

2018 Second Extraordinary Session

SENATE BILL NO. 8

BY SENATOR MORRELL

TAX/TAXATION. Defines the term dealer for purposes of collecting and remitting use tax on remote sales. (Item #26) (gov sig)

1 AN ACT

2 To amend and reenact R.S. 47:339(A)(2) and (B)(2) and to enact R.S. 47:301(4)(m), relative
3 to sales tax administration; to provide a definition of dealer for purposes of the sales
4 tax on remote sales; to provide for an effective date; and to provide for related
5 matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 47:339(A)(2) and (B)(2) are hereby amended and reenacted and R.S.
8 47:301(4)(m) is hereby enacted to read as follows:

9 §301. Definitions

10 As used in this Chapter the following words, terms, and phrases have the
11 meanings ascribed to them in this Section, unless the context clearly indicates a
12 different meaning:

13 * * *

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

* * *

(m)(i) Any person selling tangible personal property, products transferred electronically, or services for delivery into Louisiana, who does not have a physical presence in the state, provided that during the previous calendar year or the current calendar year, either of the following criteria was met:

(aa) The person's gross revenue from the sale of tangible personal property, any product transferred electronically, or services delivered into Louisiana exceeds one hundred thousand dollars.

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

(ii) A person who does not have a physical presence in the state may voluntarily register for and collect state and local sales and use taxes as a dealer, even if that person does not meet either of the criteria of Item (i) of this Subparagraph.

* * *

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

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

* * *

(2) ~~With~~ Serve as the single entity in Louisiana to require remote sellers and their designated agents to collect from customers and remit to the commission sales and use taxes on remote sales sourced to Louisiana on the uniform Louisiana state and local sales and use tax base established by Louisiana law with respect to any federal law as may be enacted by the United

1 States Congress **or final ruling by the United States Supreme Court** authorizing
 2 states to require remote sellers **to collect and remit state and local sales and use**
 3 **taxes on their sales in each state**, except those remote sellers who qualify for the
 4 ~~small seller~~ exceptions as may be provided by federal law, ~~serve as the single entity~~
 5 ~~in Louisiana to require remote sellers and their designated agents to collect from~~
 6 ~~customers and remit to the commission sales and use taxes on remote sales sourced~~
 7 ~~to Louisiana on the uniform Louisiana state and local sales and use tax base~~
 8 ~~established by Louisiana law.~~

9 * * *

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

12 * * *

13 (3) "Federal law" shall mean any federal law as may be enacted by the United
 14 States Congress **or final ruling by the United States Supreme Court** authorizing
 15 states to require remote sellers, except those remote sellers who meet ~~the small seller~~
 16 exceptions ~~of~~ **provided by** federal law, to collect and remit sales and use taxes on
 17 remote sales sourced to Louisiana.

18 * * *

19 Section 2. The provisions of this Act shall apply to all taxable periods beginning on
 20 or after the date of the final ruling by the United States Supreme Court in *South Dakota. v.*
 21 *Wayfair Inc., Overstock.Com, Inc., and Newegg Inc.*, No. 17-494 (U.S. filed Oct. 2, 2017)
 22 finding that South Dakota 2016 Senate Bill 106 does not violate the commerce clause of the
 23 Constitution of the United States of America.

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

The original instrument was prepared by Leonore F. Heavey. The following digest, which does not constitute a part of the legislative instrument, was prepared by James Benton.

DIGEST

SB 8 Engrossed

2018 Second Extraordinary Session

Morrell

Present law requires those individuals and businesses defined as "dealers" to collect and remit the catalog tax from Louisiana customers.

Proposed law adds to the definition of "dealer" those individuals or businesses not physically present in the state, but that who sell over \$100,000 of goods or services into the state, who engage in 200 or more separate transactions with Louisiana customers, or who voluntarily register to collect and remit the catalog tax.

Present law provides that the Louisiana Sales and Use Tax Commission for Remote Sellers, is created and established within the Department of Revenue for the administration and collection of the sales and use tax imposed by the state and political subdivisions with respect to remote sales. The commission will:

- (1) Promote, to the extent feasible and in accordance with law, uniformity and simplicity in sales and use tax compliance in Louisiana, while reserving to political subdivisions their authority to impose and collect sales and use taxes as provided in present law.
- (2) With respect to any federal law as may be enacted by the United States Congress authorizing states to require remote sellers, except those remote sellers who qualify for the small seller exceptions as may be provided by federal law, serve as the single entity in Louisiana to require remote sellers and their designated agents to collect from customers and remit to the commission sales and use taxes on remote sales source to Louisiana on the uniform Louisiana state and local sales and use tax base established by Louisiana law.
- (3) Provide the minimum tax administration, collection, and payment requirements required by federal law with respect to the collection and remittance of sales and use tax imposed on remote sales.
- (4) Establish a fiscal agent solely for the purpose of remote seller remittances.

Proposed law retains present law and requires that the commission serve as the single entity in Louisiana to require remote sellers and their designated agents to collect from customers and remit to the commission sales and use taxes on remote sales sourced to Louisiana on the uniform Louisiana state and local sales and use tax base established by Louisiana law with respect to any federal law as may be enacted by the United States Congress or final ruling by the United States Supreme Court authorizing states to require remote sellers to collect and remit state and local sales and use taxes on their sales in each state, except those remote sellers who qualify for exceptions as may be provided by federal law.

Proposed law's effectiveness is contingent upon the United States Supreme Court rendering a decision in favor of the state of South Dakota in *South Dakota v. Wayfair, Inc.*

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 47:339(A)(2) and (B)(2); Adds R.S. 47:301(4)(m))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Revenue and Fiscal Affairs to the original bill

1. Changes citations in order to make the provisions applicable to local government.
2. Authorizes the Louisiana Sales and Use Tax Commission for Remote Sellers to collect sales tax for all local governments contingent upon a final ruling of the U.S. Supreme Court.