

2019 Regular Session

HOUSE BILL NO. 524

BY REPRESENTATIVE FOIL

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

REVENUE DEPARTMENT: To provide for market place facilitators

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AN ACT

To amend and reenact R.S. 47:302(W)(3) and (6), 339(A)(2), (B)(3), (5) through (8), 340(E)(3),(F), (G)(1), and (H)(1) and Section 2 of Act No. 5 of the 2018 Second Extraordinary Session of the Legislature and to enact R.S.47:339(B)(9), 340(G)(6)(a) and (b), and (11), 340.1, and 1407(6), relative to the collection of certain sales and use tax; to provide for the collection of sales and use tax; to provide for the collection of sales and use tax from marketplace facilitators and remote sellers; to provide for definitions; to provide for certain requirements; to provide for certain limitations; to provide for certain conditions; to provide for applicability; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 47:302(W)(3) and (6), 339(A)(2), (B)(3), (5), (6), (7), and (8), 340(E)(3),(F), (G)(1), and (H)(1) are hereby amended and reenacted and R.S. 47:339(B)(9), 340(G)(6)(a) and (b), and (11), 340.1, and 1407(6) are hereby enacted to read as follows:

§302. Imposition of tax

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W.
* * *

1 (3) A refund request shall be filed in a manner to be determined by the
2 secretary, which may include electronic filing. The refund request may be made
3 once per calendar year, and shall be accompanied by ~~a copy of both of the following:~~

4 ~~(a) All all relevant paid local use tax returns.~~

5 ~~(b) An affidavit affirming that~~ If the delivery and use of the taxable property
6 will occur in a parish in which there is no sales and use tax imposed by any local
7 taxing authority, ~~which affidavit has been filed with the local sales and use tax~~
8 commission established under Paragraph (K)(6) of this Section. an affidavit
9 confirming such will be accepted in lieu of paid local use tax returns.

10 * * *

11 ~~(6) Until the establishment of the Louisiana Sales and Use Tax Commission~~
12 ~~for Remote Sellers pursuant to R.S. 47:339(A)(2) and (B)(3);~~ Until the Louisiana
13 Sales and Use Tax Commission for Remote Sellers enforces collection and
14 remittance of state and local sales and use tax based on the applicable state and local
15 rates and bases, dealers as defined in R.S. 47:301(4)(m); shall specifically collect the
16 additional tax authorized by Subsection K of this Section and shall file all applicable
17 sales and use tax returns. ~~In consultation with the commission, the secretary of the~~
18 Department of Revenue shall publish notification of the establishment date of the
19 Louisiana Sales and Use Tax Commission for Remote Sellers in a policy statement
20 as authorized by LAC 61:III.101. Notice of enforcement by the Louisiana Sales and
21 Use Tax Commission for Remote Sellers shall be published in a policy statement as
22 authorized by LAC 61:III.101 no later than thirty days prior to the effective date of
23 the enforcement.

24 * * *

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

26 A. The Louisiana Sales and Use Tax Commission for Remote Sellers,
27 hereinafter referred to as "commission", is created and established within the
28 Department of Revenue for the administration and collection of the sales and use tax

1 imposed by the state and political subdivisions with respect to remote sales. The
2 commission shall:

3 * * *

4 (2) Serve as the single entity in Louisiana to require remote sellers and their
5 designated agents to collect from customers and remit to the commission, sales and
6 use taxes on remote sales sourced to Louisiana on the uniform Louisiana state and
7 local sales and use tax base established by Louisiana law with respect to any federal
8 law as may be enacted by the United States Congress authorizing states to require
9 remote sellers to collect and remit state and local sales and use taxes on their sales
10 in each state or ~~final ruling~~ a decision by the United States Supreme Court
11 ~~authorizing states to require remote sellers to collect and remit state and local sales~~
12 ~~and use taxes on their sales in each state,~~ overrules the physical presence requirement
13 for a remote seller to collect and remit state and local sales and use tax on remote
14 sales for delivery into the state, except those remote sellers who qualify for
15 exceptions as may be provided by federal law.

16 * * *

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

19 * * *

20 (3) "Federal law" shall mean any federal law as may be enacted by the
21 United States Congress authorizing states to require remote sellers, except those
22 remote sellers who meet exceptions provided by federal law, to collect and remit
23 sales and use taxes on remote sales for delivery into Louisiana or ~~final ruling~~ a
24 decision by the United States Supreme Court ~~authorizing states to require remote~~
25 ~~sellers, except those remote sellers who meet exceptions provided by federal law, to~~
26 ~~collect and remit sales and use taxes on remote sales sourced to Louisiana.~~ overrules
27 the physical presence requirement for a remote seller to collect and remit state and
28 local sales and use tax on remote sales for delivery into the state.

