) or (bb), the dealer may collect the tax authorized by Paragraph (K)(5) of this Section. If either the dealer or any of its affiliates as defined in R.S. 47:340.1 meet the economic nexus thresholds set forth in R.S. 47:301(4)(m)(i)(aa) or (bb), the dealer shall collect state and local sales and use tax on remote sales for delivery into the state and remit to the Louisiana Sales and Use Tax Commission for Remote Sellers.**

\* \* \*

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

2 \* \* \*

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

5 \* \* \*

6 (7) The term "remote seller" means a seller who sells for sale at retail, use,  
7 consumption, distribution, or for storage to be used for consumption or distribution  
8 any ~~taxable~~ tangible personal property, products transferred electronically, or  
9 services for delivery within Louisiana, but does not have physical presence in  
10 Louisiana, ~~and is not considered a dealer as defined by R.S. 47:301(4)(a) through (l).~~

11 **The term "remote seller" includes "marketplace facilitators" as defined by R.S.**  
12 **47:340.1.** The term "non-remote seller" means a seller that is not a remote seller.

13 \* \* \*

14 §340. Louisiana Sales and Use Tax Commission for Remote Sellers; members;  
15 powers

16 \* \* \*

17 G. The commission shall have the power, duty, and authority:

18 \* \* \*

19 (6) To require remote sellers to register with the commission.

20 \* \* \*

21 **(c) Notwithstanding the duty to register with the commission, the state**  
22 **and local sales and use tax required to be collected by the remote seller shall be**  
23 **due and payable monthly. For the purpose of ascertaining the amount of tax**  
24 **payable, all remote sellers shall transmit to the commission returns on forms**  
25 **prescribed, prepared, and furnished by the commission showing the gross sales**  
26 **arising from all transactions during the preceding calendar month, on or before**  
27 **the twentieth day of the month following the month in which this tax is required**  
28 **to be collected. These returns shall show any further information the**  
29 **commission may require to correctly compute and collect the tax levied. At the**  
30 **time of making the return required pursuant to this Subparagraph, every**



1 which a marketplace seller may sell or offer for sale tangible personal property  
2 or sales of services for delivery into Louisiana.

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

6 (i) Offering for sale through any means, by a marketplace seller, tangible  
7 personal property or sales of services for delivery into Louisiana.

8 (ii) Collecting payment from the purchaser and transmitting all or part  
9 of the payment to the marketplace seller, regardless of whether the person  
10 receives compensation or other consideration in exchange for facilitating the  
11 sale or providing any other service directly or indirectly through any agreement  
12 or arrangement with one or more third parties.

13 (b) "Marketplace facilitator" shall not include any of the following:

14 (i) A payment processor that only handles the processing of payments  
15 between the marketplace facilitator and the purchaser.

16 (ii) A platform or forum that provides advertising services, including  
17 listing products for sale, so long as the advertising service platform or forum  
18 does not also engage directly or indirectly through one or more affiliated  
19 persons in the activities described in Item (a)(ii) of this Paragraph.

20 (iii) A derivatives clearing organization, a designated contract market,  
21 foreign board of trade or swap execution facility, registered with the  
22 Commodity Futures Trading Commission (CFTC registered platforms), and  
23 any clearing members, futures commission merchants, or brokers when using  
24 the services of CFTC registered platforms.

25 (iv) Any person who offers or facilitates the furnishing of sleeping rooms,  
26 cottages or cabins by hotels or who offers or facilitates the furnishing of rental  
27 cars by rental car companies.

28 (5) "Marketplace seller" means a person who sells or offers for sale  
29 tangible personal property, or sales of services for delivery into Louisiana  
30 through a marketplace that is owned, operated, or controlled by a marketplace

1 facilitator.

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

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

9 (8) "Secretary" means the secretary of the Department of Revenue.

10 B. Duties of marketplace facilitators. A marketplace facilitator shall be  
11 considered the dealer for each remote sale for delivery into Louisiana and  
12 transacted on a marketplace on behalf of a marketplace seller. A marketplace  
13 facilitator shall be responsible for all obligations imposed on dealers under this  
14 Subtitle and shall keep records and information required by the commission to  
15 ensure proper collection and remittance of sales and use tax, including but not  
16 limited to exemption certificates and information from the marketplace seller  
17 that may be used to determine the taxability of remote sales.

18 C. Calculation of remote sales and criteria

19 (1) A marketplace facilitator shall collect and remit state and local sales  
20 and use tax on all taxable remote sales for delivery into Louisiana that the  
21 marketplace facilitator transacts on its own behalf or facilitates on behalf of a  
22 marketplace seller regardless of whether the marketplace seller is a dealer, has  
23 registered as a dealer in Louisiana, or otherwise would have been required to  
24 collect state and local sales and use tax if the remote sale had not been  
25 facilitated by the marketplace facilitator. For purposes of this Subtitle, a  
26 marketplace facilitator shall have the same rights and duties as a remote seller.

27 (2) The requirement of Paragraph (1) of this Subsection shall apply only  
28 to a marketplace facilitator that makes or facilitates a remote sale for delivery  
29 in Louisiana of tangible personal property, products transferred electronically,  
30 or services, if during the previous or current calendar year either of the

1 following are met:

2 (a) The marketplace facilitator's gross revenue for sales delivered into  
3 Louisiana exceeded one hundred thousand dollars from sales of tangible  
4 personal property, products transferred electronically, or services.

5 (b) The marketplace facilitator sold for delivery into Louisiana tangible  
6 personal property, products transferred electronically, or services in two  
7 hundred or more separate transactions.

