

SENATE BILL NO. 162

BY SENATOR REESE

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

AN ACT

To amend and reenact R.S. 47:301(4)(k)(i), 302(V)(1) and (2), 339(A)(2), (B)(6) and (7), 340(G)(6)(a) and (H), and 340.1(A)(7) and (C)(2), to enact R.S. 47:340(G)(6)(d), and to repeal R.S. 47:340.1(A)(4)(b)(iv), relative to sales and use tax; to provide for the collection and administration of sales and use tax; to provide for definitions; to provide relative to dealers; to provide for the Louisiana Sales and Use Tax Commission for Remote Sellers; to provide for vendor's compensation; to provide relative to marketplace facilitators; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 47:301(4)(k)(i), 302(V)(1) and (2), 339(A)(2), (B)(6) and (7), 340(G)(6)(a) and (H) and 340.1(A)(7) and (C)(2) are hereby amended and reenacted and R.S. 47:340(G)(6)(d) is hereby enacted to read as follows:

§301. Definitions

* * *

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

* * *

(k)(i) Any person who sells for delivery into Louisiana tangible personal property, ~~products transferred electronically~~ **digital products**, or services, and who does not have a physical presence in Louisiana, if during the previous or current calendar year the person's gross revenue for sales delivered into Louisiana has exceeded one hundred thousand dollars from sales of tangible personal property, ~~products transferred electronically~~ **digital products**, or services.

* * *

1 §302. Imposition of tax

2 * * *

3 V.(1) In addition to the definition of "dealer" as provided in R.S. 47:301(4)
 4 for purposes of the consumer use tax, the term "dealer" includes every person who
 5 manufactures or produces tangible personal property or digital products for sale at
 6 retail, for use or consumption, or distribution, or for storage to be used or consumed
 7 in a taxing jurisdiction. "Dealer" is further defined to mean: **any person who is**
 8 **engaged in business in Louisiana through participation in the retail sales**
 9 **market within the state through any means whatsoever or who otherwise avails**
 10 **himself of the substantial privilege of carrying on business within the state,**
 11 **including through virtual or economic contacts.**

12 ~~(a) Any person engaging in business in the taxing jurisdiction which shall~~
 13 ~~mean the solicitation of business through an independent contractor or any other~~
 14 ~~representative pursuant to an agreement with a Louisiana resident or business under~~
 15 ~~which the resident or business, for a commission, referral fee, or other consideration~~
 16 ~~of any kind, directly or indirectly, refers potential customers, whether by link on an~~
 17 ~~internet website, an in-person oral presentation, telemarketing, or otherwise to the~~
 18 ~~seller. If the cumulative gross receipts from sales of tangible personal property or~~
 19 ~~digital products to customers in this state who are referred to the person through an~~
 20 ~~agreement exceeds fifty thousand dollars during the preceding twelve months, the~~
 21 ~~presumption regarding the status of that person as a dealer may be rebutted if the~~
 22 ~~person can demonstrate, to the satisfaction of the secretary, that he cannot reasonably~~
 23 ~~be expected to have gross receipts in excess of fifty thousand dollars for the~~
 24 ~~succeeding twelve months.~~

25 ~~(b) Any person selling tangible personal property, digital products, or~~
 26 ~~services, the use of which is taxed pursuant to this Chapter, who:~~

27 ~~(i) Sells the same or a substantially similar line of products as a Louisiana~~
 28 ~~retailer under the same or substantially similar business name, using the same~~
 29 ~~trademarks, service marks, or trade names that are the same or substantially similar~~
 30 ~~to those used by the Louisiana retailer.~~

1 ~~(ii) Solicits business and develops and maintains a market in Louisiana~~
2 ~~through an agent, salesman, independent contractor, solicitor, or other representative~~
3 ~~pursuant to an agreement with a Louisiana resident or business, hereinafter referred~~
4 ~~to collectively as an "affiliated agent", under which the affiliated agent, for a~~
5 ~~commission, referral fee, or other consideration of any kind engages in activities in~~
6 ~~this state that inure to the benefit of the person in the person's development or~~
7 ~~maintenance of a market for its goods or services in the state, to the extent that those~~
8 ~~activities of the affiliated agent are sufficient to satisfy the nexus requirement of the~~
9 ~~United States Constitution. For purposes of this Subparagraph, such activities of the~~
10 ~~affiliated agent shall include referral of potential customers to the person, either~~
11 ~~directly or indirectly, whether by link on an internet website or otherwise.~~

