

2015 Regular Session

HOUSE BILL NO. 545

BY REPRESENTATIVE GEYMANN

TAX: Imposes taxes on the sale of certain student assessment materials and services

1 AN ACT

2 To enact Part IV of Chapter 3 of Subtitle IV of Title 47 of the Louisiana Revised Statutes
3 of 1950, to be comprised of R.S. 47:2711 through 2717, relative to state taxes; to
4 impose a tax on the sale of certain student assessment materials and services; to
5 require permits for the sale of student assessment materials and services; to provide
6 for a permit application fee; to provide for the tax rate; to provide with respect to the
7 collection of the tax; to require certain records be maintained for inspection; to
8 establish penalties; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Part IV of Chapter 3 of Subtitle IV of Title 47 of the Louisiana Revised
11 Statutes of 1950, comprised of R.S. 47:2711 through 2717, is hereby enacted to read as
12 follows:

13 PART IV. TAXATION OF STUDENT ASSESSMENT MATERIALS AND

14 SERVICES

15 §2711. Definitions

16 As used in this Part:

17 (1) "Department" means the Department of Revenue.

18 (2) "Distributor" means any person, including publishers and wholesalers,

19 who receives, stores, and distributes student assessment materials and services.

1 (3) "Person" means any natural person, partnership, cooperative association,
2 limited liability company, corporation, personal representative, receiver, trustee,
3 assignee, or any other legal entity.

4 (4) "Place of business" means any place where student assessment materials
5 and services are received, stored, or sold in the state. For any sale involving a
6 remote seller, "place of business" means the destination in this state of student
7 assessment materials or services sold to a school.

8 (5) "Retailer" means any person who sells in the state student assessment
9 materials and services to a school whether or not that person is also a
10 distributor as defined in this Section.

11 (6) "Sale" means the transfer of title or possession for valuable consideration
12 regardless of the manner by which the transfer is complete.

13 (7) "School" means a public school or school system.

14 (8) "Stored" means any type of storage, including remote storage of student
15 assessment materials and services in digital form.

16 (9) "Student assessment materials and services" means materials sold and
17 services provided for the development, implementation, and administration of
18 standards and related assessments for students enrolled in public elementary and
19 secondary schools pursuant to R.S. 17:24.4 if such standards and assessments are not
20 developed in Louisiana and if the development, implementation, and administration
21 process for the standards and assessments are not promulgated in accordance with
22 the Administrative Procedure Act. "Student assessment materials and services" shall
23 not include college entrance examinations, including the American College Test and
24 the Scholastic Aptitude Test, high school equivalency examinations, or industry-
25 based certification examination.

26 §2712. Permit required

27 A. Beginning July 1, 2015, every distributor doing business in the state who
28 wishes to engage in the business of selling student assessment materials and services
29 shall file with the department an application for a permit to engage in such business.

1 An application shall be filed for each place of business owned and operated by the
2 distributor. An application for a permit shall be filed on forms to be furnished by the
3 department for that purpose. Each application shall be signed and verified and shall
4 state the following:

5 (1) The name and social security number of the applicant.

6 (2) The address of the applicant's principal place of business.

7 (3) The address of the principal place of business from which the applicant
8 engages in the business of selling student assessment materials and services in this
9 state and the addresses of all other places of business, if any (enumerating such
10 addresses, if any, in a separate list attached to and made a part of the application),
11 from which he engages in the business of student assessment materials and services
12 in this State.

13 (4) The name and address of the person or persons who will be responsible
14 for filing returns and payment of taxes due under this Part.

15 (5) In the case of a corporation, the name, title, and social security number
16 of each corporate officer.

17 (6) In the case of a limited liability company, the name, social security
18 number, and FEIN number of each manager and member.

19 (7) Such other information as the department may reasonably require. The
20 application shall contain an acceptance of responsibility signed by the person or
21 persons who will be responsible for filing returns and payment of the taxes due under
22 this Part.

23 B.(1) Upon receipt of an application and the annual permit fee of ten
24 thousand dollars, the department may issue to the applicant, for the place of business
25 designated, a permit, authorizing the sale of student assessment materials and
26 services to schools in the state. No distributor shall sell any student assessment
27 materials and services to schools without first obtaining a permit to do so under this
28 Part. Permits issued pursuant to this Section shall expire one year from the date of

1 issuance and may be renewed annually. Fees shall be deposited into the state general
2 fund.

3 (2) A permit may not be transferred or assigned from one person to another,
4 and a permit shall at all times be prominently displayed in a distributor's place of
5 business and a statement attesting to the possession of the permit shall be included
6 in any contract for the sale of student assessment materials and services. The
7 department may refuse to issue a permit to any person previously convicted of
8 violations of this Part under such procedures as the department may establish by
9 regulation.

10 (3) The department may, in its discretion, issue the permit electronically.

11 §2713. Tax imposed

12 A. Beginning on July 1, 2015, there is imposed a tax on every distributor for
13 the privilege of selling student assessment materials and services to schools in this
14 state. The taxes imposed by this Section are in addition to any other taxes that may
15 apply to persons or products subject to this Part. The tax shall be imposed at the
16 following rates:

17 (1) For a sale of one thousand dollars or less, the rate shall be ten percent of
18 the sales price.

19 (2) For a sale of greater than one thousand dollars but less than ten thousand
20 dollars, the rate shall be nine percent of the sales price.

21 (3) For a sale of ten thousand dollars or more, the rate shall be eight percent
22 of the sales price.

23 B. A retailer that sells student assessment materials and services in the state
24 to a school, on which the tax imposed by this Section has not been paid by a
25 distributor, is liable for the tax imposed in Subsection A at the time of sale to a
26 school.

