HLS 23RS-540 REENGROSSED

2023 Regular Session

HOUSE BILL NO. 171

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BY REPRESENTATIVE BEAULLIEU

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

TAX/SALES & USE: Provides relative to requirements for dealers and marketplace facilitators to collect and remit sales and use taxes

AN ACT

2	To amend and reenact R.S. 47:301(4)(m)(i) and 340.1(C)(2) and (3) and (D), relative to
3	administration and collection of state and local sales and use taxes with respect to
4	remote sales; to provide relative to duties of entities defined as marketplace
5	facilitators; to provide relative to the requirement for a marketplace facilitator to
6	collect and remit sales and use taxes; to provide for conditions pursuant to which the
7	requirement applies; to provide for certain duties of the Louisiana Sales and Use Tax
8	Commission for Remote Sellers with respect to marketplace facilitators; to provide
9	for definitions; and to provide for related matters.
10	Be it enacted by the Legislature of Louisiana:
11	Section 1. R.S. 47:301(4)(m)(i) and 340.1(C)(2) and (3) and (D) are hereby amended
12	and reenacted to read as follows:
13	§301. Definitions
14	As used in this Chapter, the following words, terms, and phrases have the
15	meanings ascribed to them in this Section, unless the context clearly indicates a
16	different meaning:
17	* * *
18	(4) "Dealer" includes every person who manufactures or produces tangible
19	personal property for sale at retail, for use, or consumption, or distribution, or for

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CODING: Words in struck through type are deletions from existing law; words <u>underscored</u> are additions.

1	storage to be used or consumed in a taxing jurisdiction. "Dealer" is further defined
2	to mean:
3	* * *
4	(m)(i) Any person who sells for delivery into Louisiana tangible personal
5	property, products transferred electronically, or services, and who does not have a
6	physical presence in Louisiana, if during the previous or current calendar year either
7	of the following criteria was met:
8	(aa) The the person's gross revenue for sales delivered into Louisiana has
9	exceeded one hundred thousand dollars from sales of tangible personal property,
10	products transferred electronically, or services.
11	(bb) The person sold for delivery into Louisiana tangible personal property,
12	products transferred electronically, or services in two hundred or more separate
13	transactions.
14	* * *
15	§340.1. Marketplace facilitators; collection and remittance of state and local sales
16	and use tax
17	* * *
18	C. Calculation of remote sales and criteria.
19	* * *
20	(2) The requirement of Paragraph (1) of this Subsection shall apply only to
21	a marketplace facilitator that makes or facilitates a remote sale for delivery in
22	Louisiana of tangible personal property, products transferred electronically, or
23	services; if, during the previous or current calendar year, either of the following are
24	met:
25	(a) The the marketplace facilitator's gross revenue for retail sales delivered
26	into Louisiana exceeded one hundred thousand dollars from sales of tangible
27	personal property, products transferred electronically, or services.

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

- (3) In determining whether the <u>criteria of condition established in Paragraph</u> (2) of this Subsection <u>have has been met, all only remote sales that are retail sales, as defined in R.S. 47:301, shall be considered. However, a marketplace facilitator may voluntarily register for and collect state and local sales and use tax as a dealer regardless of whether the marketplace facilitator meets the <u>criteria condition</u> established in Paragraph (2) of this Subsection.</u>
 - D. Timing of application and collection.

No later than thirty calendar days after meeting either of the criteria of the condition established in Paragraph (C)(2) of this Section, a marketplace facilitator shall submit an application for approval to collect state and local sales and use tax on remote sales for delivery into Louisiana to the commission on a form prescribed by the commission. The commission shall approve or deny the application and shall notify the marketplace facilitator of the approval or denial no later than thirty business days after receiving the complete application. A marketplace facilitator shall commence collection of state and local sales and use tax, once notified of the commission has approved commission's approval of the application, no later than sixty days after meeting either of the criteria of the condition established in Paragraph (C)(2) of this Section.

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 171 Reengrossed

2023 Regular Session

Beaullieu

Abstract: Revises certain conditions under which dealers and marketplace facilitators are required to collect and remit state and local sales and use tax on remote sales.