12 ~~(c) In addition to those persons established as dealers according to~~
13 ~~Subparagraph (b) of this Paragraph, the provisions of this Subsection shall be~~
14 ~~presumed by a taxing authority to apply to any person who holds a substantial~~
15 ~~ownership interest, directly or through a subsidiary, in a retailer maintaining sales~~
16 ~~locations in Louisiana, or to any person who is owned in whole or in substantial part~~
17 ~~by a retailer maintaining sales locations in Louisiana, or by a parent or subsidiary~~
18 ~~thereof. For purposes of this Paragraph, "substantial ownership interest" means~~
19 ~~affiliated persons with respect to each other where one of such persons has an~~
20 ~~ownership interest of more than five percent, whether direct or indirect, in the other,~~
21 ~~or where an ownership interest of more than five percent, whether direct or indirect,~~
22 ~~is held in each of such persons by another person or by a group of other persons~~
23 ~~which are affiliated persons with respect to each other.~~

24 (2) A dealer, as defined in and for the purposes of this Subsection, shall file
25 all applicable sales and use tax returns and remittances through the electronic filing
26 options available for such purposes. If neither the dealer nor any of its affiliates as
27 defined in R.S. 47:340.1 meet the economic nexus thresholds set forth in R.S.
28 ~~47:301(4)(m)(i)(aa) or (bb)~~ **R.S. 47:301(4)(k)(i)**, the dealer may collect the tax
29 authorized by Paragraph (K)(5) of this Section. If either the dealer or any of its
30 affiliates as defined in R.S. 47:340.1 meet the economic nexus thresholds set forth

1 in ~~R.S. 47:301(4)(m)(i)(aa) or (bb)~~ **R.S. 47:301(4)(k)(i)**, the dealer shall collect state
2 and local sales and use tax on remote sales for delivery into the state and remit to the
3 Louisiana Sales and Use Tax Commission for Remote Sellers.

4 * * *

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

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

11 * * *

12 (2) Serve as the single entity in Louisiana to require remote sellers and their
13 designated agents to collect from customers and remit to the commission, sales and
14 use taxes on remote sales sourced to Louisiana on the uniform Louisiana state and
15 local sales and use tax base established by Louisiana law **in accordance with**
16 **federal law** ~~with respect to any federal law as may be enacted by the United States~~
17 ~~Congress authorizing states to require remote sellers to collect and remit state and~~
18 ~~local sales and use taxes on their sales in each state or a decision by the United States~~
19 ~~Supreme Court overrules the physical presence requirement for a remote seller to~~
20 ~~collect and remit state and local sales and use tax on remote sales for delivery into~~
21 ~~the state, except those remote sellers who qualify for exceptions as may be provided~~
22 ~~by federal law.~~

23 * * *

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

26 * * *

27 (6) The term "remote sale" means a sale that is made by a remote seller for
28 delivery into Louisiana. ~~The term "non-remote sale" means a sale that is not a remote~~
29 ~~sale.~~

30 (7) The term "remote seller" means a seller who sells for sale at retail, use,

1 consumption, distribution, or for storage to be used for consumption or distribution
 2 any tangible personal property, ~~products transferred electronically~~ **digital products**,
 3 or services for delivery within Louisiana, but does not have physical presence in
 4 Louisiana. The term "remote seller" includes "marketplace facilitators" as defined
 5 by R.S. 47:340.1. ~~The term "non-remote seller" means a seller that is not a remote~~
 6 ~~seller.~~

7 * * *

8 §340. Louisiana Sales and Use Tax Commission for Remote Sellers; members;
 9 powers

10 * * *

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

12 * * *

13 (6) To require remote sellers and qualifying nonremote sellers to register with
 14 the commission.

15 (a) No later than thirty calendar days after surpassing either of the criteria of
 16 ~~R.S. 47:301(4)(m)(i)~~ **R.S. 47:301(4)(k)(i)**, a remote seller shall submit an application
 17 for approval to collect state and local sales and use tax on remote sales for delivery
 18 into Louisiana to the commission on a form prescribed by the commission. A remote
 19 seller shall commence collection of state and local sales and use tax, once notified
 20 the commission has approved the application, no later than sixty days after
 21 surpassing either of the criteria of ~~R.S. 47:301(4)(m)(i)~~ **R.S. 47:301(4)(k)(i)**.