8 (3) In determining whether the criteria of Paragraph (2) of this  
9 Subsection have been met, all remote sales shall be considered. However, a  
10 marketplace facilitator may voluntarily register for and collect state and local  
11 sales and use tax as a dealer regardless of whether the marketplace facilitator  
12 meets the criteria established in Paragraph (2) of this Subsection.

13 D. Timing of application and collection

14 (1) No later than thirty calendar days after meeting either of the criteria  
15 of Paragraph (C)(2) of this Section, a marketplace facilitator shall submit an  
16 application for approval to collect state and local sales and use tax on remote  
17 sales for delivery into Louisiana to the commission on a form prescribed by the  
18 commission. A marketplace facilitator shall commence collection of state and  
19 local sales and use tax, once notified the commission has approved the  
20 application, no later than sixty days after meeting either of the criteria of  
21 Paragraph (C)(2) of this Section.

22 E. Administration of requirements to collect and remit state and local  
23 sales and use tax

24 (1) For remote sales transacted on a marketplace, the marketplace  
25 facilitator shall be responsible for the determination of taxability of remote sales  
26 for delivery into Louisiana. Except as provided in Paragraph (2) of this  
27 Subsection, the marketplace facilitator shall collect and remit to the commission  
28 state and local sales and use tax based on the applicable state and local rates and  
29 bases.

30 (2)(a) If a marketplace facilitator fails to collect tax as required by this

1            Subsection due to incorrect or insufficient information provided by the  
2            marketplace seller, the marketplace facilitator shall be relieved of liability for  
3            failure to collect or remit the tax provided that the relief under this Paragraph  
4            shall not exceed five percent of the total sales tax due from sales made or  
5            facilitated in this state by the marketplace facilitator. If the marketplace  
6            facilitator is relieved of liability under this Paragraph, the marketplace seller  
7            shall be liable for any amount of uncollected or unremitted tax due.

8            (b) No relief authorized by this Paragraph shall be permitted for remote  
9            sales made by a marketplace seller who is affiliated with the marketplace  
10           facilitator. For purposes of this Section, persons or entities shall be considered  
11           affiliated if one entity owns more than five percent of the other entity or both  
12           entities are subject to the control of a common entity that owns more than five  
13           percent of each of the entities.

14           (3) The state and local sales and use tax required to be collected by the  
15           marketplace facilitator shall be due and payable monthly. For the purpose of  
16           ascertaining the amount of tax payable, all marketplace facilitators shall  
17           transmit to the commission returns on forms prescribed and prepared by the  
18           commission showing the gross sales arising from all transactions during the  
19           preceding calendar month, on or before the twentieth day of the month  
20           following the month in which this tax is required to be collected. These returns  
21           shall show any further information the commission may require to correctly  
22           compute and collect the tax levied. At the time of making the return required  
23           pursuant to this Paragraph, every marketplace facilitator shall compute and  
24           remit to the commission the required tax due for the preceding calendar month,  
25           and failure to remit the tax shall cause the tax to become delinquent. In the  
26           event the tax becomes delinquent, interest and penalties imposed by this Subtitle  
27           shall be an obligation to be assessed, collected, and enforced against the  
28           marketplace facilitator in the same manner as if it were a tax due.

29           (4) As prescribed by regulations of the commission, a marketplace  
30           facilitator may either:

1           (a) Report the sales and use tax collected, as required by Paragraph  
2           (C)(1) of this Section, on all taxable remote sales for delivery into Louisiana that  
3           the marketplace facilitator facilitates on behalf of a marketplace seller  
4           separately from all sales and use tax collected, as required by Paragraph (C)(1)  
5           of this Section, on taxable remote sales for delivery into Louisiana that the  
6           marketplace facilitator transacts on its own behalf or on behalf of an affiliate,  
7           as described in Subparagraph (2)(b) of this Subsection, of the marketplace  
8           facilitator using a separate marketplace facilitator form prescribed and  
9           prepared by the commission.

10           (b) Report all of the sales and use tax collected, as required by  
11           Paragraph (C)(1) of this Section, on a combined basis and on a form prescribed  
12           and prepared by the commission.

13           (5) The marketplace facilitator shall be the sole person subject to audit  
14           for remote sales made by marketplace sellers but facilitated by the marketplace  
15           facilitator. Marketplace sellers shall not be subject to audit for remote sales  
16           facilitated by the marketplace facilitator except to the extent the marketplace  
17           facilitator seeks relief under Paragraph (2) of this Subsection.

18           (6) Notwithstanding any law to the contrary, a class action shall not be  
19           brought or maintained against a marketplace facilitator in the Louisiana Board  
20           of Tax Appeals or in any state or federal court by or on behalf of purchasers  
21           arising from or related to an overpayment of sales or use tax collected by the  
22           marketplace facilitator under this Section, regardless of whether the action is  
23           characterized as a tax refund claim, provided the marketplace facilitator did  
24           not intentionally collect state and local sales and use tax on remote sales without  
25           regard to applicable state and local rates and bases.

26           F. Notwithstanding any other provision of law to the contrary, nothing  
27           in this Section shall prohibit the marketplace facilitator and the marketplace  
28           seller from contractually agreeing to have the marketplace seller and its  
29           affiliates collect and remit all applicable taxes and fees if the marketplace seller  
30           meets all of the following requirements:

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

5                   (2) The marketplace seller, or its affiliates, is a service supplier as defined  
6                   by R.S. 33:9109(B)(7) or is a seller as defined by R.S. 33:9109.1(B)(8).

7                   (3) The marketplace seller provides evidence to the marketplace  
8                   facilitator that it is registered as a dealer defined by R.S. 47:301(4) with the  
9                   state and local collectors as defined by R.S. 47:301(2).

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

15                  Section 2. R.S. 47:301(4)(l) is hereby repealed.

16                  Section 3. This Act shall become effective on July 1, 2020.

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

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