27 C. Pass-through of the tax. A distributor shall add the amount of tax levied
28 under this Section to the price of student assessment materials and services sold to
29 a retailer, and the retailer shall pass the amount of the tax through to the school as

1 a component of the final retail purchase price. The amount of the taxes may be
2 stated separately on all invoices, signs, sales or delivery slips, bills, and statements
3 that advertise or indicate the price of those educational materials and services.

4 §2714. Report of sales and tax remittances

5 A. Any distributor or retailer liable for the tax imposed by this Part shall, on
6 or before the twentieth day of each calendar month, return to the department a
7 statement containing its name and place of business, the amount of student
8 assessment materials and services subject to the tax imposed by this Part sold or
9 offered for sale in the month preceding the month in which the report is due, and any
10 other information required by the department, along with the tax due.

11 B. If the taxpayer's average monthly tax liability to the department under this
12 Part was twenty thousand dollars or more during the preceding four completed
13 calendar quarters, he shall file a return with the department each month by the
14 twentieth day of the month following the month during which such tax liability is
15 incurred and shall make payment to the Department on or before the seventh,
16 fifteenth, twenty-second, and last day of the month during which such liability is
17 incurred.

18 C. The department, in its discretion, may require that returns be submitted
19 and payments be made electronically.

20 §2715. Records of distributors

21 Every distributor and every retailer subject to this Part shall maintain for not
22 less than four years accurate books and records, showing all transactions that gave
23 rise, or may have given rise, to tax liability under this Part. Such records are subject
24 to inspection by the department at all reasonable times during normal business hours.

25 §2716. Penalties

26 A. Any distributor, retailer, or other person subject to the provisions of this
27 Part who fails to pay the entire amount of tax imposed by this Part by the date that
28 payment is due, fails to submit a report or maintain records required by this Part,
29 does business in the state without first obtaining a permit as required by this Part, or

1 violates any other provision of this Part, or rules and regulations adopted by the
2 department for the enforcement of this Part, shall be guilty of a misdemeanor and
3 shall also be liable for the penalties set forth and incorporated by reference into this
4 Section.

5 B. In addition to any other penalty authorized by law, a permit issued
6 pursuant to this Part shall be suspended or revoked if any court of competent
7 jurisdiction determines, or the department finds based on a preponderance of the
8 evidence, after the permittee is afforded notice and an opportunity to be heard, that
9 the permittee, or any of the permittee's agents or employees, has violated any of the
10 requirements, conditions, or prohibitions of this Part. For a first violation of this Part
11 within any sixty month period, the permit shall be suspended for thirty days. For a
12 second violation of this Part within any sixty month period, the permit shall be
13 suspended for ninety days. For a third violation of this Part within any sixty month
14 period, the permit shall be suspended for one year. For a fourth or subsequent
15 violation of this Part within any sixty month period, the license shall be revoked.

16 C. A decision of the department under this Section is a final administrative
17 decision and is subject to review by the division of administrative law.

18 §2717. Unpaid taxes a debt

19 The tax herein required to be collected by any person selling student
20 assessment materials and services to a school in the state, and any such tax collected
21 by that person shall constitute a debt owed by that person to this state.

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)]

HB 545 Original

2015 Regular Session

Geymann

Abstract: Requires vendors of student assessment materials and services to receive a permit to sell to public schools. Imposes a sales tax on the sale of student assessment materials to schools in the state.

Proposed law defines "student assessment materials and services" as materials sold and services provided for the development, implementation, and administration of standards and related assessments for students enrolled in public elementary and secondary schools pursuant to R.S. 17:24.4 if such standards and assessments are not developed in the state and if the development, implementation, and administration process for the standards and assessments are not promulgated in accordance with the Administrative Procedure Act. "Student assessment materials and services" shall not include college entrance examinations, including the ACT, SAT, high school equivalency examinations, or industry-based certification examination.

Proposed law requires every distributor who wishes to sell student assessment materials and services to schools in the state to apply for a permit with the Dept. of Revenue (the department). Permit fees are \$10,000 for a one-year permit. Permits are non-transferrable and shall be prominently displayed. A statement attesting to the possession of the permit shall be included in any contract for the sale of student assessment materials and services.

Proposed law requires an application be filed for each place of business owned and operated by the distributor. Defines "place of business" as any place where student assessment materials and services are received, stored, or sold in the state. For any sale involving a remote seller, "place of business" means the destination in the state of student assessment materials or services sold to a school.

Proposed law imposes a tax on every distributor for selling student assessment materials and services, based on the dollar value of each sale.

- (1) For a sale of \$1,000 or less, 10%.
- (2) For a sale greater than \$1,000, but less than \$10,000, 9%.
- (3) For a sale of \$10,000 or more, 8%.

If the tax has not been paid by the distributor, the tax shall be paid by a retailer selling the student assessment materials and services.

A distributor shall add the amount of tax levied to the price of student assessment materials and services sold to a retailer, and the retailer shall pass the amount of the tax through to the school as a component of the final retail purchase price. The amount of the taxes may be stated separately on all invoices, signs, sales or delivery slips, bills, and statements that advertise or indicate the price of those educational materials and services.

Any distributor or retailer liable for the tax shall submit the tax due and other information required by the department by the 20th day of each month. Requires more frequent filing if a taxpayer's monthly tax liability was \$20,000 or more during the preceding calendar year.

Every distributor and every retailer shall keep applicable records for four years and such records shall be subject to inspection by the department at all reasonable times during normal business hours.

Proposed law provides penalties for failure to pay the entire amount of the tax due. Authorizes the suspension of permits if a permittee has violated any provisions of proposed law.

The tax required to be collected by proposed law and any such tax collected shall constitute a debt owed by that person to the state.

(Adds R.S. 47:2711-2717)