

Regular Session, 2014

HOUSE BILL NO. 847

BY REPRESENTATIVE PUGH

TAX/SALES & USE: Requires the filing of an annual use tax return for the payment of use tax on taxable tangible personal property and services purchased from a remote seller

1 AN ACT

2 To enact R.S. 47:306(F), relative to collection of state use taxes; to provide a method for the
3 payment of use tax on certain transactions involving remote sellers; to require and
4 provide for the filing of an annual use tax return; to provide with respect to the
5 determination, estimation, calculation and reporting of use tax liabilities; to provide
6 for limitations and exclusions; to require the development of forms by the secretary
7 of the Department of Revenue; to provide for rulemaking; and to provide for related
8 matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 47:306(F) is hereby enacted to read as follows:

11 §306. Returns and payment of tax; penalty for absorption

12 * * *

13 F. Annual consumer use tax return

14 (1) Since 1934, the state has imposed a use tax to ensure that sales tax is paid
15 on taxable purchases made by Louisiana consumers if the seller was not legally
16 obligated to collect the sales tax due on the transaction. The use tax is intended to put
17 Louisiana retailers on an equal footing with their out of state competitors who are not
18 required to collect sales tax because they do not have a sufficient connection with
19 Louisiana. The rate and base are the same for both sales and use taxes.

1 (2) Beginning January 1, 2015, every person who uses, stores, or consumes
2 tangible personal property or purchases a taxable service not in the conduct of a
3 business, and who has not paid the sales or use tax imposed by this Chapter to the
4 dealer shall make an annual use tax return to remit use tax. For taxable transactions
5 occurring outside of the state upon which tax was paid to another jurisdiction, the
6 credit for taxes paid allowed under R.S. 47:303(A)(3)(a) shall apply. The consumer
7 use tax return shall not be used by a business for payment of use taxes. The secretary
8 shall prescribe a form and instructions for the use tax return. The return shall include
9 the name of the taxpayer; the total cost price of the tangible personal property stored,
10 used, or consumed; and the total purchase price of taxable services acquired or
11 consumed by that person within this state for the preceding taxable year. The
12 instructions for the return shall include a use tax table which provides estimated use
13 tax liabilities for taxpayers based on the taxpayer's federal adjusted gross income for
14 the previous year. The annual consumer use tax payment and tax return are due on
15 or before the fifteenth day of the fifth month following the close of the year in which
16 the use tax became due. In the event that the date on which returns shall be filed
17 falls on a Saturday, Sunday, or legal holiday, the return shall be made and filed on
18 the next business day. The return shall be subscribed by the taxpayer or his agent
19 and shall contain a written declaration that it is made under the penalties of perjury.
20 (3) A taxpayer shall elect to either calculate their actual use tax liabilities on
21 the annual use tax return, or use the use tax table to report their estimated use tax
22 liabilities for one or more single nonbusiness purchases of individual taxable items
23 of tangible personal property or taxable services. If a taxpayer utilizes the use tax
24 table to estimate their use tax liabilities and correctly reports their estimated use tax
25 liabilities by using the safe harbor amount for their federal adjusted gross income
26 range for the previous year, then the department shall not assess the difference, if
27 any, between the estimated use tax liabilities reported and paid in accordance with
28 the use tax table and the consumer's actual use tax liabilities. The use tax table may
29 not be used to estimate use tax liabilities for business purchases, including purchases

1 made by a business which is required to hold a seller's permit or, pursuant to the
2 Sales and Use Tax Law, to register with the department and report their use tax
3 liabilities directly to the department.

4 (4) Safe harbor amounts are based on the taxpayer's federal adjusted gross
5 income for the tax year in which the purchases were made, regardless of filing status.

6 (a) If the consumer's federal adjusted gross income is less than or equal to
7 ten thousand dollars, the safe harbor use tax amount is four dollars.

8 (b) If the consumer's federal adjusted gross income is greater than ten
9 thousand dollars, but less than or equal to twenty thousand dollars, the safe harbor
10 use tax amount is twelve dollars.

11 (c) If the consumer's federal adjusted gross income is greater than twenty
12 thousand dollars, but less than or equal to thirty thousand dollars, the safe harbor use
13 tax amount is twenty dollars.

14 (d) If the consumer's federal adjusted gross income is greater than thirty
15 thousand dollars, but less than or equal to forty thousand dollars, the safe harbor use
16 tax amount is twenty-eight dollars.

17 (e) If the consumer's federal adjusted gross income is greater than forty
18 thousand dollars, but less than or equal to fifty thousand dollars, the safe harbor use
19 tax amount is thirty-six dollars.

