

2020 Regular Session

SENATE BILL NO. 138

BY SENATOR ALLAIN

TAX/SALES. Provides for sales and use tax collection by marketplace facilitators. (1/1/21)

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AN ACT

To amend and reenact R.S. 47:339(B)(7), to enact R.S. 47:340(G)(6)(c) and (d) and R.S. 47:340.1, and to repeal R.S. 47:302(V)(2), relative to tax collection; to provide for requirements to file tax returns; to provide for compensation to remote sellers; to provide for the collection of sales and use tax from marketplace facilitators and remote sellers; to provide for definitions; to provide for certain conditions and limitations; to provide for applicability; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 47:339(B)(7) is hereby amended and reenacted and 340(G)(6)(c) and (d) and 340.1 are hereby enacted to read as follows:

§339. Louisiana Sales and Use Tax Commission for Remote Sellers

\* \* \*

B. As used in this Chapter, unless the context clearly indicates otherwise, the following terms shall be defined as follows:

\* \* \*

(7) The term "remote seller" means a seller who sells for sale at retail, use,

1 consumption, distribution, or for storage to be used for consumption or distribution  
2 any taxable tangible personal property, products transferred electronically, or  
3 services for delivery within Louisiana, but does not have physical presence in  
4 Louisiana, ~~and is not considered a dealer as defined by R.S. 47:301(4)(a) through (l).~~

5 **The term "remote seller" includes "marketplace facilitators" as defined by R.S.**  
6 **47:340.1.** The term "non-remote seller" means a seller that is not a remote seller.

7 \* \* \*

8 §340. Louisiana Sales and Use Tax Commission for Remote Sellers; members;  
9 powers

10 \* \* \*

11 G. The commission shall have the power, duty, and authority:

12 \* \* \*

13 (6) To require remote sellers to register with the commission.

14 \* \* \*

15 **(c) Notwithstanding the duty to register with the commission, the state**  
16 **and local sales and use tax required to be collected by the remote seller shall be**  
17 **due and payable monthly. For the purpose of ascertaining the amount of tax**  
18 **payable, all remote sellers shall transmit to the commission returns on forms**  
19 **prescribed, prepared, and furnished by the commission showing the gross sales**  
20 **arising from all taxable transactions during the preceding calendar month, on**  
21 **or before the twentieth day of the month following the month in which this tax**  
22 **is required to be collected. These returns shall show any further information the**  
23 **commission may require to correctly compute and collect the tax levied. At the**  
24 **time of making the return required pursuant to this Subparagraph, every**  
25 **remote seller shall compute and remit to the commission the required tax due**  
26 **for the preceding calendar month, and failure to remit the tax shall cause the**  
27 **tax to become delinquent. In the event the tax becomes delinquent, interest and**  
28 **penalties imposed by Part IV of Chapter 18 of this Subtitle shall be an**  
29 **obligation to be assessed, collected, and enforced against the remote seller in the**

1 same manner as if it were a tax due.

2 (d) For the purpose of compensating the remote seller in accounting for  
 3 and remitting the tax due, each remote seller shall be allowed .935 percent of the  
 4 amount of tax due and account for and remitted to the commission in the form  
 5 of a deduction in submitting the return timely and paying the amount due  
 6 timely. The aggregate compensation for a remote seller shall not exceed one  
 7 thousand five hundred dollars per calendar month. This deduction shall be  
 8 borne pro-rata by each taxing jurisdiction to which taxable remote sales for  
 9 delivery into the state were made during the calendar month and shall reduce  
 10 the monthly distribution provided for by Paragraph (E)(2) of this Section  
 11 accordingly.

12 \* \* \*

13 §340.1. Marketplace facilitators; collection and remittance of state and local  
 14 sales and use tax

15 A. Definitions. For purposes of this Section, the following words and  
 16 phrases shall have the following meanings, unless the context clearly indicates  
 17 otherwise:

18 (1) "Commission" means the Louisiana Sales and Use Tax Commission  
 19 for Remote Sellers set forth in this Chapter.

20 (2) "Marketplace" means any method through which a marketplace  
 21 seller may sell or offer for sale tangible personal property, admissions, or  
 22 services that are subject to taxation under this Subtitle for delivery into  
 23 Louisiana.

24 (3)(a) "Marketplace facilitator" means any person that facilitates a sale  
 25 for a marketplace seller through a marketplace by any of the following:

26 (i) Offering for sale through any means, by a marketplace seller, tangible  
 27 personal property, admissions, or services that are subject to taxation under  
 28 this Subtitle for delivery into Louisiana.

29 (ii) Collecting payment from a purchaser and transmitting the payment

1 to the marketplace seller, regardless of whether the person receives  
2 compensation or other consideration in exchange for facilitating the sale or  
3 providing any other service directly or indirectly through any agreement or  
4 arrangement with one or more third parties.

5 (b) "Marketplace facilitator" shall not include a payment processor that  
6 only handles the processing of payments between the marketplace facilitator  
7 and the purchaser.

