AN ACT

To amend and reenact R.S. 47:302(V)(2) and 339(B)(7), to enact R.S. 47:340(G)(6)(c) and (d) and R.S. 47:340.1, and to repeal R.S. 47:301(4)(l), relative to tax collection; to provide for requirements to file tax returns; to provide for compensation to remote sellers; to provide for the collection of sales and use tax from marketplace facilitators and remote sellers; to provide for definitions; to provide for certain conditions and limitations; 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(V)(2) and 339(B)(7) are hereby amended and reenacted and R.S. 47:340(G)(6)(c) and (d) and R.S. 47:340.1 are hereby enacted to read as follows:

§302. Imposition of tax

V. * * *

(2) A dealer, as defined in and for the purposes of this Subsection, shall file all applicable sales and use tax returns and remittances through the electronic filing options available for such purposes. Further, such dealer shall specifically collect the tax authorized by Paragraph (K)(5) of this Section. If neither the dealer nor any of its affiliates as defined in R.S. 47:340.1, meet the economic nexus thresholds set forth in R.S. 47:301(4)(m)(i)(aa) or (bb), the dealer may collect the tax authorized by Paragraph (K)(5) of this Section. If either the dealer or any of its affiliates as defined in R.S. 47:340.1 meet the economic nexus thresholds set forth in R.S. 47:301(4)(m)(i)(aa) or (bb), the dealer shall collect state and local sales and use tax on remote sales for delivery into the state and remit to the Louisiana Sales and Use Tax Commission for Remote Sellers.

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

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

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(7) The term "remote seller" means a seller who 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 Louisiana, but does not have physical presence in Louisiana, and is not considered a dealer as defined by R.S. 47:301(4)(a) through (l). The term "remote seller" includes "marketplace facilitators" as defined by R.S. 47:340.1. The term "non-remote seller" means a seller that is not a remote seller.

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

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

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

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

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

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

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

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

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

(3) "Marketplace" means any physical or electronic platform or forum,
owned, operated, or otherwise controlled by the marketplace facilitator through
(4)(a) "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:

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

(ii) 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.

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

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

(ii) A platform or forum that provides advertising services, including listing products for sale, so long as the advertising service platform or forum does not also engage directly or indirectly through one or more affiliated persons in the activities described in Item (a)(ii) of this Paragraph.

(iii) 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.

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

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

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

(7) "Remote seller" means a seller who 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 Louisiana, but does not have a physical presence in Louisiana.

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

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

C. Calculation of remote sales and criteria

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

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

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

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

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

D. Timing of application and collection

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

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

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

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

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

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

(4) As prescribed by regulations of the commission, a marketplace facilitator may either:
(a) Report the sales and use tax collected, as required by Paragraph (C)(1) of this Section, on all taxable remote sales for delivery into Louisiana that the marketplace facilitator facilitates on behalf of a marketplace seller separately from all sales and use tax collected, as required by Paragraph (C)(1) of this Section, on taxable remote sales for delivery into Louisiana that the marketplace facilitator transacts on its own behalf or on behalf of an affiliate, as described in Subparagraph (2)(b) of this Subsection, of the marketplace facilitator using a separate marketplace facilitator form prescribed and prepared by the commission.

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

(5) The marketplace facilitator shall be the sole person subject to audit for remote sales made by marketplace sellers but facilitated by the marketplace facilitator. Marketplace sellers shall not be subject to audit for remote sales facilitated by the marketplace facilitator except to the extent the marketplace facilitator seeks relief under Paragraph (2) of this Subsection.

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

F. Notwithstanding any other provision of law to the contrary, nothing in this Section shall prohibit the marketplace facilitator and the marketplace seller from contractually agreeing to have the marketplace seller and its affiliates collect and remit all applicable taxes and fees if the marketplace seller meets all of the following requirements:
(1) The marketplace seller has annual United States gross sales over one billion dollars, including the gross sales of any affiliates, and in the case of franchised entities, including the combined sales of all franchisees of a single franchisor.

(2) The marketplace seller, or its affiliates, is a service supplier as defined by R.S. 33:9109(B)(7) or is a seller as defined by R.S. 33:9109.1(B)(8).

(3) The marketplace seller provides evidence to the marketplace facilitator that it is registered as a dealer defined by R.S. 47:301(4) with the state and local collectors as defined by R.S. 47:301(2).

(4) The marketplace seller notifies the commission in a manner prescribed by the commission that the marketplace seller and its affiliates will collect and remit all applicable taxes and fees on its sales through the marketplace and is liable for failure to collect or remit applicable taxes and fees on its sales.

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

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

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PRESIDENT OF THE SENATE

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: __________