20 (f) If the consumer's federal adjusted gross income is greater than fifty
21 thousand dollars, but less than or equal to seventy thousand dollars, the safe harbor
22 use tax amount is forty-eight dollars.

23 (g) If the consumer's federal adjusted gross income is greater than seventy
24 thousand dollars, but less than or equal to eighty thousand dollars, the safe harbor use
25 tax amount is sixty dollars.

26 (h) If the consumer's federal adjusted gross income is greater than eighty
27 thousand dollars, but less than or equal to one hundred thousand dollars, the safe
28 harbor use tax amount is seventy-two dollars.

1 (i) If the consumer's federal adjusted gross income is greater than one
2 hundred thousand dollars, the safe harbor use tax amount is determined by
3 multiplying the federal adjusted gross income by eight ten thousandths of one
4 percent (0.0008%).

5 (5) Beginning January 1, 2015, the department shall annually recalculate the
6 safe harbor use tax table based on:

7 (a) The most current consumer expenditure data published by the United
8 States Bureau of Labor Statistics.

9 (b) Total spending at electronic shopping and mail order houses, determined
10 by reference to the most current electronic shopping and mail order house spending
11 data published by the United States Census Bureau.

12 (c) The percentage of total spending at electronic shopping and mail order
13 houses that are not included in the constitutionally exempted items, by reference to
14 the most current retail trade product lines statistics by kind of business data
15 published by the United States Census Bureau.

16 (d) The department shall annually determine the new use tax table and shall
17 publish such schedule no later than the March issue of the Louisiana Register.

18 (6) If a person fails to make a return, the secretary shall make an estimate,
19 based upon the information available, of the amount of taxes due for the period for
20 which the taxpayer is delinquent, and shall add a penalty equal to ten percent of the
21 amount of taxes due, plus interest on the delinquent taxes at the rate imposed under
22 R.S. 47:1601. Thereafter, the department shall give to the delinquent taxpayer
23 written notice of the estimated taxes, penalty, and interest, which notice shall be to
24 the last address the taxpayer provided to the department. Such estimate shall
25 constitute a notice of tax due as provided in R.S. 47:1562.

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)]

Pugh

HB No. 847

Abstract: Requires the annual filing of a consumer use tax return for the payment of use tax due on property and services bought from a remote seller who did not collect the tax due at the time of sale.

Present law imposes a total of 4% in state use tax on the use of certain tangible personal property and services.

Proposed law retains present law and establishes a requirement for the annual filing of a consumer use tax return (return) beginning Jan. 1, 2015, for the payment of use tax due on taxable property and services bought from a remote seller who did not collect the sales tax due at the time of sale.

Proposed law excludes purchases by a business.

Proposed law requires the secretary of the Dept. of Revenue (secretary) to prescribe the form and instructions for the return, and provides for the specific data elements to be included. The annual consumer use tax payment and tax return are due on or before the 15th day of May following the close of the year in which the use tax became due.

Proposed law requires the instructions for the return to include a use tax table which provides estimated use tax liabilities as "safe harbor" amounts which are based on a taxpayer's federal adjusted gross income for the previous year.

Proposed law requires a taxpayer, in reporting their estimated use tax liabilities of the return, to elect to either use the safe harbor amounts provided in the use tax table or calculate their actual use tax liabilities. If a taxpayer utilizes the use tax table and pays the appropriate safe harbor amount for their income level, the secretary shall not assess the difference, if any, between the estimated use tax liabilities reported and paid and the taxpayer's actual use tax liabilities.

Proposed law provides for the following safe harbor amounts.

<u>Consumer's federal adjusted gross income</u>	<u>Safe Harbor Amount</u>
Less and or equal to 10,000	\$4
10,000 to 20,000	\$12
20,000 to 30,000	\$20
30,000 to 40,000	\$28
40,000 to 50,000	\$36
50,000 to 70,000	\$48
70,000 to 80,000	\$60
80,000 to 100,000	\$72

If the taxpayer's adjusted gross income is greater than \$100,000 the safe harbor amount is determined by calculating the federal adjusted gross income by 0.0008%.

Proposed law requires the department to annually determine the new use tax table and publish the schedule no later than the March issue of the La. Register. The safe harbor use

tax table shall be recalculated based on consumer spending data published by the United States Bureau of Labor Statistics and the United States Census Bureau.

Proposed law provides that if a person fails to make a return, the secretary shall make an estimate, based upon the information available, of the amount of taxes due for the period for which the taxpayer is delinquent, and shall add a penalty equal to ten percent of the amount of taxes due, plus interest on the delinquent taxes as provided by present law. Thereafter, the department shall give to the delinquent taxpayer written notice of the estimated taxes, penalty, and interest, which notice shall be to the last address the taxpayer provided to the department.

(Adds R.S. 47:306(F))