

2018 Second Extraordinary Session

HOUSE BILL NO. 12

BY REPRESENTATIVE LEGER

TAX/SALES & USE: Provides criteria for the definition of "dealer" for purposes of the sales tax imposed on transactions involving a remote seller (Item #26)

1 AN ACT

2 To amend and reenact R.S. 47:302(V)(1)(introductory paragraph), (a), (b)(introductory
3 paragraph), and (c), and to enact R.S. 47:302(V)(1)(d), relative to sales and use tax;
4 to provide with respect to collection and reporting of sales and use taxes; to provide
5 for the definition of dealer; to provide for effectiveness; and to provide for related
6 matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 47:302(V)(1)(introductory paragraph), (a), (b)(introductory
9 paragraph), and (c) are hereby amended and reenacted and R.S. 47:302(V)(1)(d) is hereby
10 enacted to read as follows:

11 §302. Imposition of tax

12 * * *

13 V.(1) In addition to the definition of "dealer" as provided in R.S. 47:301(4)
14 for purposes of the ~~consumer-use~~ additional tax levied under R.S. 47:302(K), the
15 term "dealer" includes every person who manufactures or produces tangible personal
16 property for sale at retail, for use or consumption, or distribution, or for storage to
17 be used or consumed in a taxing jurisdiction. "Dealer" is further defined to mean:

18 (a)(i) Any person who sells for delivery into Louisiana tangible personal
19 property, products transferred electronically, or service and who does not have a

1 physical presence in Louisiana, if during the previous or current calendar year either
2 of the following criteria was met:

3 (aa) The person's gross revenue for sales delivered into Louisiana has
4 exceeded one hundred thousand dollars from sales of tangible personal property,
5 products transferred electronically, or services; or

6 (bb) The person sold for delivery into Louisiana tangible personal property,
7 products transferred electronically, or services in two hundred or more separate
8 transactions.

9 (ii) A person without a physical presence in Louisiana may voluntarily
10 register for and collect sales taxes pursuant to R.S. 47:302(K), even if they do not
11 meet the criteria established in Item (i) of this Subparagraph.

12 (b) 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 to
19 customers in this state who are referred to the person through such an agreement
20 exceeds fifty thousand dollars during the preceding twelve months, the presumption
21 regarding the status of that person as a dealer may be rebutted if the person can
22 demonstrate, to the satisfaction of the secretary, that he cannot reasonably be
23 expected to have gross receipts in excess of fifty thousand dollars for the succeeding
24 twelve months.

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

27 * * *

28 ~~(c)~~(d) In addition to those persons established as dealers according to
29 Subparagraph ~~(b)~~(c) of this Paragraph, the provisions of this Subsection shall be

1 presumed by a taxing authority to apply to any person who holds a substantial
 2 ownership interest, directly or through a subsidiary, in a retailer maintaining sales
 3 locations in Louisiana, or to any person who is owned in whole or in substantial part
 4 by a retailer maintaining sales locations in Louisiana, or by a parent or subsidiary
 5 thereof. For purposes of this Paragraph, "substantial ownership interest" means
 6 affiliated persons with respect to each other where one of such persons has an
 7 ownership interest of more than five percent, whether direct or indirect, in the other,
 8 or where an ownership interest of more than five percent, whether direct or indirect,
 9 is held in each of such persons by another person or by a group of other persons
 10 which are affiliated persons with respect to each other.

11 * * *

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

16 Section 3. This Act shall become effective upon signature by the governor or, if not
 17 signed by the governor, upon expiration of the time for bills to become law without signature
 18 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 19 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 20 effective on the day following such approval.

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 12 Original 2018 Second Extraordinary Session Leger

Abstract: Establishes criteria for the definition of "dealer" for purposes of registration of remote sellers as collectors of state tax.

Present law defines "dealer" for purposes of state and local sales and use taxes as a person who manufactures or produces tangible personal property 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 for purposes of collection of the additional sales tax imposed under R.S. 47:302(K) to mean a person who engages in business in the state through a variety of methods that involve a transaction by a remote seller.

Proposed law retains present law and further defines "dealer" as a person who does not have a physical presence in the state and who sells for delivery into La. tangible personal property, products transferred electronically, or services, if either:

- (1) The person's gross revenue from sales in La. exceeds \$100,000; or
- (2) The person engaged in 200 or more separate transactions in La.

Proposed law also provides that a person may voluntarily register as a dealer for purposes of collecting the additional sales tax regardless of their revenue or number of sales.

(Amends R.S. 47:302(V)(1)(intro. para.), (a), (b)(intro. para.), and (c); Adds R.S. 47:302(V)(1)(d))