
DIGEST

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HB 110 Original

2016 First Extraordinary Session

Pugh

Abstract: Establishes a variety of requirements and procedures affecting persons who make or facilitate retail sales of taxable tangible personal property and services in La.

Proposed law provides requirements for persons who engage in business, and facilitate and maintain a market in La. concerning the collection and remittance of sales and use tax.

Proposed law defines the following terms: "dealer", "direct response marketing", "marketplace dealer", "marketplace provider", and "referrer".

Proposed law establishes activity that constitutes doing business within a jurisdiction, which includes the selling, leasing, or delivery of taxable tangible personal property or services, maintaining an office or other facility, having an employee work from his home located within a jurisdiction, engaging in marketing targeted at the residents of a jurisdiction, and maintaining agreements with certain persons who refer potential purchasers of products.

Proposed law establishes a rebuttable presumption that a person is presumed to be conducting business within a jurisdiction, and thus a dealer, if their cumulative sales exceed \$50,000 per calendar year, and authorizes rebuttal of the presumption under certain circumstances.

Present law requires a dealer to register with the Dept. of Revenue (department) for purposes of collection and remittance of sales and use tax.

Proposed law establishes guidelines for the types of relationships between persons which indicate nexus with a jurisdiction, and authorizes rebuttal of a presumption of nexus under certain circumstances.

Proposed law establishes conditions under which a marketplace provider may be subject to the obligations of a dealer with respect to collection and remittance of sales and use tax, and provides for the specific conditions under which they may be relieved of that duty.

Proposed law requires a referrer to annually register with the department and provides for a permitting process for referrers.

Proposed law requires referrers who are paid more than \$10,000 by dealers for referral services in the previous calendar year, or more than \$7,500 in the first three quarters of the current calendar year, to file a notification form with the department concerning their activities in the promotion,

facilitating, and maintenance of a market in a jurisdiction. Upon the filing of the notification, the department shall issue a permit to the referrer for activity in the prospective year. A referrer is prohibited from referring customers in the jurisdiction of a seller without a permit. A fee may be imposed on a referrer who refers customers without a permit, as may be determined by administrative rule.

Proposed law requires the department to maintain a list of dealers and referrers.

Proposed law establishes specific requirements for reports to the department by a referrer who receives more than \$10,000 per year from dealers, including information on the identity of the dealers, the cumulative sales from referrals, and numbers of referrals. Further, such a referrer is required to provide notice to dealers that the dealer's sales may be subject to sales and use tax and that other information concerning the dealer and their sales is being provided to the department. A referrer who fails to perform the required reporting shall have their permit revoked.

Proposed law establishes conditions under which a referrer may be subject to the obligations of a dealer with respect to collection and remittance of sales and use tax, and provides for the specific conditions under which they may be relieved of that duty.

Proposed law provides that an appeal of a determination by the secretary concerning the collection and remittance of sales and use taxes under proposed law on an issue of constitutionality shall be heard by preference within 60 days of the lodging of the record in the court of appeal. The appeal shall be taken 30 days from the date the determination was issued. Further, amounts paid under protest shall remain segregated, and there shall be no bond or other security necessary to perfect the appeal. In the event the supreme court grants a writ of certiorari, the court shall hear the appeal on the next regular docket of the court.

If any provision of this Act or the application thereof is held invalid, the invalidity shall not affect other provisions or applications of this Act which can be effective without the invalid provisions or applications, and to this end the provisions of this Act are hereby declared severable.

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

(Adds R.S. 47:302(V))