# LEGISLATIVE FISCAL OFFICE
## Fiscal Note

Fiscal Note On: **HB 641** HLS 11RS 2066
Bill Text Version: **ENGROSSED**
Opp. Chamb. Action:
Proposed Amd.:
Sub. Bill For.: HB 544

**Date:** May 25, 2011 8:13 AM
**Author:** JONES, ROSALIND
**Dept./Agy.:** Revenue
**Subject:** Defines dealer for sales tax purposes
**Analyst:** Deborah Vivien

TAX/SALES & USE EG SEE FISC NOTE GF RV See Note 
Provides with respect to the definition of "dealer" for state and local sales and use tax

Current law: For purposes of sales tax collection, a dealer is defined in detail in R.S. 47:301(4), sections (a)-(l). The U.S. Supreme Court has found that a business with a physical presence in the state has established a nexus and is responsible for the collection and remittance of state and local sales tax.

Proposed law expands the definition of dealer by including internet businesses that also have a physical presence in the state and those soliciting business through an independent contractor or any other representative, whether by internet or otherwise. Any person who sells the same or similar products under the same or similar name would be considered dealers for state and local sales tax purposes. The legislation also contains ownership criteria. These companies would then be obligated to collect and remit sales tax on behalf of the state and local governments, including sales over the internet mailed to purchasers in the state. The bill's provisions are prospective only.

| **EXPENDITURES** | **2011-12** | **2012-13** | **2013-14** | **2014-15** | **2015-16** | **5 -YEAR TOTAL** |
|---|---|---|---|---|---|---|
| State Gen. Fd. | $0 | $0 | $0 | $0 | $0 | **$0** |
| Agy. Self-Gen. | $0 | $0 | $0 | $0 | $0 | **$0** |
| Ded./Other | $0 | $0 | $0 | $0 | $0 | **$0** |
| Federal Funds | $0 | $0 | $0 | $0 | $0 | **$0** |
| Local Funds | $0 | $0 | $0 | $0 | $0 | **$0** |
| **Annual Total** | **$0** | **$0** | **$0** | **$0** | **$0** | **$0** |

| **REVENUES** | **2011-12** | **2012-13** | **2013-14** | **2014-15** | **2015-16** | **5 -YEAR TOTAL** |
|---|---|---|---|---|---|---|
| State Gen. Fd. | SEE BELOW | SEE BELOW | SEE BELOW | SEE BELOW | SEE BELOW | |
| Agy. Self-Gen. | $0 | $0 | $0 | $0 | $0 | **$0** |
| Ded./Other | $0 | $0 | $0 | $0 | $0 | **$0** |
| Federal Funds | $0 | $0 | $0 | $0 | $0 | **$0** |
| Local Funds | $0 | $0 | $0 | $0 | $0 | **$0** |
| **Annual Total** | **$0** | **$0** | **$0** | **$0** | **$0** | **$0** |

**EXPENDITURE EXPLANATION**
There is no anticipated direct material effect on governmental expenditures as a result of this measure.

**REVENUE EXPLANATION**
This bill does not change overall legal tax liabilities. In cases where sales tax is not collected by the seller during the sales transaction, the consumer is still obligated to pay the use tax by filing with the Department of Revenue. According to the Department of Revenue, annual collections of consumer use tax are just short of $1 million per year, suggesting that consumer compliance is low; however, business remittances of use tax are approximately $400 million per year.

A dealer is defined under the state sales tax code to establish an obligation to collect and remit sales tax on behalf of the state and local taxing jurisdictions. This bill specifically names as dealers those internet businesses that also have a brick and mortar presence in the taxing jurisdiction and those soliciting business through an independent contractor, whether by internet or otherwise. The affected businesses are obligated to collect state and local sales tax on behalf of the state for all sales made in the state, including those over the internet and mailed to purchasers in the state. For those businesses with a physical presence or nexus in the state, this reflects current interpretation and practice of the Department of Revenue and is not expected to materially alter tax liabilities or collections. The portion of the bill related to those doing business through independent contractors targets internet services that have affiliates in the state who offer a link to the independent contractor's site for a commission on sales. These entities would now be obligated to collect and remit state and local sales tax since those in-state affiliates establish a physical presence or nexus. Currently, many large online retailers are collecting and remitting sales tax in the absence of this legislation, but a few large ones are not, including Amazon.com and Overstock.com. Five other states (NY, IL, CO, RI and HA) have recently passed similar legislation and, in four of the states, Amazon severed its affiliate program in those states to avoid collecting taxes (the NY law is being challenged). However, other retailers have reportedly extended offers to those associates to provide commission and collect/remit the tax. The net effect on aggregate sales in a state is unlikely to be material.

The bill may help assure compliance in cases where a dispute occurs with the state, and may help local governments enforce compliance, as well. To the extent existing state or local tax liabilities are not being collected/remitted from certain retailers affected by this bill, compliance may be enhanced and additional revenue receipts may result; primarily from consumer purchases. The magnitude of this potential effect for the state and local jurisdictions is indeterminable.

Senate Dual Referral Rules House

☐ 13.5.1 >= $100,000 Annual Fiscal Cost {S&H}
☐ 13.5.2 >= $500,000 Annual Tax or Fee Change {S&H}
☐ 6.8(F)1 >= $500,000 Annual Fiscal Cost {S}
6.8(F)2 >= $100,000 Annual SGF Cost {H&S}
☐ 6.8(G) >= $500,000 Tax or Fee Increase or a Net Fee Decrease {S}

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