

2020 Regular Session

HOUSE BILL NO. 791

BY REPRESENTATIVE MAGEE

TAX/SALES & USE: Authorizes the Louisiana Sales and Use Tax Commission for Remote Sellers to remit local sales and use taxes to local collectors on behalf of certain dealers

1 AN ACT

2 To amend and reenact R.S. 47:339 (A)(introductory paragraph) and (4), 340(A),(E)(2) and  
3 (3), (F)(2),(G)(7) and (9), and (I), to enact R.S. 47:339(A)(5) and 340(G)(12) and (J),  
4 and to repeal R.S. 47:340(H)(3), (12), and (13), relative to local sales and use tax  
5 remittance; to authorize the Louisiana Sales and Use Tax Commission for Remote  
6 Sellers to remit local sales and use tax to local sales and use tax collectors on behalf  
7 of certain dealers; to provide authority to the Louisiana Sales and Use Tax  
8 Commission for Remote Sellers related to the administration of remitting sales and  
9 use tax; to provide for funding of remittance; to provide for the contents of an annual  
10 report; to provide for effectiveness; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 47:339 (A)(introductory paragraph) and (4), 340(A),(E)(2) and (3),  
13 (F)(2),(G)(7) and (9), and (I) are hereby amended and reenacted and R.S. 47:339(A)(5) and  
14 340(G)(12) and (J) are hereby enacted to read as follows:

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

16 A. The Louisiana Sales and Use Tax Commission for Remote Sellers,  
17 hereinafter referred to as "commission", is created and established within the  
18 Department of Revenue for the administration and collection of the sales and use tax  
19 imposed by the state and political subdivisions with respect to remote sales: and to

1 remit local sales and use tax owed by and on behalf of any dealer, as defined by R.S.  
2 47:301(4), with a physical presence in Louisiana who elects to use the commission  
3 for such remittance. The commission shall:

4 \* \* \*

5 (4) Establish a fiscal agent solely for the purpose of ~~remote-seller~~  
6 remittances.

7 (5) Remit local sales and use taxes to local sales and use tax collectors on  
8 behalf of dealers, as defined in R.S. 47:301(4), with a physical presence in Louisiana  
9 who elect to use the commission for such remittance.

10 \* \* \*

11 §340. Louisiana Sales and Use Tax Commission for Remote Sellers; members;  
12 powers

13 A. The duties of the commission shall be exercised and discharged under the  
14 supervision and direction of a commission with voting power and a non-voting  
15 executive director, all of whom shall be appointed and shall serve as provided in this  
16 Section.

17 \* \* \*

18 E.

19 \* \* \*

20 (2) The commission shall monthly remit monies, less any refunds and  
21 amounts retained for expenses as defined in Paragraph (3) of this Subsection, to the  
22 appropriate state or local collector by electronic funds to the designated bank account  
23 of that state or local collector on or before the tenth business day of the month  
24 following the month ~~of collection~~ the monies were received. Records of gross  
25 collections, refunds, remittance, and amounts retained for expenses shall be made  
26 accessible to the respective state or local collector on a monthly basis.

27 (3) The commission and its operations shall be funded by an amount equal  
28 to actual expenses incurred which amount shall not exceed one percent of the total  
29 amount of state and local sales and use tax collected on remote sales by the

1           commission and an additional one half of one percent of the total amount of local  
2           sales and use taxes remitted for non-remote sales. Subject to the limitations provided  
3           in this Paragraph, this amount shall be retained by the commission on a monthly  
4           basis from current collections of state and local sales tax on remote sales as collected  
5           by the commission and current local sales and use taxes to be remitted by the  
6           commission for non-remote sales prior to monthly distribution to the state and local  
7           collectors. The commission shall have no authority to retain these monies unless and  
8           until a federal law authorizing states to require remote sellers and their agents to  
9           collect state and local sales and use taxes on their sales in each state has been enacted  
10          and becomes effective or a decision by the United States Supreme Court overrules  
11          the physical presence requirement for a remote seller to collect and remit state and  
12          local sales and use tax on remote sales for delivery into the state. Upon distribution  
13          of the local sales and use tax collected from remote sellers by the commission and  
14          remittance of local sales and use taxes by the commission for non-remote sales, the  
15          local collectors may retain the usual and customary percentage of collections in  
16          accordance with local ordinances or agreements.

