

2016 First Extraordinary Session

HOUSE BILL NO. 113

BY REPRESENTATIVE HILFERTY

TAX/SALES & USE: Requires online or catalog retailers that are not domiciled in Louisiana to provide notice to Louisiana purchasers that Louisiana sales and use taxes may be due on the purchases (Item #30)

1 AN ACT

2 To enact R.S. 47:306(F), relative to state sales and use tax; requires online or catalog  
3 retailers that are not domiciled in Louisiana to provide notice to Louisiana  
4 purchasers that Louisiana sales and use taxes may be due on the purchases; defines  
5 terms; provides for the details of such notice; prohibits the imposition of criminal  
6 penalties or civil liabilities; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

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

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

10 \* \* \*

11 F. Notice requirement for non-collecting retailers.

12 (1) The terms used in this Subsection shall have the following meanings:

13 (a) "De minimis online auction website" means any online auction website  
14 that facilitated in the prior calendar year total gross sales in Louisiana of less than one  
15 hundred thousand dollars and reasonably expects that Louisiana sales in the current  
16 calendar year will be less than one hundred thousand dollars.

17 (b) "De minimis retailer" means any noncollecting retailer that in the prior  
18 calendar year made total gross sales in Louisiana of less than one hundred thousand

1        dollars and reasonably expects that Louisiana sales in the current calendar year will  
2        be less than one hundred thousand dollars.

3                (c) "Noncollecting retailer" means any retailer not currently registered to  
4        collect and remit Louisiana sales and use taxes who makes sales of tangible personal  
5        property, services, or products transferred electronically from a place of business  
6        outside of Louisiana to be shipped to Louisiana for use, storage, or consumption and  
7        who is not required to collect Louisiana sales and use taxes.

8                (d) "Online auction website" means a collection of web pages on the Internet  
9        that allows any person to display tangible personal property, services, or products to  
10       be transferred electronically for sale which are purchased through a competitive  
11       process where a participant places a bid with the highest bidder purchasing the  
12       property, service, or product when the bidding period ends.

13               (e) "Louisiana purchaser" means any purchaser who purchases tangible  
14       personal property, services, or products electronically to be shipped or transferred  
15       to Louisiana.

16               (2) Pursuant to this Subsection, each noncollecting retailer shall give notice  
17       that Louisiana use tax is due on nonexempt purchases of tangible personal property,  
18       services, or products transferred electronically and shall be paid by the Louisiana  
19       purchaser. The notice shall be readily visible and contain the information as follows:

20               (a) The noncollecting retailer is not required and does not collect Louisiana  
21       use tax.

22               (b) The purchase is subject to state use tax unless it is specifically exempt  
23       from such taxation.

24               (c) The purchase is not exempt merely because the purchase is made over the  
25       Internet, by catalog, or by other remote means.

26               (d) The state requires each Louisiana purchaser to report any purchase that  
27       was not taxed at the time of purchase and pay the tax due on such purchase. The tax  
28       may be reported and paid on the Louisiana use tax form.

1           (e) The use tax form and corresponding instructions are available on the  
2           Louisiana Department of Revenue and Taxation website.

3           (3)(a) The notice required by Paragraph (2) of this Subsection shall occur on  
4           a page necessary to facilitate the applicable transaction. The notice shall be  
5           sufficient if the noncollecting retailer provides a prominent linking notice that reads  
6           "See important Louisiana sales and use tax information regarding the tax you may  
7           owe directly to the state of Louisiana". The prominent linking notice shall direct the  
8           purchaser to the principal notice information required by Paragraph (2) of this  
9           Subsection.

10          (b) The notice required by Paragraph (2) of this Subsection for a catalog  
11          transaction shall be a part of the order form. The notice shall be sufficient if the  
12          noncollecting retailer provides a prominent reference to a supplemental page that  
13          reads "See important Louisiana sales and use tax information regarding the tax you  
14          may owe directly to the state of Louisiana on page                   ". The notice on the  
15          order form shall direct the purchaser to the page that includes the principal notice  
16          required by Paragraph (2) of this Subsection.

17          (4)(a) For any Internet purchase made pursuant to this Subsection, the  
18          invoice notice shall occur on the electronic order confirmation. The notice shall be  
19          sufficient if the noncollecting retailer provides a prominent linking notice that reads  
20          "See important Louisiana sales and use tax information regarding the tax you may  
21          owe directly to the state of Louisiana". The invoice notice link shall direct the  
22          purchaser to the principal notice required by Paragraph (2) of this Subsection. If the  
23          noncollecting retailer does not issue an electronic order confirmation, the complete  
24          notice shall be placed on the purchase order, fill receipt, sales slip, order form, or  
25          packing statement.

26          (b) For any catalog or phone purchase made pursuant to this Subsection, the  
27          complete notice shall be placed on the purchase order, bill, receipt, sales slip, order  
28          form, or packing statement.

1           (5)(a) For any Internet purchase made pursuant to this Subsection, notice on  
2           the check-out page fulfills both the website and the invoice requirements  
3           simultaneously. The notice shall be sufficient if the noncollecting retailer provides  
4           a prominent linking notice that reads "See important Louisiana sales and use tax  
5           information regarding the tax you may owe directly to the state of Louisiana". The  
6           check-out page notice link shall direct the purchaser to the principal notice required  
7           by Paragraph (2) of this Subsection.

8           (b) If a retailer is required to provide a similar notice for another state in  
9           addition to Louisiana, the retailer may provide a consolidated notice so long as the  
10          notice includes the information required by Paragraph (2) of this Subsection,  
11          specifically references Louisiana, and meets the placement requirements of this  
12          Subsection.

13          (6) A noncollecting retailer may not state nor display nor imply that no tax  
14          is due on any Louisiana purchase unless the display is accompanied by the notice  
15          required by Paragraph (2) of this Subsection each time the display appears. If a  
16          summary of the transaction includes a line designated "sales tax" and shows the  
17          amount of sales tax as zero, this constitutes a display implying that no tax is due on  
18          the purchase. This display shall be accompanied by the notice required by Paragraph  
19          (2) of this Subsection.

20          (7) Notwithstanding the limitation contained in this Subsection, if a  
21          noncollecting retailer knows that a purchase is exempt from Louisiana tax pursuant  
22          to Louisiana law, the noncollecting retailer may display or indicate that no sales or  
23          use tax is due even if the display is not accompanied by the notice required by  
24          Paragraph (2) of this Subsection.

25          (8)(a) With the exception of notification on an invoice, the provision of this  
26          Subsection shall apply to online auction websites.

27          (b) De minimis retailers and de minimis online auction websites are exempt  
28          from the notice requirements of this Subsection.

1                   (c) No criminal penalty nor civil liability may be applied or assessed for  
2                   failure to comply with the provisions of this Subsection.

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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)]

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HB 113 Original                   2016 First Extraordinary Session                   Hilferty

**Abstract:** Requires the registration of dealers who maintain a market for retail sales in Louisiana.

Proposed law requires online and catalog retailers outside the state of La. to give notice to customers that they may owe sales and use taxes to the state of La. for any purchases made through their website, online auction site, or catalogs. Specifies the location of notices and the content of the warning notice including on the website with a link to more information, on the website checkout page, on the catalog order form, and on the purchase order, bill receipt, or packing statement. Prohibits a retailer that does not collect the sales tax from claiming that the purchases are tax free. Further prohibits criminal penalties or civil liabilities for failure to comply with these requirements.

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