

2020 Regular Session

SENATE BILL NO. 138

BY SENATOR ALLAIN

TAX/SALES. Provides for sales and use tax collection by marketplace facilitators. (7/1/20)

1 AN ACT

2 To amend and reenact R.S. 47:302(V)(2) and 339(B)(7), to enact R.S. 47:340(G)(6)(c) and
3 (d) and R.S. 47:340.1, and to repeal R.S. 47:301(4)(l), relative to tax collection; to
4 provide for requirements to file tax returns; to provide for compensation to remote
5 sellers; to provide for the collection of sales and use tax from marketplace facilitators
6 and remote sellers; to provide for definitions; to provide for certain conditions and
7 limitations; to provide for applicability; to provide for an effective date; and to
8 provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 47:302(V)(2) and 339(B)(7) are hereby amended and reenacted and
11 340(G)(6)(c) and (d) and 340.1 are hereby enacted to read as follows:

12 §302. Imposition of tax

13 * * *

14 V. * * *

15 (2) A dealer, as defined in and for the purposes of this Subsection, shall file
16 all applicable sales and use tax returns and remittances through the electronic filing
17 options available for such purposes. ~~Further, such dealer shall specifically collect the~~

1 tax authorized by Paragraph (K)(5) of this Section. If neither the dealer nor any of
 2 its affiliates as defined in R.S. 47:340.1, meet the economic nexus thresholds set
 3 forth in R.S. 47:301(4)(m)(i)(aa) or (bb), the dealer may collect the tax
 4 authorized by Paragraph (K)(5) of this Section. If either the dealer or any of its
 5 affiliates as defined in R.S. 47:340.1 meet the economic nexus thresholds set
 6 forth in R.S. 47:301(4)(m)(i)(aa) or (bb), the dealer shall collect state and local
 7 sales and use tax on remote sales for delivery into the state and remit to the
 8 Louisiana Sales and Use Tax Commission for Remote Sellers.

9 * * *

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

11 * * *

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

14 * * *

15 (7) The term "remote seller" means a seller who sells for sale at retail, use,
16 consumption, distribution, or for storage to be used for consumption or distribution
17 any ~~taxable~~ tangible personal property, products transferred electronically, or
18 services for delivery within Louisiana, but does not have physical presence in
19 Louisiana, ~~and is not considered a dealer as defined by R.S. 47:301(4)(a) through (l).~~

20 The term "remote seller" includes "marketplace facilitators" as defined by R.S.

21 47:340.1. The term "non-remote seller" means a seller that is not a remote seller.

22 * * *

23 §340. Louisiana Sales and Use Tax Commission for Remote Sellers; members;
24 powers

25 * * *

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

27 * * *

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

29 * * *

1 (c) Notwithstanding the duty to register with the commission, the state
2 and local sales and use tax required to be collected by the remote seller shall be
3 due and payable monthly. For the purpose of ascertaining the amount of tax
4 payable, all remote sellers shall transmit to the commission returns on forms
5 prescribed, prepared, and furnished by the commission showing the gross sales
6 arising from all transactions during the preceding calendar month, on or before
7 the twentieth day of the month following the month in which this tax is required
8 to be collected. These returns shall show any further information the
9 commission may require to correctly compute and collect the tax levied. At the
10 time of making the return required pursuant to this Subparagraph, every
11 remote seller shall compute and remit to the commission the required tax due
12 for the preceding calendar month, and failure to remit the tax shall cause the
13 tax to become delinquent. In the event the tax becomes delinquent, interest and
14 penalties imposed by this Subtitle shall be an obligation to be assessed, collected,
15 and enforced against the remote seller in the same manner as if it were a tax
16 due. The commission shall collect interest and penalties on delinquent taxes and
17 distribute such collections to the state or local collector in the same manner as
18 provided by Subsection E. For purposes of Paragraph (E)(3), "state and local
19 sales and use tax collected on remote sales" shall include interest and penalties
20 collected on delinquent taxes.

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

28 * * *

29 §340.1. Marketplace facilitators; collection and remittance of state and local

1 sales and use tax

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

5 (1) "Affiliate" means an entity that owns more than five percent of the
6 other entity or both entities are subject to the control of a common entity that
7 owns more than five percent of each of the other entities.

8 (2) "Commission" means the Louisiana Sales and Use Tax Commission
9 for Remote Sellers set forth in this Chapter.

10 (3) "Marketplace" means any physical or electronic platform or forum,
11 owned, operated, or otherwise controlled by the marketplace facilitator through
12 which a marketplace seller may sell or offer for sale tangible personal property
13 or sales of services for delivery into Louisiana.