29 * * *

1 (5) ~~The term "non-remote sale" means a sale that is not a remote sale. The~~
2 ~~terms "marketplace", "marketplace facilitator", and "marketplace seller" shall have~~
3 ~~the meanings provided for in R.S. 47:340.1.~~

4 (6) ~~The term "non-remote seller" means a seller that is not a remote seller.~~
5 ~~The term "remote sale" means a sale that is made by a remote seller or facilitated by~~
6 ~~a marketplace facilitator on a marketplace for delivery into Louisiana. The term~~
7 ~~"non-remote sale" means a sale that is not a remote sale.~~

8 (7) ~~The term "person" shall have the meaning as defined by federal law for~~
9 ~~purposes of remote sales but shall retain the meaning as provided in R.S. 47:301(8)~~
10 ~~for all other purposes in state and local sales and use tax law. The term "remote~~
11 ~~seller" means a seller who sells for sale at retail, use, consumption, distribution, or~~
12 ~~for storage to be used for consumption or distribution any taxable tangible personal~~
13 ~~property, products transferred electronically, or services for delivery within~~
14 ~~Louisiana, but does not have physical presence in Louisiana, and is not considered~~
15 ~~a dealer as defined by R.S. 47:301(4)(a) through (l). The term "non-remote seller"~~
16 ~~means a seller that is not a remote seller.~~

17 (8) ~~"Sales and use taxes" and "taxes" shall mean the sales and use taxes~~
18 ~~levied by the state of Louisiana under the provisions of Title 47 of the Louisiana~~
19 ~~Revised Statutes of 1950 and the sales and use taxes levied by local taxing~~
20 ~~authorities in Louisiana under the provisions of the Constitution of Louisiana,~~
21 ~~statutory laws authorizing the imposition of such taxes, and local sales and use tax~~
22 ~~ordinances. The term "person" shall have the meaning provided for in R.S. 47:301(8)~~
23 ~~for all purposes in state and local sales and use tax law.~~

24 (9) "Sales and use taxes" and "taxes" shall mean the sales and use taxes
25 levied by the state of Louisiana under the provisions of Title 47 of the Louisiana
26 Revised Statutes of 1950, and the sales and use taxes levied by local taxing
27 authorities in Louisiana under the provisions of the Constitution of Louisiana,
28 statutory laws authorizing the imposition of sales and use taxes, and local sales and
29 use tax ordinances.

1 §340. Louisiana Sales and Use Tax Commission for Remote Sellers; members;
2 powers

3 * * *

4 E.

5 * * *

6 (3) The commission and its operations shall be funded by an amount equal
7 to actual expenses incurred which amount shall not exceed one percent of the total
8 amount of state and local sales and use tax collected on remote sales by the
9 commission. Subject to the limitations provided in this Paragraph, this amount shall
10 be retained by the commission on a monthly basis from current collections of state
11 and local sales tax on remote sales as collected by the commission prior to monthly
12 distribution to the state and local collectors. The commission shall have no authority
13 to retain these monies unless and until a federal law authorizing states to require
14 remote sellers and their agents to collect state and local sales and use taxes on their
15 sales in each state has been enacted and becomes effective: or a decision by the
16 United States Supreme Court overrules the physical presence requirement for a
17 remote seller to collect and remit state and local sales and use tax on remote sales for
18 delivery into the state. Upon distribution of the local sales and use tax collected from
19 remote sellers by the Commission, the local collectors may retain the usual and
20 customary percentage of collections in accordance with local ordinances or
21 agreements.

22 F. (1) The commission shall develop rules and procedures in accordance
23 with the Administrative Procedure Act with respect to implementation of the
24 provisions of this Chapter. Unless contrary to a rule adopted in accordance with this
25 Subsection, the provisions of Chapter 18 of this Subtitle may be utilized by the
26 commission, or its duly authorized agents and employees, in the exercise of any
27 power authorized by this Section in the same manner that the provisions of Chapter
28 18 of this Subtitle may be utilized by the secretary.

1 (2) The commission, or its duly authorized agents and employees, may take
2 any action related to the collection of tax within its jurisdiction that the secretary in
3 Chapter 18 of this Subtitle is authorized to take and any person aggrieved by any
4 such action shall have the same rights, including appeal or review as provided for in
5 Chapter 18 of this Subtitle.

