

HOUSE SUMMARY OF SENATE AMENDMENTS**HB 555****2015 Regular Session****Fannin**

TAX/SALES-USE, STATE: Provides relative to the collection of state sales and use taxes due on sales made in Louisiana by a remote dealer

Synopsis of Senate Amendments

1. Add a limitation that the tax collected pursuant to proposed law shall only be collected by the Department of Revenue.
2. Add authorization for refund payments within 30 days of remittance of the tax to those taxpayers who have paid the local tax or who are in a parish where no use tax is imposed by the local taxing authority.

Digest of Bill as Finally Passed by Senate

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 affirming that the delivery and all use of the property subject to tax will be in a parish where no use tax is 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))