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## DIGEST

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HB 1121 Reengrossed

2016 Regular Session

Leger

**Abstract:** Requires annual notifications to purchasers and the Dept. of Revenue by remote retailers who make sales in La. in excess of \$50,000 per year.

Present law authorizes the secretary of the Dept. of Revenue (secretary) to require that a dealer furnish a list to the secretary concerning their sales of property and services which exceed \$250. The secretary is authorized to compensate a dealer for the preparation and submission of the list.

Proposed law retains present law.

Proposed law establishes requirements for the provision of notices to consumer and annual statements to the Dept. of Revenue concerning sales by remote retailers of property delivered into La. or services occurring in La.

Proposed law establishes definitions for "engaging in business in Louisiana", "Louisiana purchaser", and "remote retailer".

Proposed law excludes from the requirements of proposed law remote retailers who make retail sales in La. whose cumulative annual gross receipts from those sales is less than \$50,000 per calendar year.

Proposed law requires, at the time of sale, that the remote retailer notify the La. purchaser that their purchase is subject to La. use tax unless it is specifically exempt, and that there is no exemption specifically based on the fact that a purchase is made over the Internet, by catalog, or by other remote means. A retailer is subject to a \$5 penalty for each failure to provide this sales notice; however, all or a portion of the penalty may be waived by the secretary if the retailer shows reasonable cause for the failure.

Proposed law requires a remote retailer to send, by Jan. 31<sup>st</sup> of each year, an annual notice to all La. purchasers who made purchases from them in the immediately preceding calendar year. The annual notice shall report the total amount paid for purchases in that preceding calendar year, and other information required by the secretary through administrative rule. If available, this notice may include a listing of the dates and amounts of purchases, and whether the property or service is exempt from sales and use taxes. A retailer is subject to a penalty of \$10 for each annual notice which was not sent; however, all or a portion of the penalty may be waived by the secretary if the retailer shows reasonable cause for the failure.

Proposed law requires a remote retailer who made retail sales of tangible personal property or taxable services to La. purchasers in the immediately preceding calendar year to file with the secretary an annual statement with regard to each purchaser by March first of each year. The statement shall provide the total amount paid by the purchaser to that retailer in the immediately preceding calendar year, but shall not contain any detail as to specific property or services purchased. The secretary is authorized to require the electronic filing of annual statements by a remote retailer who had sales in La. in excess of \$100,000 in the immediately preceding calendar. A retailer is subject to a penalty of \$10 for each annual statement that was not sent; however, all or a portion of the penalty may be waived by the secretary if the retailer shows reasonable cause for the failure.

Proposed law establishes powers of the secretary for purposes of enforcement of proposed law which include the authority to subpoena or compel witnesses and the production of documents. The secretary is also authorized to seek letters rogatory when appropriate, and in the event of the failure by a retailer to respond to a subpoena, the secretary may request that the subpoena be enforced through a court order.

Present law provides that any dealer selling property or services to residents of La., where the property is delivered into the state or the beneficial use of the service occurs in the state, is considered to have consented to the jurisdiction of the courts of La. for the exclusive purpose of enforcing present law. Further, service of process upon dealers subject to present law may be made by service outside of La. in the same manner provided for service within the state with the same force and effect as though service had been made within the state.

Proposed law retains present law and adds jurisdiction for the Board of Tax Appeals.

Proposed law authorizes rulemaking in accordance with the Administrative Procedure Act regarding procedures and requirements concerning purchaser notifications and the filing of annual statements.

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

(Amends R.S. 47:302(U) and 309.1)

#### Summary of Amendments Adopted by House

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

1. Remove requirement for the promulgation of rules necessary for proposed law to be implemented.
2. Authorize rulemaking for procedures and requirements concerning purchaser notifications and the filing of annual statements.
3. Establish Jan. 31<sup>st</sup> of each year as the deadline by which a remote dealer is required to send annual notice to La. purchasers required in proposed law.

4. Establish March 1<sup>st</sup> of each year as the deadline by which a remote dealer has to file the annual statement required by proposed law with the Secretary.