

GREEN SHEET REDIGEST

HB 355

2015 Regular Session

Pugh

(KEYWORD, SUMMARY, AND DIGEST as amended by Senate committee amendments)

TAX/SALES-USE, STATE. Provide for the collection of sales and use taxes due on sales made in Louisiana by a remote dealer.

DIGEST

Present law levies an additional 4% state sales and use tax to be collected only by a person who qualifies as a dealer in La. solely by virtue of engaging in regular or systematic solicitation of a consumer market in La. by the distribution of catalogs, and other print media, radio, television, and other electronic and digital media.

Present law provides various definitions of "dealer" with respect to sales and use tax law and defines "engaging in business in a taxing jurisdiction".

Proposed law retains present law and expands the definition of dealer for purposes of the collection of the additional 4% state sales and use tax to include the following activities and attributes:

- (1) The solicitation of business through an independent contractor or any other representative pursuant to an agreement with a La. resident under which the resident, for a commission, referral fee, or other consideration of any kind, directly or indirectly refers potential customers, whether by website link, personal presentation, telemarketing, or otherwise, to the seller. For purposes of qualification as a "dealer" through an agreement with a La. resident to maintain a business in La., the presumption that a person is a dealer, based upon annual gross receipts from sales of property delivered in La. that exceed \$50,000, is rebuttable if the person can demonstrate that he cannot reasonably be expected to have gross receipts in excess of \$50,000 in the following 12 months.
- (2) Sale of the same or a substantially similar line of products as a La. retailer under the same or substantially similar business name.
- (3) Holding a substantial ownership interest, directly or through a subsidiary, in a retailer maintaining sales locations in La. or who is owned in whole or in substantial part by a retailer maintaining sales locations in La.
- (4) Solicitation of business or maintenance of a market in La. through an agent, salesman, independent contractor, or other representative (affiliated agent), through an agreement with the dealer.

Proposed law limits the collection of the tax from such dealers to the Department of Revenue and prohibits a La. retailer from collecting the additional 4% state sales and use tax in lieu of the sales and use tax levied by a political subdivision and remitted to the political subdivision.

Proposed law allows any taxpayer from whom a dealer has "actually collected and remitted" the state 4% in lieu of the local sales tax to obtain a refund if within 30 days from the remittance of the tax the taxpayer provides the secretary with either of the following:

- (1) A certified copy of a use tax return that has been filed with the relevant parish sales and use tax collector concerning the same transaction, together with the proof of payment of all state and local use taxes due on the transaction.

- (2) A certified copy of an affidavit that has been filed with the sales and use tax commission provided in present law as an advisory commission, in a form prescribed by the commission, affirming that the delivery and all use of the property subject to tax will be in a parish with no use tax imposed by any local taxing authority.

Proposed law requires persons who meet the definition of a dealer under proposed law to electronically file tax returns and remittances to the state and local taxing authorities.

Proposed law prohibits the determination that certain business activities establishes a person as a dealer for purposes of sales and use tax from being used in a determination of whether the person is liable for the payment of state income or franchise taxes.

Present law requires the secretary of the Dept. of Revenue to annually distribute the avails of the tax to parish governing authorities based on population, which monies are then distributed to the local taxing authorities in the respective parish.

Proposed law retains present law, but changes the frequency of distributions by the secretary to the parishes from annually to quarterly.

Proposed law provides that if the U.S. Congress enacts legislation authorizing states to require a remote seller to collect sales taxes on taxable transactions, the federal law shall preempt the provisions of proposed law. Further, directs the secretary of the Dept. of Revenue to promulgate rules to carry out the provisions of the federal law within 90 days of its effectiveness. However, the Dept. of Revenue, for purposes of the promulgation of the rules, shall consult with the sales and use tax commission established under present law for purposes of the distribution of the proceeds of the additional 4% state sales and use tax to the parishes.

Applicable to tax periods beginning on and after July 1, 2015.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 47:302(K)(5), (7)(a) and (U); adds R.S. 47:302(V))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Ways and Means to the original bill:

1. Add to the definition of "dealer" with respect to methods of transacting and solicitation of business.
2. Change the threshold level of sales activity for purposes of the definition of "dealer" from a cumulative total of \$250,000 or 100 sales of tangible personal property in one year to \$50,000 in sales of tangible personal property in one year.
3. Specify that the provisions of proposed law shall apply to tax periods beginning on and after July 1, 2015.
4. Add provisions that if the U.S. Congress enacts legislation authorizing states to require a remote seller to collect sales taxes on taxable transactions, the federal law shall preempt the provisions of proposed law. Further, directs the secretary of the Dept. of Revenue to promulgate rules to carry out the provisions of the federal law within 90 days of its effectiveness.

The House Floor Amendments to the engrossed bill:

1. Add a prohibition that a La. retailer shall not collect the additional 4% state sales and use tax in lieu of collecting the sales and use tax imposed by a political subdivision.

2. Change the frequency for the distribution of the proceeds of the additional 4% state sales and use tax by the Dept. of Revenue to parishes from annually to quarterly.
3. Add a requirement that before promulgation of rules for purposes of implementing federal law with regard to collection of state and local sales and use taxes on sales involving remote dealers, the Dept. of Revenue shall consult with the sales and use tax commission for purposes of the distribution of the proceeds of the additional 4% state sales and use tax to the parishes.

Summary of Amendments Adopted by Senate

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

1. Limits the collection of the tax from dealers defined in the proposed law to the Department of Revenue.
2. Provides a procedure for making refunds to taxpayers who have paid the local tax or who are in a parish with no use tax imposed by any local taxing authority.