17   \*        \*        \*

18                         F.

19   \*        \*        \*

20                         (2) The commission, or its duly authorized agents and employees, may take  
21                         any action related to the collection of sales and use tax from remote sellers and  
22                         remittance of sales and use tax within its jurisdiction that the secretary in Chapter 18  
23                         of this Subtitle is authorized to take and any person aggrieved by any such action  
24                         shall have the same rights, including appeal or review as provided for in Chapter 18  
25                         of this Subtitle.

26   \*        \*        \*

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

28   \*        \*        \*

1 (7) To provide to the single tax collector for each parish an annual report of  
2 revenues collected, remitted, and distributed for the previous calendar year, which  
3 report shall be provided on or before June first of each year.

4 \* \* \*

5 (9) With the consent of the affected local taxing authority, to issue notices  
6 of intent to assess, notices of assessments, enforce collection and remittance of local  
7 sales and use taxes by distraint and sale, and institute summary proceedings or  
8 ordinary proceedings for collection of local taxes.

9 \* \* \*

10 (12) To remit local sales and use taxes to local sales and use tax collectors  
11 on behalf of dealers, as defined in R.S. 47:301(4), with a physical presence in  
12 Louisiana who elect to use the commission for such remittance.

13 \* \* \*

14 I. The Louisiana State Law Institute is hereby authorized and requested to  
15 review all statutes which contain phrases being changed by this Chapter and in all  
16 locations it deems appropriate change the references, particularly those that apply to  
17 the levy, remittance, and collection of state and local sales and use taxes.

18 J. Notwithstanding the provisions of this Section, local taxing authorities  
19 shall maintain the exclusive right to administer local tax levies and conduct audits  
20 related to local taxes.

21 Section 2. R.S. 47:340(H)(3),(12), and (13) are hereby repealed in their entirety.

22 Section 3. This Act shall take effect and become operative if and when the proposed  
23 amendment of Article VII of the Constitution of Louisiana contained in the Act which  
24 originated as House Bill No. 429 of this 2020 Regular Session of the Legislature is adopted  
25 at a statewide election and becomes effective.

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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 791 Original

2020 Regular Session

Magee

**Abstract:** Authorizes the La. Sales and Use Tax Commission for Remote Sellers to remit local sales and use taxes to local collectors on behalf of dealers with a physical presence in La. who elect to use the commission.

Present law establishes the La. Sales and Use Tax Commission for Remote Sellers (commission) for the purpose of collecting sales and use taxes from remote sellers without a physical presence in La.

Proposed law retains present law and authorizes the commission to remit local sales and use taxes to local tax collectors on behalf of any dealer with physical presence in La. who elects to use the commission.

Present law provides that the commission's operations shall be funded by an amount not to exceed 1% of the total amount of state and local sales and use taxes collected on remote sales by the commission.

Proposed law retains present law and authorizes the commission to retain an additional .5% of the total amount of local sales and use taxes remitted for non-remote sales for the purpose of funding the administration of remitting taxes on behalf of dealers with a physical presence in the state.

Present law allows for the commission to take any action related to the collection of sales and use tax within its jurisdiction as permitted by law that the secretary of the Department of Revenue (DOR) is authorized to take to enforce administration.

Proposed law changes present law by extending the commission's power, allowing the commission to take the same actions as the secretary of DOR necessary in order to enforce the remittance of sales and use tax on behalf of non-remote sellers.

Present law gives the commission the power, duty and authority to provide to the single tax collector for each parish, on or before June first of each year, an annual report of revenues collected and distributed in the previous calendar year. Proposed law requires the report to include revenues remitted in the previous calendar year.

Present law provides that nothing in present law provisions related to the commission shall be construed to:

1. Authorize the commission to exercise any right or perform any function presently exercised by local sales and use tax authorities.
2. Authorize the commission to serve as a central state collection agency for local sales and use taxes.
3. Limit any statutory and ordinal provisions in place as of June 16, 2017, that require dealers and taxpayers, with respect to non-remote sales, to pay and remit directly to the single sales and use tax collector in each parish the sales and use taxes due to each local taxing authority within each parish.

Proposed law repeals present law.

Proposed law provides that local taxing authorities maintain the exclusive right to administer local tax levies and conduct audits related to local taxes.

(Amends R.S. 47:339 (A)(intro. para.) and (4), 340(A),(E)(2) and (3), (F)(2),(G)(7) and (9), and (I); Adds R.S. 47:339(A)(5) and 340(G)(12) and (J); Repeals R.S. 47:340(H)(3), (12), and (13))