8 (4) "Marketplace seller" means a person who sells or offers for sale  
9 tangible personal property, admissions, or services, that are subject to taxation  
10 under this Subtitle for delivery into Louisiana through a marketplace that is  
11 owned, operated, or controlled by a marketplace facilitator.

12 (5) "Remote sale" means a sale made by a remote seller or a sale  
13 facilitated by a marketplace facilitator.

14 (6) "Remote seller" means a seller who sells for sale at retail, use,  
15 consumption, distribution, or for storage to be used for consumption or  
16 distribution any taxable tangible personal property, products transferred  
17 electronically, or services for delivery within Louisiana, but does not have a  
18 physical presence in Louisiana.

19 (7) "Secretary" means the secretary of the Department of Revenue.

20 B. Duties of marketplace facilitators. A marketplace facilitator shall be  
21 considered the dealer for each remote sale for delivery into Louisiana and  
22 transacted on a marketplace on behalf of a marketplace seller. A marketplace  
23 facilitator shall be responsible for all obligations imposed on dealers under this  
24 Subtitle and shall keep records and information required by the commission to  
25 ensure proper collection and remittance of sales and use tax, including but not  
26 limited to exemption certificates and information from the marketplace seller  
27 that may be used to determine the taxability of remote sales.

28 C. Calculation of remote sales and criteria

29 (1) A marketplace facilitator shall collect and remit state and local sales

1 and use tax on all taxable remote sales for delivery into Louisiana that the  
2 marketplace facilitator transacts on its own behalf or facilitates on behalf of a  
3 marketplace seller regardless of whether the marketplace seller is a dealer, has  
4 registered as a dealer in Louisiana, or otherwise would have been required to  
5 collect state and local sales and use tax if the remote sale had not been  
6 facilitated by the marketplace facilitator.

7 (2) The requirement of Paragraph (1) of this Subsection shall apply only  
8 to a marketplace facilitator who is a dealer or who facilitates a remote sale for  
9 delivery in Louisiana of tangible personal property, products transferred  
10 electronically, or services, if during the previous or current calendar year either  
11 of the following are met:

12 (a) The marketplace facilitator's gross revenue for sales delivered into  
13 Louisiana exceeded one hundred thousand dollars from sales of tangible  
14 personal property, products transferred electronically, or services.

15 (b) The marketplace facilitator sold for delivery into Louisiana tangible  
16 personal property, products transferred electronically, or services in two  
17 hundred or more separate transactions.

18 (3) In determining whether the criteria of Paragraph (2) of this  
19 Subsection have been met, all remote sales shall be considered. However, a  
20 marketplace facilitator may voluntarily register for and collect state and local  
21 sales and use tax as a dealer regardless of whether the marketplace facilitator  
22 meets the criteria established in Paragraph (2) of this Subsection.

23 D. Timing of application and collection

24 (1) No later than thirty calendar days after meeting either of the criteria  
25 of Paragraph (C)(2) of this Section, a marketplace facilitator shall submit an  
26 application for approval to collect state and local sales and use tax on remote  
27 sales for delivery into Louisiana to the commission on a form prescribed by the  
28 commission. A marketplace facilitator shall commence collection of state and  
29 local sales and use tax, once notified the commission has approved the

1 application, no later than sixty days after meeting either of the criteria of  
2 Paragraph (C)(2) of this Section.

3 E. Administration of requirements to collect and remit state and local  
4 sales and use tax

5 (1) For remote sales transacted on a marketplace, the marketplace  
6 facilitator shall be responsible for the determination of taxability of remote sales  
7 for delivery into Louisiana. Except as provided in Paragraph (2) of this  
8 Subsection, the marketplace facilitator shall collect and remit to the commission  
9 state and local sales and use tax based on the applicable state and local rates and  
10 bases.

11 (2)(a) If a marketplace facilitator fails to collect sales tax as required by  
12 Paragraph (1) of this Subsection due to incorrect or insufficient information  
13 provided by the marketplace seller, the marketplace facilitator shall be relieved  
14 of liability for failure to collect or remit the tax provided that the relief under  
15 this Paragraph shall not exceed five percent of the total sales tax due from sales  
16 made or facilitated in this state by the marketplace facilitator. If the  
17 marketplace facilitator is relieved of liability under this Paragraph, the  
18 marketplace seller shall be liable for any amount of uncollected or unremitted  
19 tax due.

20 (b) No relief authorized by this Paragraph shall be permitted for remote  
21 sales made by a marketplace seller who is affiliated with the marketplace  
22 facilitator. For purposes of this Section, persons or entities shall be considered  
23 affiliated if one entity owns more than five percent of the other entity or both  
24 entities are subject to the control of a common entity that owns more than five  
25 percent of each of the entities.