14 (4)(a) "Marketplace facilitator" means any person that facilitates a sale
15 for a marketplace seller through a marketplace, owned, operated, or otherwise
16 controlled by the person, by any of the following:

17 (i) Offering for sale through any means, by a marketplace seller, tangible
18 personal property or sales of services for delivery into Louisiana.

19 (ii) Collecting payment from the purchaser and transmitting all or part
20 of the payment to the marketplace seller, regardless of whether the person
21 receives compensation or other consideration in exchange for facilitating the
22 sale or providing any other service directly or indirectly through any agreement
23 or arrangement with one or more third parties.

24 (b) "Marketplace facilitator" shall not include any of the following:

25 (i) A payment processor that only handles the processing of payments
26 between the marketplace facilitator and the purchaser.

27 (ii) A platform or forum that provides advertising services, including
28 listing products for sale, so long as the advertising service platform or forum
29 does not also engage directly or indirectly through one or more affiliated

1 persons in the activities described in Items (A)(4)(a)(i) or (ii) of this Section.

2 (iii) A derivatives clearing organization, a designated contract market,
3 foreign board of trade or swap execution facility, registered with the
4 Commodity Futures Trading Commission (CFTC registered platforms), and
5 any clearing members, futures commission merchants, or brokers when using
6 the services of CFTC registered platforms.

7 (iv) Any person who offers or facilitates the furnishing of sleeping rooms,
8 cottages or cabins by hotels or who offers or facilitates the furnishing of rental
9 cars by rental car companies.

10 (5) "Marketplace seller" means a person who sells or offers for sale
11 tangible personal property, or sales of services for delivery into Louisiana
12 through a marketplace that is owned, operated, or controlled by a marketplace
13 facilitator.

14 (6) "Remote sale" means a sale made by a remote seller or a sale
15 facilitated by a marketplace facilitator.

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

21 (8) "Secretary" means the secretary of the Department of Revenue.

22 B. Duties of marketplace facilitators. A marketplace facilitator shall be
23 considered the dealer for each remote sale for delivery into Louisiana and
24 transacted on a marketplace on behalf of a marketplace seller. A marketplace
25 facilitator shall be responsible for all obligations imposed on dealers under this
26 Subtitle and shall keep records and information required by the commission to
27 ensure proper collection and remittance of sales and use tax, including but not
28 limited to exemption certificates and information from the marketplace seller
29 that may be used to determine the taxability of remote sales.

1 **C. Calculation of remote sales and criteria**

2 **(1) A marketplace facilitator shall collect and remit state and local sales**
3 **and use tax on all taxable remote sales for delivery into Louisiana that the**
4 **marketplace facilitator transacts on its own behalf or facilitates on behalf of a**
5 **marketplace seller regardless of whether the marketplace seller is a dealer, has**
6 **registered as a dealer in Louisiana, or otherwise would have been required to**
7 **collect state and local sales and use tax if the remote sale had not been**
8 **facilitated by the marketplace facilitator. For purposes of this Subtitle, a**
9 **marketplace facilitator shall have the same rights and duties as a remote seller.**

10 **(2) The requirement of Paragraph (1) of this Subsection shall apply only**
11 **to a marketplace facilitator that makes or facilitates a remote sale for delivery**
12 **in Louisiana of tangible personal property, products transferred electronically,**
13 **or services, if during the previous or current calendar year either of the**
14 **following are met:**

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

18 **(b) The marketplace facilitator sold for delivery into Louisiana tangible**
19 **personal property, products transferred electronically, or services in two**
20 **hundred or more separate transactions.**

21 **(3) In determining whether the criteria of Paragraph (2) of this**
22 **Subsection have been met, all remote sales shall be considered. However, a**
23 **marketplace facilitator may voluntarily register for and collect state and local**
24 **sales and use tax as a dealer regardless of whether the marketplace facilitator**
25 **meets the criteria established in Paragraph (2) of this Subsection.**

26 **D. Timing of application and collection**

27 **(1) No later than thirty calendar days after meeting either of the criteria**
28 **of Paragraph (C)(2) of this Section, a marketplace facilitator shall submit an**
29 **application for approval to collect state and local sales and use tax on remote**

1 sales for delivery into Louisiana to the commission on a form prescribed by the
2 commission. A marketplace facilitator shall commence collection of state and
3 local sales and use tax, once notified the commission has approved the
4 application, no later than sixty days after meeting either of the criteria of
5 Paragraph (C)(2) of this Section.

6 E. Administration of requirements to collect and remit state and local
7 sales and use tax

8 (1) For remote sales transacted on a marketplace, the marketplace
9 facilitator shall be responsible for the determination of taxability of remote sales
10 for delivery into Louisiana. Except as provided in Paragraph (2) of this
11 Subsection, the marketplace facilitator shall collect and remit to the commission
12 state and local sales and use tax based on the applicable state and local rates and
13 bases.