22 * * *

23 **(d) Vendor's compensation shall be allowed as a deduction against tax**
 24 **due if the return is filed timely on or before the twentieth day of the month**
 25 **following the month of collection and all tax shown due on the return is remitted**
 26 **on or before the twentieth day of the month following the month of collection.**
 27 **The commission shall apply each taxing jurisdiction's specific rate of vendor's**
 28 **compensation as a deduction against tax due and shall reduce the monthly**
 29 **distribution provided for by Paragraph (E)(2) of this Section accordingly.**

30 * * *

1 H. Nothing in this Chapter shall be construed to:

2 ~~(1) Authorize or require any expenditure unless and until a federal law~~
3 ~~authorizing states to require remote sellers and their agents to collect state and local~~
4 ~~sales and use taxes on their sales in each state has been enacted and becomes~~
5 ~~effective or a decision by the United States Supreme Court overrules the physical~~
6 ~~presence requirement for a remote seller to collect and remit state and local sales and~~
7 ~~use tax on remote sales for delivery into the state.~~

8 ~~(2) Limit the right of local taxing authorities to levy and collect sales and use~~
9 ~~taxes as provided in the Constitution of Louisiana, statutory law, and jurisprudence.~~

10 ~~(3) Authorize the commission to exercise any right or perform any function~~
11 ~~presently exercised by local sales and use tax authorities under present law except~~
12 ~~as provided in contracts entered into pursuant to R.S. 47:339.1.~~

13 ~~(4) Create, repeal, or amend any local tax exclusions or exemptions.~~

14 ~~(5) Authorize the commission to grant local tax amnesty.~~

15 ~~(6)~~**(1)** Authorize the commission to promulgate rules, regulations, issue
16 private letter rulings or give to dealers or taxpayers other advice that is inconsistent
17 with the Constitution of Louisiana, statutory law, or controlling jurisprudence.

18 ~~(7)~~**(2)** Require local taxing authorities to make refunds, give tax credit, waive
19 penalties, or waive audit costs.

20 ~~(8) Repeal or amend any provisions of any local tax ordinances.~~

21 ~~(9) Extend to any local taxes any state exclusions, exemptions, credits,~~
22 ~~rebates, or other tax relief provisions that do not presently apply to local taxes.~~

23 ~~(10) Repeal or amend any provision of the Uniform Local Sales Tax Code,~~
24 ~~R.S. 47:337.1 et seq.~~

25 ~~(11) Make the state of Louisiana a member of the Streamlined Sales and Use~~
26 ~~Tax Agreement.~~

27 ~~(12) Authorize the commission to serve as a central state collection agency~~
28 ~~for local sales and use taxes except as provided in contracts entered into pursuant to~~
29 ~~R.S. 47:339.1.~~

30 ~~(13) Limit any statutory and ordinal provisions in place as of June 16, 2017,~~

1 that require dealers and taxpayers, with respect to nonremote sales, to pay and remit
2 directly to the single sales and use tax collector in each parish the sales and use taxes
3 due to each local taxing authority within each parish except as provided in contracts
4 entered into pursuant to R.S. 47:339.1.

5 (14) Limit or amend any provision of R.S. 47:1508 and 1508.1.

6 * * *

7 §340.1. Marketplace facilitators; collection and remittance of state and local sales
8 and use tax

9 A. Definitions. For purposes of this Section, the following words and phrases
10 shall have the following meanings, unless the context clearly indicates otherwise:

11 * * *

12 (7) "Remote seller" means a seller who sells for sale at retail, use,
13 consumption, distribution, or for storage to be used for consumption or distribution
14 any taxable tangible personal property, ~~products transferred electronically~~ **digital**
15 **products**, or services for delivery within Louisiana, but does not have a physical
16 presence in Louisiana.

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~~ **remote sales** for
22 delivery in Louisiana of ~~tangible personal property, products transferred~~
23 ~~electronically, or services~~ if, during the previous or current calendar year, the
24 marketplace facilitator's gross revenue for retail sales delivered into Louisiana
25 exceeded one hundred thousand dollars, ~~from sales of tangible personal property,~~
26 ~~products transferred electronically, or services~~ **Once the marketplace facilitator's**
27 **sales exceed one hundred thousand dollars during a calendar year, the**
28 **marketplace facilitator shall be deemed a dealer for all sales occurring**
29 **thereafter.**

30 * * *

1 Section 2. R.S. 47:340.1(A)(4)(b)(iv) is hereby repealed in its entirety.

2 Section 3. The provisions of this Act shall become effective July 1, 2025, and shall

3 be applicable to taxable periods beginning on or after July 1, 2025.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____