6 (3) Any consideration of a request for refund and any appeal of the
7 commission's denial of a refund made to the Board of Tax Appeals shall occur in the
8 same manner and be subject to the same deadlines as provided for in Chapter 18 of
9 this Subtitle.

10 (4) The commission shall be considered a state collector for the purposes of
11 R.S. 47:1418(7)(d) and the related provisions of Chapter 17 of this Subtitle.

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

13 (1) To serve as the single entity within the state of Louisiana responsible for
14 all state and local sales and use tax administration, return processing, and audits for
15 remote sales ~~sourced to~~ delivered into Louisiana.

16 * * *

17 (6) To require remote sellers to register with the commission.

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

25 (b) Marketplace facilitators shall register with the Commission and
26 commence collection in accordance with R.S. 47:340.1(C).

27 * * *

28 (11) To enter into voluntary disclosure agreements with remote sellers as to
29 state and local sales and use taxes.

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 * * *

9 §340.1. Marketplace facilitators; collection and remittance of state and local sales
10 and use tax

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

13 (1) "Commission" means the Louisiana Sales and Use Tax Commission for
14 Remote Sellers set forth in this Chapter.

15 (2) "Marketplace" means any method through which a marketplace seller
16 may sell or offer for sale tangible personal property, admissions, or services which
17 are subject to taxation under this Subtitle for delivery into Louisiana.

18 (3)(a) "Marketplace Facilitator" means any person that facilitates a sale for
19 a marketplace seller through a marketplace by any of the following:

20 (i) Offering for sale through any means, by a marketplace seller, tangible
21 personal property, admissions, or services which are subject to taxation under this
22 Subtitle for delivery into Louisiana.

23 (ii) Collecting payment from a purchaser and transmitting the payment to the
24 marketplace seller, regardless of whether the person receives compensation or other
25 consideration in exchange for facilitating the sale or providing any other service
26 directly, or indirectly through any agreement or arrangement with one or more third
27 parties.

1 (b) "Marketplace Facilitator" shall not be construed to include a payment
2 processor which only handles the processing of payments between the marketplace
3 facilitator and the purchaser.

4 (4) "Marketplace Seller" means a person who sells or offers for sale tangible
5 personal property, admissions, or services which are subject to taxation under this
6 Subtitle for delivery into Louisiana through a marketplace that is owned, operated,
7 or controlled by a marketplace facilitator.

8 (5) "Remote Sale" means a sale made by a remote seller or a sale facilitated
9 by a marketplace facilitator.

10 (6) "Remote Seller" means a seller who sells for sale at retail, use,
11 consumption, distribution, or for storage to be used for consumption or distribution
12 any taxable tangible personal property, products transferred electronically, or
13 services for delivery within Louisiana, but does not have physical presence in
14 Louisiana, and is not considered a dealer as defined by R.S. 47:301(4)(a) through (l).

15 (7) "Secretary" means the secretary of the Department of Revenue.

16 B. Duties of Marketplace Facilitators. A marketplace facilitator shall be
17 considered the dealer for each remote sale for delivery into Louisiana and transacted
18 on a marketplace on behalf of a marketplace seller. A marketplace facilitator shall
19 be responsible for all obligations imposed on dealers under this Subtitle and keep
20 records and information required by the Commission to ensure proper collection and
21 remittance of sales and use tax, including but not limited to exemption certificates
22 and information from the marketplace seller that may be used to determine the
23 taxability of remote sales.

24 C. Calculation of Remote Sales and Criteria

25 (1) A marketplace facilitator shall collect and remit state and local sales and
26 use tax on all taxable remote sales for delivery into Louisiana which the marketplace
27 facilitator transacts on its own behalf or facilitates on behalf of a marketplace seller
28 regardless of whether the marketplace seller is a dealer, has registered as a dealer in

1 Louisiana, or otherwise would have been required to collect state and local sales and
2 use tax if the remote sale had not been facilitated by the marketplace facilitator.

3 (2) The requirement of Paragraph (1) of this Subsection shall only apply to
4 a marketplace facilitator who is a dealer or who facilitates a remote sale for delivery
5 in Louisiana of tangible personal property, products transferred electronically, or
6 services, if during the previous or current calendar year either of the following
7 criteria are met:

8 (a) The marketplace facilitator's gross revenue for sales delivered into
9 Louisiana exceeded one hundred thousand dollars from sales of tangible personal
10 property, products transferred electronically, or services.