<u>Present law</u> defines the term "dealer" for purposes of imposition, administration, and collection of state and local sales and use tax. Provides that the sales and use taxes imposed by present law shall be collected from dealers.

<u>Proposed law</u> amends <u>present law</u> to do the following:

- (1) Eliminate from the definition of "dealer" any person who does not have a physical presence in La. and, during the previous or current calendar year, sells for delivery into La. tangible personal property, products transferred electronically, or services in 200 or more separate transactions.
- (2) Retain within the definition of "dealer" any person who does not have a physical presence in La. and whose gross revenue for sales delivered into La. during the previous or current calendar year has exceeded \$100,000 from sales of tangible personal property, products transferred electronically, or services.

<u>Present law</u> provides relative to imposition, administration, and collection of state and local sales and use tax on remote sales. Defines "remote sale", "marketplace", "marketplace seller", "marketplace facilitator", and other key terms for purposes of <u>present law</u>. Provides that "marketplace facilitator", with limited exceptions, means any person that facilitates a sale for a marketplace seller through a marketplace, owned, operated, or otherwise controlled by the person, by any of the following:

- (1) Offering for sale through any means, by a marketplace seller, tangible personal property or sales of services for delivery into La.
- (2) Collecting payment from the purchaser and transmitting all or part of the payment to the marketplace seller.

<u>Proposed law</u> retains <u>present law</u>.

<u>Present law</u> requires marketplace facilitators to collect and remit state and local sales and use tax on all taxable remote sales for delivery into La. that the marketplace facilitator transacts on its own behalf or facilitates on behalf of a marketplace seller. Provides, however, that this requirement shall apply only to a marketplace facilitator if, during the previous or current calendar year, either of the following conditions are met:

- (1) The marketplace facilitator's gross revenue for sales delivered into La. exceeded \$100,000 from sales of tangible personal property, products transferred electronically, or services.
- (2) The marketplace facilitator sold for delivery into La. tangible personal property, products transferred electronically, or services in 200 or more separate transactions.

<u>Proposed law</u> revises <u>present law</u> relative to conditions under which marketplace facilitators are required to collect and remit state and local sales and use tax on remote sales. <u>Proposed law</u> stipulates that the gross revenue condition for sales delivered into La. (no. (1) above) applies exclusively to retail sales and repeals the 200-transaction condition (no. (2) above).

<u>Present law</u> provides the following procedure for marketplace facilitators initiating their collection of sales and use taxes on remote sales:

(1) No later than 30 calendar days after a marketplace facilitator meets the conditions requiring it to collect and remit sales and use taxes, it shall submit an application for approval to collect such taxes to the La. Sales and Use Tax Commission for Remote Sellers (hereafter, the "commission").

(2) A marketplace facilitator shall commence collection of sales and use taxes, once notified the commission has approved the application, no later than 60 days after meeting the conditions requiring it to collect and remit such taxes.

<u>Proposed law</u> adds an interim step to this procedure requiring the commission to approve or deny the marketplace facilitator's application and notify the marketplace facilitator of the approval or denial no later than 30 business days after receiving the completed application.

(Amends R.S. 47:301(4)(m)(i) and 340.1(C)(2) and (3) and (D))

Summary of Amendments Adopted by House

The House Floor Amendments to the engrossed bill:

- 1. Amend <u>present law</u> (R.S. 47:301(4)) defining the term "dealer" for purposes of sales tax administration to do the following:
 - (a) Eliminate from the definition of "dealer" any person who does not have a physical presence in La. and, during the previous or current calendar year, sells for delivery into La. tangible personal property, products transferred electronically, or services in 200 or more separate transactions.
 - (b) Retain within the definition of "dealer" any person who does not have a physical presence in La. and whose gross revenue for sales delivered into La. during the previous or current calendar year has exceeded \$100,000 from sales of tangible personal property, products transferred electronically, or services.
- 2. Revise <u>proposed law</u> requiring that the commission approve or deny a marketplace facilitator's application and notify the marketplace facilitator of the approval or denial no later than 20 calendar days after receiving the application to require instead that the commission take such action no later than 30 business days after receiving the marketplace facilitator's completed application.