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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))