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

14 (3) In determining whether the criteria of Paragraph (2) of this Subsection has
15 been met, all taxable remote sales described in Paragraph (1) of this Subsection shall
16 be considered. However, a marketplace facilitator may voluntarily register for and
17 collect state and local sales and use tax as a dealer regardless of whether the
18 marketplace facilitator meets the criteria established in Paragraph (2) of this
19 Subsection.

20 D. Timing of Application and Collection

21 (1) No later than thirty calendar days after surpassing either of the criteria of
22 Paragraph (2) of Subsection C of this Section, a marketplace facilitator shall submit
23 an application for approval to collect state and local sales and use tax on remote sales
24 for delivery into Louisiana to the Commission on a form prescribed by the
25 Commission. A marketplace facilitator shall commence collection of state and local
26 sales and use tax, once notified the Commission has approved the application, no
27 later than sixty days after surpassing either of the criteria of Paragraph (2) of
28 Subsection C of this Section.

1 (2) A marketplace facilitator who is a dealer as defined by R.S. 47:301(4)(a)
2 through (1) shall collect state and local sales and use tax on remote sales for delivery
3 into Louisiana in accordance with R.S. 47:306.

4 E. Administration of Requirements to Collect and Remit State and Local
5 Sales and Use Tax

6 (1) For remote sales transacted on a marketplace, the marketplace facilitator
7 shall be responsible for the determination of taxability of remote sales for delivery
8 into Louisiana. Except as provided in Paragraph (6) of this Subsection, the
9 marketplace facilitator shall collect and remit to the Commission state and local
10 sales and use tax based on the applicable state and local rates and bases.

11 (2)(a) If a marketplace facilitator fails to collect sales tax as required by
12 Paragraph (1) of this Subsection due to incorrect or insufficient information provided
13 by the marketplace seller, the marketplace facilitator shall be relieved of liability for
14 failure to collect or remit the tax provided that the relief under this Paragraph shall
15 not exceed five percent of the total sales tax due from sales made or facilitated in this
16 state by the marketplace facilitator. If a marketplace facilitator is relieved of liability
17 under this Paragraph, the marketplace seller shall be liable for any amount of
18 uncollected or unremitted tax due.

19 (a) No relief authorized by this Paragraph shall be permitted for remote sales
20 made by a marketplace seller who is affiliated with the marketplace facilitator. For
21 purposes of this Section, persons or entities shall be considered affiliated if one
22 entity owns more than five percent of the other entity or both entities are subject to
23 the control of a common entity that owns more than five percent of each of the
24 entities.

25 (3) The state and local sales and use tax required to be collected by the
26 marketplace facilitator shall be due and payable monthly. For the purpose of
27 ascertaining the amount of tax payable, all marketplace facilitators shall transmit to
28 the Commission returns on forms prescribed, prepared, and furnished by the
29 Commission showing the gross sales, purchases, gross proceeds from lease or rental,

1 gross payments for lease or rental, gross proceeds derived from sales of services, or
 2 gross payments for services arising from all taxable transactions during the preceding
 3 calendar month, on or before the twentieth day of the month following the month in
 4 which this tax is required to be collected. Thereafter, like returns shall be prepared
 5 and transmitted to the Commission by marketplace facilitators on or before the
 6 twentieth day of each month for the preceding calendar month. These returns shall
 7 show any further information the Commission may require to correctly compute and
 8 collect the tax levied. At the time of making the return required hereunder every
 9 marketplace facilitator shall compute and remit to the Commission the required tax
 10 due for the preceding calendar month, and failure to remit the tax shall cause the tax
 11 to become delinquent. In the event the tax becomes delinquent, interest and penalties
 12 imposed by Part IV of Chapter 18 of this Subtitle shall be an obligation to be
 13 assessed, collected, and enforced against the marketplace facilitator in the same
 14 manner as if it were a tax due.

15 (4) The marketplace facilitator shall be the sole person or entity subject to
 16 audit for sales made by marketplace sellers but facilitated by the marketplace
 17 facilitator. Marketplace sellers shall not be subject to audit for sales facilitated by
 18 the marketplace facilitator except to the extent the marketplace facilitator seeks relief
 19 under Paragraph (2) of this Subsection.

20 (5) A class action shall not be maintained against a marketplace facilitator by
 21 or on behalf of purchasers arising from or related to an overpayment of sales or use
 22 tax collected by the marketplace facilitator under this Section, regardless of whether
 23 the action is characterized as a tax refund claim, provided the marketplace facilitator
 24 did not intentionally collect state and local sales and use tax on remote sales without
 25 regard to applicable state and local rates and bases.