26 (3) The state and local sales and use tax required to be collected by the  
27 marketplace facilitator shall be due and payable monthly. For the purpose of  
28 ascertaining the amount of tax payable, all marketplace facilitators shall  
29 transmit to the commission returns on forms prescribed, prepared, and

1 furnished by the commission showing the gross sales arising from all taxable  
2 transactions during the preceding calendar month, on or before the twentieth  
3 day of the month following the month in which this tax is required to be  
4 collected. These returns shall show any further information the commission  
5 may require to correctly compute and collect the tax levied. At the time of  
6 making the return required pursuant to this Paragraph, every marketplace  
7 facilitator shall compute and remit to the commission the required tax due for  
8 the preceding calendar month, and failure to remit the tax shall cause the tax  
9 to become delinquent. In the event the tax becomes delinquent, interest and  
10 penalties imposed by Part IV of Chapter 18 of this Subtitle shall be an  
11 obligation to be assessed, collected, and enforced against the marketplace  
12 facilitator in the same manner as if it were a tax due.

13 (4) The marketplace facilitator shall be the sole person or entity subject  
14 to audit for sales made by marketplace sellers but facilitated by the marketplace  
15 facilitator. Marketplace sellers shall not be subject to audit for sales facilitated  
16 by the marketplace facilitator except to the extent the marketplace facilitator  
17 seeks relief under Paragraph (2) of this Subsection.

18 (5) Notwithstanding any law to the contrary, a class action shall not be  
19 maintained against a marketplace facilitator by or on behalf of purchasers  
20 arising from or related to an overpayment of sales or use tax collected by the  
21 marketplace facilitator under this Section, regardless of whether the action is  
22 characterized as a tax refund claim, provided the marketplace facilitator did  
23 not intentionally collect state and local sales and use tax on remote sales without  
24 regard to applicable state and local rates and bases.

25 Section 2. R.S. 47:302(V)(2) is hereby repealed.

26 Section 3. This Act shall become effective on January 1, 2021.

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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Leonore Heavey.

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DIGEST

SB 138 Original                      2020 Regular Session                      Allain

Present law establishes the La. Sales and Use Tax Commission for Remote Sellers (the commission) as an independent agency within the Dept. of Revenue for the administration and collection of sales and use taxes related to remote sales.

Present law defines non-remote sales, non-remote sellers, sales and use taxes, and taxes.

Proposed law retains present law but also provides definitions specific to the commission for marketplace, marketplace facilitator, marketplace seller, remote sale, and remote seller.

- (1) "Marketplace" means any method through which a marketplace seller may sell or offer for sale tangible personal property, admissions, or services that are subject to sales and use tax for delivery into Louisiana.
- (2) "Marketplace facilitator" means any person that facilitates a sale for a marketplace seller through a marketplace, but does not include third party payment processors.
- (3) "Marketplace seller" means a person who sells or offers for sale tangible personal property, admissions, or services, that are subject to sales and use tax for delivery into Louisiana through a marketplace that is owned, operated, or controlled by a marketplace facilitator.
- (4) "Remote sale" means a sale made by a remote seller or a sale facilitated by a marketplace facilitator.
- (5) "Remote seller" means a seller that does not have a physical presence in Louisiana and that sells for sale at retail, use, consumption, distribution, or for storage to be used for consumption or distribution any taxable tangible personal property, products transferred electronically, or services for delivery within Louisiana.

Proposed law provides that marketplace facilitators must register with the commission and must collect and remit state and local sales and use tax on all taxable remote sales for delivery into La. which the marketplace facilitator transacts on its own behalf or facilitates on behalf of a marketplace seller.

Proposed law provides an exception to the sales and use tax filing obligation for marketplace facilitators that had fewer than 200 sales or less than \$100,000 of gross sales into Louisiana for the prior or current calendar year, however once either of these sales thresholds are met, the filing and collection obligation begins.

Proposed law permits marketplace facilitators who do not meet either of the sales thresholds to voluntarily register with the commission for collection and filing of sales and use taxes.

Proposed law provides that a marketplace facilitator must register with the commission within 30 days of meeting either of the two sales thresholds and begin collection of sales and use tax within 60 days of meeting either threshold.

Proposed law provides that the marketplace facilitator shall be responsible for the determination of taxability of remote sales for delivery into La.

Proposed law relieves marketplace facilitators from any liability for failure to collect sales and use tax if the failure is due to insufficient information from the marketplace seller and



further provides that the marketplace seller will then be liable for any tax due.

Proposed law does not relieve marketplace facilitators from liability for failure to collect sales and use tax if the facilitator and the marketplace seller are affiliates, and the facilitator and the seller are considered to be affiliated if one entity owns more than five percent of the other entity or both entities are subject to the control of a common entity that owns more than five percent of each of the entities.

Proposed law provides for the administrative requirements of filing a monthly return and remitting tax collected to the commission.

Proposed law provides that marketplace sellers shall not be subject to audit for sales facilitated by the marketplace facilitator unless the facilitator is seeking relief from liability by asserting that it had insufficient information from the marketplace seller.

Proposed law prohibits class actions against marketplace facilitators even with respect to refund claims unless the marketplace facilitator intentionally collected sales and use tax on remote sales without regard to applicable state and local sales tax law.

Proposed law repeals the provision of law requiring dealers to collect consumer use tax.

Effective January 1, 2021.

(Amends R.S. 47:339(B)(7); adds R.S. 47:340(G)(6)(c) and (d) and R.S. 47:340.1; repeals R.S. 47:302(V)(2))