

2015 Regular Session

HOUSE BILL NO. 355

BY REPRESENTATIVE PUGH

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

TAX/SALES-USE, STATE: Provide for the collection of sales and use taxes due on sales made in Louisiana by a remote dealer

1 AN ACT

2 To amend and reenact R.S. 47:301(4)(h), and to enact R.S. 47:301(4)(m), relative to sales
3 and use tax; to provide with respect to the collection and remittance of sales and use
4 tax; to provide for the definition of dealer; to provide a method for reporting and
5 remitting taxes by certain dealers; to provide for effectiveness; and to provide for
6 related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 47:301(h) is hereby amended and reenacted, and R.S. 47:301(m) is
9 hereby enacted, to read as follows:

10 §301. Definitions

11 As used in this Chapter the following words, terms, and phrases have the
12 meaning ascribed to them in this Section, unless the context clearly indicates a
13 different meaning:

14 * * *

15 (4) "Dealer" includes every person who manufactures or produces tangible
16 personal property for sale at retail, for use, or consumption, or distribution, or for
17 storage to be used or consumed in a taxing jurisdiction. "Dealer" is further defined
18 to mean:

19 * * *

1 (h) Any person engaging in business in the taxing jurisdiction. ~~"Engaging~~
2 ~~in business in the taxing jurisdiction"~~ means and includes any:

3 (i) Any of the following methods of transacting business: maintaining
4 directly, indirectly, or through a subsidiary, an office, distribution house, sales house,
5 warehouse, or other place or location of business, or by having an agent, salesman,
6 independent contractor, or solicitor operating within the taxing jurisdiction under the
7 authority of or through an agreement with the seller or its subsidiary irrespective of
8 whether such place of business, agent, salesman, or solicitor is located in such taxing
9 jurisdiction permanently or temporarily or whether such seller or subsidiary is
10 qualified to do business in such taxing jurisdiction, or any person who makes
11 deliveries of tangible personal property into the taxing jurisdiction other than by a
12 common or contract carrier.

13 (ii) The solicitation of business through an independent contractor or any
14 other representative pursuant to an agreement with a Louisiana resident or business
15 under which the resident or business, for a commission, referral fee, or other
16 consideration of any kind, directly or indirectly refers potential customers, whether
17 by link on an internet website or otherwise, to the seller.

18 (iii) If, for the immediately preceding four quarterly periods ending on the
19 last day of February, May, August, and November, the cumulative total of a person's
20 gross receipts from sales of tangible personal property delivered in this state exceeds
21 two hundred thousand dollars and such person made more than one hundred sales of
22 tangible personal property delivered in this state, unless the person can demonstrate,
23 to the satisfaction of the secretary, that he cannot reasonably be expected to have
24 gross receipts in excess of two hundred thousand dollars or more than one hundred
25 sales of tangible personal property delivered in this state for the next succeeding four
26 quarterly periods ending on the last day of February, May, August, and November.

27 * * *

28 (m)(i) Any person selling tangible personal property or services, the use of
29 which is taxed pursuant to this Chapter, who:

1 (aa) Sells the same or substantially similar line of products as a Louisiana
2 retailer under the same or substantially similar business name, using the same
3 trademarks, service marks, or trade names that are the same or substantially similar
4 to those used by the Louisiana retailer.

5 (bb) Uses the facilities or employees of a Louisiana retailer to advertise or
6 promote sales by the person to Louisiana purchasers, or to facilitate returns, issuance
7 of refunds or credits, or adjustments on property sold by the person.

8 (cc) Solicits business and develops and maintains a market in Louisiana
9 through an agent, salesman, independent contractor, solicitor, or other representative
10 pursuant to an agreement with a Louisiana resident or business, hereinafter referred
11 to collectively as "affiliated agent" under which the affiliated agent, for a
12 commission, referral fee, or other consideration of any kind engages in activities in
13 this state that inure to the benefit of the person in the person's development or
14 maintenance of a market for its goods or services in the state, to the extent that those
15 activities of the affiliated agent are sufficient to satisfy the nexus requirement of the
16 United States Constitution. For purposes of this Subparagraph, such activities of the
17 affiliated agent shall include referral of potential customers to the person, either
18 directly or indirectly, whether by link on an internet website or otherwise.

