

2022 Regular Session

SENATE BILL NO. 235

BY SENATOR ALLAIN

TAX/LOCAL. Authorizes parishes to contract with the Louisiana Sales and Use Tax Commission for Remote Sellers for the collection of local sales and use tax. (1/1/23)

1 AN ACT

2 To amend and reenact R.S. 47:340(E)(3) and (5), (G)(1) through (5), the introductory  
3 paragraph of (G)(6), (G)(8), and (11), (H)(3), (12), and (13), and (I) and to enact R.S.  
4 47:339.1, relative to the administration of local sales and use taxes; to provide for the  
5 powers and duties of the Louisiana Sales and Use Tax Commission for Remote  
6 Sellers; to authorize the commission to collect local sales and use taxes for collectors  
7 that enter into contracts with the commission; to provide for an effective date; and  
8 to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 47:340(E)(3) and (5), (G)(1) through (5), the introductory paragraph  
11 of (G)(6), (G)(8), and (11), (H)(3), (12), and (13), and (I) are hereby amended and reenacted  
12 and R.S. 47:339.1 is hereby enacted to read as follows:

13 **§339.1. Louisiana Sales and Use Tax Commission for Remote Sellers;**

14 **nonremote sales**

15 **A. In addition to the duties of the commission pursuant to R.S. 47:339,**

16 **no later than January 1, 2024, the commission shall:**

17 **(1) Develop a single electronic return for all local taxing authorities in**

1 consultation with the Louisiana Uniform Local Sales Tax Board and the  
2 Department of Revenue.

3 (2) Have the authority to enter into contracts with collectors of local sales  
4 and use tax for the collection of tax from qualifying nonremote sellers. The tax  
5 monies received pursuant to these contracts shall, at all times, be and remain  
6 the property of the respective local taxing authorities.

7 (3) Provide the minimum tax administration, collection, and payment  
8 requirements required by federal law with respect to the collection and  
9 remittance of local sales and use tax imposed on nonremote sales that the  
10 commission is authorized by contract to collect.

11 (4) Establish a fiscal agent for the purpose of nonremote sales and use tax  
12 remittances.

13 B. Definitions.

14 (1) "Local taxing authority" and "local" means those parishes,  
15 municipalities, special tax districts, political subdivisions, parish governing  
16 bodies, and school boards who are authorized under the provisions of the  
17 Constitution of Louisiana, the Louisiana Revised Statutes of 1950, and  
18 jurisprudence to levy and collect local sales and use taxes.

19 (2) The term "nonremote sale" means a sale that is made by a nonremote  
20 seller that is not a remote sale.

21 (3) The term "nonremote seller" means a seller that is not a remote  
22 seller.

23 (4) The term "remote sale" means a sale that is made by a remote seller  
24 for delivery into Louisiana.

25 (5) The term "remote seller" means a seller who sells for sale at retail,  
26 use, consumption, distribution, or for storage to be used for consumption or  
27 distribution any taxable tangible personal property, products transferred  
28 electronically, or services for delivery within Louisiana, but does not have a  
29 physical presence in Louisiana. The term "remote seller" includes

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"marketplace facilitators" as defined in R.S. 47:340.1.

(6) The term "qualifying nonremote sale" means a sale by a qualifying nonremote seller in a parish that has entered into a contract for collection by the commission pursuant to Paragraph (A)(2) of this Section.

(7) The term "qualifying nonremote seller" means a nonremote seller that has a physical location in this state and is registered to file and remit local sales and use taxes pursuant to a local ordinance in two or more parishes.

(8) "Sales and use taxes" and "taxes" shall mean the sales and use taxes levied by the state of Louisiana under the provisions of Title 47 of the Louisiana Revised Statutes of 1950, and the sales and use taxes levied by local taxing authorities in Louisiana under the provisions of the Constitution of Louisiana, statutory laws authorizing the imposition of such taxes, and local sales and use tax ordinances.

C. Notwithstanding the provisions of Subsection A of this Section, if the commission certifies to the Senate Committee on Revenue and Fiscal Affairs and the House Committee on Ways and Means that the commission has insufficient funds available from R.S. 47:340(E)(3) to meet the January 1, 2024, deadline for the development of the single electronic return and the implementation of the other duties set forth in Subsection A of this Section, the commission may request an extension of the deadline from the committees until funds are available.