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

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

28 (3) The state and local sales and use tax required to be collected by the
29 marketplace facilitator shall be due and payable monthly. For the purpose of

1 ascertaining the amount of tax payable, all marketplace facilitators shall
2 transmit to the commission returns on forms prescribed and prepared by the
3 commission showing the gross sales arising from all transactions during the
4 preceding calendar month, on or before the twentieth day of the month
5 following the month in which this tax is required to be collected. These returns
6 shall show any further information the commission may require to correctly
7 compute and collect the tax levied. At the time of making the return required
8 pursuant to this Paragraph, every marketplace facilitator shall compute and
9 remit to the commission the required tax due for the preceding calendar month,
10 and failure to remit the tax shall cause the tax to become delinquent. In the
11 event the tax becomes delinquent, interest and penalties imposed by this Subtitle
12 shall be an obligation to be assessed, collected, and enforced against the
13 marketplace facilitator in the same manner as if it were a tax due.

14 (4) As prescribed by regulations of the commission, a marketplace
15 facilitator may either:

16 (a) Report the sales and use tax collected, as required by Paragraph
17 (C)(1) of this Section, on all taxable remote sales for delivery into Louisiana that
18 the marketplace facilitator facilitates on behalf of a marketplace seller
19 separately from all sales and use tax collected, as required by Paragraph (C)(1)
20 of this Section, on taxable remote sales for delivery into Louisiana that the
21 marketplace facilitator transacts on its own behalf or on behalf of an affiliate,
22 as described in Paragraph (E)(2)(b) of this Section, of the marketplace
23 facilitator using a separate marketplace facilitator form prescribed and
24 prepared by the commission.

25 (b) Report all of the sales and use tax collected, as required by
26 Paragraph (C)(1) of this Section, on a combined basis and on a form prescribed
27 and prepared by the commission.

28 (5) The marketplace facilitator shall be the sole person subject to audit
29 for remote sales made by marketplace sellers but facilitated by the marketplace

1 facilitator. Marketplace sellers shall not be subject to audit for remote sales
 2 facilitated by the marketplace facilitator except to the extent the marketplace
 3 facilitator seeks relief under Paragraph (2) of this Subsection.

4 (6) Notwithstanding any law to the contrary, a class action shall not be
 5 brought or maintained against a marketplace facilitator in the Louisiana Board
 6 of Tax Appeals or in any state or federal court by or on behalf of purchasers
 7 arising from or related to an overpayment of sales or use tax collected by the
 8 marketplace facilitator under this Section, regardless of whether the action is
 9 characterized as a tax refund claim, provided the marketplace facilitator did
 10 not intentionally collect state and local sales and use tax on remote sales without
 11 regard to applicable state and local rates and bases.

12 Section 2. R.S. 47:301(4)(l) is hereby repealed.

13 Section 3. This Act shall become effective on July 1, 2020.

The original instrument was prepared by Leonore Heavey. The following digest, which does not constitute a part of the legislative instrument, was prepared by Curry J. Lann.

DIGEST

SB 138 Engrossed

2020 Regular Session

Allain

Present law establishes the La. Sales and Use Tax Commission for Remote Sellers (the commission) as an independent agency within the Dept. of Revenue for the administration and collection of sales and use taxes related to remote sales.

Proposed law authorizes remote sellers that have fewer than 200 sales or less than \$100,000 of gross sales into La. to collect as a direct marketer pursuant to present law. However, once either of these sales thresholds are met, the remote seller must collect state and local sales and use tax on remote sales for delivery into the state and remit to the commission.

Proposed law requires state and local sales and use tax collected by the remote seller to be paid monthly and returns transmitted to the commission on forms prescribed, prepared, and furnished by the commission.

Proposed law provides that delinquent taxes are subject to interest and penalties and requires the commission to collect interest and penalties on delinquent taxes and distribute such collections to the state or local collector.

Proposed law authorizes vendor's compensation as a deduction against tax due if the return is filed timely and all tax shown due on the return is remitted on or before the 20th of the month following the month of collection. The commission must apply each taxing jurisdiction's specific rate of vendor's compensation as a deduction against tax due and reduce the monthly distribution accordingly.

Present law defines non-remote sales, non-remote sellers, sales and use taxes, and taxes.

Proposed law retains present law but also provides definitions specific to the commission for affiliate, marketplace, marketplace facilitator, marketplace seller, remote sale, and remote seller.

