

HOUSE SUMMARY OF SENATE AMENDMENTS

HB 17

2018 Second Extraordinary Session

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TAX/SALES & USE: Provides criteria for the definition of "dealer" for purposes of the sales tax imposed on transactions involving a remote seller (Item #26)

Synopsis of Senate Amendments

1. Require the continued collection of the additional state sales and use tax imposed on remote sales pursuant to R.S. 47:302(K) until the establishment of the La. Sales and Use Tax Commission.
2. Extend the refund of La. sales taxes paid on tangible personal property that is part of and used in a home that is destroyed by a natural disaster that warrants federal assistance and for which no reimbursement was received by insurance or otherwise to certain tangible personal property that is part of and used in or about a nonpublic school which sustained damage in the flooding disaster which occurred in August 2016.
3. Technical amendments.

Digest of Bill as Finally Passed by Senate

Present law defines "dealer" for purposes of state and local sales and use taxes as a person who manufactures or produces tangible personal property for sale at retail, for use or consumption, or distribution, or for storage to be used or consumed in a taxing jurisdiction.

Proposed law retains present law and further defines "dealer" as a person who does not have a physical presence in the state and who sells for delivery into La. tangible personal property, products transferred electronically, or services, if either:

- (1) The person's gross revenue from sales in La. exceeds \$100,000; or
- (2) The person engaged in 200 or more separate transactions in La.

Proposed law provides that until the establishment of the La. Sales and Use Tax Commission for Remote Sellers (commission), dealers shall specifically collect the additional tax imposed by the state on remote sales pursuant to present law and file all applicable sales and use tax returns. In consultation with the commission, the secretary of the Dept. of Revenue shall publish notification of the establishment date of the commission in a policy statement as authorized by present law.

Proposed law also provides that a person may voluntarily register as a dealer for purposes of collecting the additional sales tax regardless of their revenue or number of sales.

Present law requires that the commission serve as the single entity in La. to require remote sellers to collect and remit sales and use taxes on remote sales sourced to La. pursuant to federal law authorizing states to require remote sellers.

Proposed law retains present law and includes final rulings by the U. S. Supreme Court as a source of authority by which states may be authorized to require remote sellers to collect and remit sales and use taxes.

Present law authorizes reimbursement of the amount of La. sales taxes paid by a property owner on tangible personal property that is part of and used in a person's home that is destroyed by a natural disaster that is subsequently determined by the U.S. President to warrant assistance by the federal government, for which no reimbursement was received by insurance or otherwise. Further provides for administrative requirements for requesting a

refund from the collector and for payment of the refund to the property owner.

Proposed law retains present law but extends the refund to tangible personal property, including construction materials, that was a part of and used in a nonpublic school which sustained damage in the flooding disaster which occurred in August 2016, which event was the subject of a gubernatorial proclamation and numerous executive orders. Further requires that in order to be eligible for the La. sales tax refund, the owner of the nonpublic school must meet the same eligibility and administrative requirements as is provided for in present law for receipt of the refund as well as require that the school be eligible to participate in the Federal Emergency Management Agency Public Assistance grant program.

Proposed law applicable to all taxable periods beginning on or after the date of the final ruling by the U. S. Supreme Court in *South Dakota v. Wayfair Inc, Overstock.Com, Inc., and Newegg Inc.*, No. 17-494 (U.S. filed October 2, 2017) finding South Dakota 2016 Senate Bill No. 106 constitutional.

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

(Amends R.S. 47:315.1(A) and 339(A)(2) and (B)(3); Adds R.S. 47:301(4)(m) and 302(W)(6))