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

powers

\* \* \*

E. \* \* \*

(3) The commission and its operations shall be funded by an amount equal to actual expenses incurred which amount shall not exceed one percent of the total amount of state and local sales and use tax collected on ~~remote~~ sales by the commission. Subject to the limitations provided in this Paragraph, this amount shall

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

13 \* \* \*

14 (5)**(a)** If use tax collections pursuant to R.S. 47:302(K) yield insufficient  
 15 revenue to fulfill the dedication for the adjudication of local sales and use tax matters  
 16 that is made pursuant to R.S. 47:302(K)(7) for interagency transfers to the  
 17 Department of State Civil Service, Board of Tax Appeals, Local Tax Division, ~~and~~  
 18 ~~there is no means of financing available to satisfy the dedication pursuant to R.S.~~  
 19 ~~47:337.102(T)(3)~~; the remaining amount necessary to satisfy the dedication shall be  
 20 considered an actual expense of this commission pursuant to Paragraph (3) of this  
 21 Subsection, and payment of the interagency transfer due shall be made from local  
 22 sales and use tax collections of the commission **within the first thirty days of the**  
 23 **fiscal year.**

24 **(b)** A part of the interagency transfer due pursuant to Section 2 of Act No.  
 25 198 of the 2014 Regular Session of the Legislature may be designated as an actual  
 26 expense of the commission pursuant to Paragraph (3) of this Subsection, and  
 27 payment of that designated part may be made from state sales and use tax collections  
 28 of the commission **pursuant to a written agreement with the secretary.**

29 \* \* \*

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

2 (1) To serve as the single entity within the state of Louisiana responsible for  
3 all state and local sales and use tax administration, return processing, and audits for  
4 remote sales delivered into Louisiana **and for nonremote sales that the**  
5 **commission is authorized by contract to collect.**

6 (2) To serve as the central, single agency to which remote sellers shall make  
7 state and local sales and use tax remittances **and as the central, single agency to**  
8 **which qualifying nonremote sellers shall make local sales and use tax**  
9 **remittances on nonremote sales that the commission is authorized by contract**  
10 **to collect.**

11 (3) To assign and direct a single audit of remote sellers for the state and all  
12 local taxing authorities **and assign and direct a single audit of qualifying**  
13 **nonremote sellers for all local taxing authorities that have entered into a**  
14 **contract with the commission pursuant to R.S. 47:339.1.**

15 (4) To serve as the single state of Louisiana agency to represent both state  
16 and local taxing authorities in taking appropriate action to enable Louisiana to  
17 participate in programs designed to allow Louisiana to more efficiently enforce and  
18 collect state and local sales and use taxes on sales made by remote sellers **and**  
19 **qualifying nonremote sellers.**

20 (5) To conduct administrative hearings as requested by aggrieved remote  
21 sellers **and qualifying nonremote sellers**, administer oaths, and make adjustments  
22 to assessments when justified by the facts and the law, and render decisions  
23 following such hearings.

24 (6) To require remote sellers **and qualifying nonremote sellers** to register  
25 with the commission.

26 \* \* \*

27 (8) To enter into agreements to waive or suspend prescription with remote  
28 sellers as to state and local taxes **and with qualifying nonremote sellers as to local**  
29 **taxes.**

\* \* \*

(11) To enter into voluntary disclosure agreements with remote sellers as to state and local sales and use taxes **and with qualifying nonremote sellers as to local taxes.**

H. Nothing in this Chapter shall be construed to:

\* \* \*

(3) Authorize the commission to exercise any right or perform any function presently exercised by local sales and use tax authorities under present law **except as provided in contracts entered into pursuant to R.S. 47:339.1.**

\* \* \*

(12) Authorize the commission to serve as a central state collection agency for local sales and use taxes **except as provided in contracts entered into pursuant to R.S. 47:339.1.**

(13) 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 **except as provided in contracts entered into pursuant to R.S. 47:339.1.**

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~~(15) I.~~ **I.** The sums of money collected by ~~the remote seller~~ **remote sellers and nonremote sellers and remitted to the commission pursuant to R.S. 47:339 and 339.1** for payment of sales and use taxes imposed by the state and local taxing authorities shall, at all times, be and remain the property of the respective taxing authorities and deemed held in trust for taxing authorities, including while in the possession of the commission.

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



Proposed law retains the present law limitations on nonremote sales except for those nonremote sales that the commission is authorized under proposed law by contract to collect.

Present law provides that taxes on remote sales collected by the commission shall, at all times, be and remain the property of the respective taxing authorities and deemed held in trust for taxing authorities by the commission.

Proposed law retains present law and extends the provisions to taxes collected on nonremote sales that the commission is authorized under proposed law by contract to collect.

Proposed law deletes obsolete language in present law that authorized the Law Institute to change references.

Effective January 1, 2023.

(Amends R.S. 47:340(E)(3) and (5), (G)(1) - (5), (6) (intro para), (8), and (11), (H)(3), (12), and (13), and (I); adds R.S. 47:339.1)

#### Summary of Amendments Adopted by Senate

##### Committee Amendments Proposed by Senate Committee on Revenue and Fiscal Affairs to the original bill

1. Requires the commission to develop a single electronic return for all local taxing authorities in consultation with the Uniform Local Sales Tax Board and the Dept. of Revenue by January 1, 2024.
2. Authorizes the commission to request an extension of the January 1, 2024 deadline if there is insufficient funding to carry out its new duties.
3. Removes provision that beginning January 1, 2023, agreements to collect remote sales tax under present law shall be suspended for all taxing authorities until their collector has entered into an agreement for the collection of tax on non-remote sales.
4. Removes the requirement that the Louisiana Uniform Local Sales Tax Board provide any deficit funding for the Local Tax Division of the BTA.
5. Provides for technical changes.