- (1) "Affiliate" means an entity that owns more than 5% of the other entity or both entities are subject to the control of a common entity that owns more than 5% of each of the other entities.
- (2) "Marketplace" means any physical or electronic platform or forum, owned, operated, or otherwise controlled by the marketplace facilitator through which a marketplace seller may sell or offer for sale tangible personal property or sales of services for delivery into La.
- (3) "Marketplace facilitator" means any person that facilitates a sale for a marketplace seller through a marketplace, owned, operated, or otherwise controlled by the person, by any of the following:
 - (a) Offering for sale through any means, by a marketplace seller, tangible personal property, or sales of services for delivery into La.
 - (b) Collecting payment from the purchaser and transmitting all or part of the payment to the marketplace seller, regardless of whether the person receives compensation or other consideration in exchange for facilitating the sale or providing any other service directly or indirectly through any agreement or arrangement with one or more third parties.

"Marketplace facilitator" does not include any of the following:

- (a) Third party payment processors.
 - (b) A platform or forum that provides advertising services.
 - (c) A derivatives clearing organization, a designated contract market, foreign board of trade or swap execution facility, registered with the Commodity Futures Trading Commission (CFTC registered platforms), and any clearing members, futures commission merchants, or brokers when using the services of CFTC registered platforms.
 - (d) Any person who offers or facilitates the furnishing of sleeping rooms, cottages or cabins by hotels or rental cars by rental car companies.
- (4) "Marketplace seller" means a person who sells or offers for sale tangible personal property or sale of services for delivery into La. through a marketplace that is owned, operated, or controlled by a marketplace facilitator.
 - (5) "Remote sale" means a sale made by a remote seller or a sale facilitated by a marketplace facilitator.
 - (6) "Remote seller" means a seller that does not have a physical presence in La. and that sells for sale at retail, use, consumption, distribution, or for storage to be used for consumption or distribution any taxable tangible personal property, products transferred electronically, or services for delivery within La.

Proposed law provides that marketplace facilitators must register with the commission and must 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 a marketplace facilitator has the same rights and duties as a remote seller.

Proposed law provides an exception to the sales and use tax filing obligation for marketplace facilitators that had fewer than 200 sales or less than \$100,000 of gross sales into La. for the prior or current calendar year, however once either of these sales thresholds are met, the filing and collection obligation begins.

Proposed law permits marketplace facilitators who do not meet either of the sales thresholds to voluntarily register with the commission for collection and filing of sales and use taxes.

Proposed law provides that a marketplace facilitator must register with the commission within 30 days of meeting either of the two sales thresholds and begin collection of sales and use tax within 60 days of meeting either threshold.

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

Proposed law relieves marketplace facilitators from any liability for failure to collect sales and use tax if the failure is due to insufficient information from the marketplace seller and further provides that the marketplace seller will then be liable for any tax due.

Proposed law does not relieve marketplace facilitators from liability for failure to collect sales and use tax if the facilitator and the marketplace seller are affiliates, and the facilitator and the seller are considered to be affiliated if one entity owns more than 5% of the other entity or both entities are subject to the control of a common entity that owns more than 5% of each of the entities.

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

Proposed law provides that marketplace sellers shall not be subject to audit for remote sales facilitated by the marketplace facilitator unless the facilitator is seeking relief from liability by asserting that it had insufficient information from the marketplace seller.

Proposed law prohibits class actions against marketplace facilitators even with respect to refund claims unless the marketplace facilitator intentionally collected sales and use tax on remote sales without regard to applicable state and local sales tax law.

Proposed law repeals the provision of law defining dealers to include persons who engage in regular or systematic solicitation of a consumer market in the taxing jurisdiction by the distribution of catalogs, periodicals, advertising fliers, or other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system.

Effective July 1, 2020.

(Amends R.S. 47:302(V)(2) and 339(B)(7); adds R.S. 47:340(G)(6)(c) and (d) and R.S. 47:340.1; repeals R.S. 47:301(4)(l))

Summary of Amendments Adopted by Senate

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

1. Adds a definition of "affiliate" and clarifies definitions of "marketplace", "marketplace facilitator", and "marketplace seller".

2. Exempts certain parties from the "marketplace facilitator" definition.
3. Authorizes remote sellers that have fewer than 200 sales or less than \$100,000 of gross sales into La. to collect as a direct marketer. Once either of these sales thresholds are met, the remote seller must collect state and local sales and use tax on remote sales and remit to the commission.
4. Requires the commission to collect interest and penalties on delinquent taxes and distribute such collections to the state or local collector.
5. Authorizes vendor's compensation as a deduction against tax due if the return is filed timely and all tax shown due on the return is remitted.
6. Provides that a marketplace facilitator has the same rights and duties as a remote seller.
7. Repeals the provision of law defining dealers to include persons who engage in regular or systematic solicitation of a consumer market in the taxing jurisdiction by the distribution of catalogs, periodicals, advertising fliers, or other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system.
8. Changes the effective date from January 1, 2021, to July 1, 2020.
9. Provides for technical corrections.