26 (6) Until the Commission enforces collection and remittance of state and
 27 local sales and use tax based on the state and local rates and bases, marketplace
 28 facilitators shall collect and remit state and local sales and use tax to the secretary in
 29 accordance with R.S. 47:302(K). Notice of enforcement by the Commission shall be

1 published in a policy statement as authorized by LAC 61:III.101 no later than thirty
2 days prior to the effective date of the enforcement.

3 F. Rules. (1) The Commission may establish specific procedures and
4 requirements concerning marketplace facilitators and the collection and remittance
5 of state and local sales and use tax through rules promulgated in accordance with the
6 Administrative Procedures Act. Unless contrary to a rule adopted in accordance with
7 this Subsection, the provisions of Chapter 18 of this Subtitle may be utilized by the
8 commission, or its duly authorized agents and employees, in the exercise of any
9 power authorized by this Section, in the same manner that the provisions of Chapter
10 18 may be utilized by the secretary.

11 (2) The Commission, or its duly authorized agents and employees, may take
12 any action related to the collection of tax within its jurisdiction that the secretary in
13 Chapter 18 of this Subtitle is authorized to take and any person aggrieved by any
14 such action shall have the same rights, including appeal or review as provided for in
15 Chapter 18 of this Subtitle.

16 (3) Any consideration of a request for refund and any appeal of the
17 Commission's denial of a refund made to the Board of Tax Appeals shall occur in the
18 same manner and subject to the same deadlines as provided for in Chapter 18 of this
19 Subtitle.

20 (4) The Commission shall be considered a state collector for the purposes of
21 R.S. 47:1418(7)(d) and the related provisions of Chapter 17 of this Subtitle II.

22 * * *

23 §1407. Jurisdiction of the board

24 The jurisdiction of the board shall extend to the following:

25 * * *

26 (6) All matters relating to appeals of administrative hearings, assessments,
27 and refund denials by the Louisiana Sales and Use Tax Commission for Remote
28 Sellers.

notice by the commission to commence enforcement shall be published no later than 30 days prior to the date of enforcement.

Present law defines "non-remote sales", "non-remote sellers", "person", "sales and use taxes" and "taxes". Proposed law retains present law but also provides definitions for "marketplace facilitator", "marketplace seller", "remote sale", "remote seller" and changes the definition of "person."

Present law establishes a method of funding the commission's operations, however the Commission shall not be authorized to use these funds unless and until a federal law authorizes states to require remote sellers to collect state and local sales and use taxes becomes effective.

Proposed law retains present law but expands the definition of federal law for the purposes of this Section. Proposed law also provides that local collectors may be allowed to retain the usual and customary percentage of the taxes they collect.

Present law provides that the commission shall develop rules and procedures to carry out its purpose. Proposed law retains present law and expands the actions in which the commission is allow to take.

Present law provides for the powers and duties of the commission including requiring remote sellers to register with the commission. Proposed law retains present law but provides for time periods in which remote sellers much register.

Proposed law provides that marketplace facilitators must register with the Commission and shall collect and remit state and local sales and use tax on all taxable remote sales for delivery into La. which the marketplace facilitator transacts on its own behalf or facilitates on behalf of a marketplace seller.

Proposed law provides that the marketplace facilitator shall be responsible for the determination of taxability of remote sales for delivery into La.

Proposed law provides for the administrative requirements of filing a monthly return and remitting tax collected to the commission.

Present law provides for the jurisdiction of the Board of Tax Appeals. Proposed law expands the Board of Tax Appeal's jurisdiction to all matters related to the commission.

Present law, regarding the applicability of the provisions of present law relative to the commission and collection of state and local sales and use taxes on remote sales provides that the provisions of present law apply to all taxable periods beginning on or after the date of the final ruling by the U.S. Supreme Court in *South Dakota v. Wayfair Inc, Overstock.com, Inc., and Newegg Inc.*, finding South Dakota 2016 Senate Bill No. 106 constitutional.

Proposed law repeals the contingent applicability provisions thereby giving the provisions of present law immediate applicability.

(Amends R.S. 47:302(W)(3) and (6), 339(A)(2), (B)(3), (5) through (8), 340(E)(3),(F), (G)(1), and (H)(1) and §2 of Act No. 5 of the 2018 2nd E.S.; Adds R.S.47:339(B)(9), 340(G)(6)(a) and (b), and (11), 340.1, and 1407(6))