19 (ii)(aa) In addition to those persons established as dealers according to Item
20 (i) of this Subparagraph, the provisions of this Subparagraph shall be presumed by
21 the taxing authority to apply to any person who holds a substantial ownership
22 interest, directly or through a subsidiary, in a retailer maintaining sales locations in
23 Louisiana; or to any person who is owned in whole or in substantial part by a retailer
24 maintaining sales locations in Louisiana, or by a parent or subsidiary thereof.

25 (bb) For the purposes of this Subparagraph, "substantial ownership interest"
26 means affiliated persons with respect to each other where one of such persons has an
27 ownership interest of more than five percent, whether direct or indirect, in the other,
28 or where an ownership interest of more than five percent, whether direct or indirect,

1 is held in each of such persons by another person or by a group of other persons
2 which are affiliated persons with respect to each other.

3 (iii) A dealer, as defined in and for purposes of this Subparagraph, shall file
4 all applicable sales and use tax returns and remittances through the electronic filing
5 options available for such purposes. Further, such dealer shall specifically collect
6 the tax authorized by R.S. 47:302(K)(5).

7 (iv) The provisions of this Subparagraph holding that certain business
8 activities conducted by certain persons establishes the person as a dealer for purposes
9 of sales and use tax levied by the state and its political subdivisions, shall not be used
10 in the determination of whether such persons are liable for the payment of income
11 and franchise taxes levied by the state.

12 * * *

13 Section 2. The provisions of this Act shall apply prospectively.

14 Section 3. This Act shall become effective upon signature by the governor or, if not
15 signed by the governor, upon expiration of the time for bills to become law without signature
16 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
17 vetoed by the governor and subsequently approved by the legislature, this Act shall become
18 effective on the day following such approval.

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)]

HB 355 Original

2015 Regular Session

Pugh

Abstract: Expands the definition of "dealer" to include persons who have certain substantial relationships and similarities with La. retailers or who engage in business in La. through the use of certain affiliated agents.

Present law provides various definitions of "dealer" with respect to sales and use tax law and defines "engaging in business in a taxing jurisdiction".

Proposed law retains present law but expands the definition of "engaging in business in the taxing jurisdiction" to include:

- (1) The solicitation of business through an independent contractor or any other representative pursuant to an agreement with a La. resident or business under which the resident or business, for a commission, referral fee, or other consideration of any

kind, directly or indirectly refers potential customers, whether by link on an internet website or otherwise, to the seller.

- (2) If, for the immediately preceding four quarterly periods, the cumulative total of such person's gross receipts from sales of property delivered in this state exceeds \$200,000 and such person made more than 100 sales of property delivered in this state, unless such person can demonstrate, to the satisfaction of the secretary, that he cannot reasonably be expected to have gross receipts in excess of \$200,000 or more than 100 sales of property delivered in this state for the next succeeding four quarterly periods.

Proposed law retains present law but expands the definition of "dealer" to include a person who meets any of the following criteria:

- (1) Sells the same or substantially similar line of products as a La. retailer under the same or substantially similar business name.
- (2) The facilities or employees of the La. retailer are used to advertise or promote sales by the person to La. purchasers and to support the maintenance of a market in La.
- (3) Solicits business and develops a market in La. through an agent or other representative through an agreement for a commission, referral fee, or other consideration who engages in activities in La. that inure to the benefit of the person in the person's development or maintenance of a market for its goods or services in La., to the extent that those activities of the agent are sufficient to satisfy the nexus requirement of the U.S. Constitution.
- (4) Holds a substantial ownership interest, directly or through a subsidiary, in a retailer maintaining sales locations in La. or who is owned in whole or in substantial part by a retailer maintaining sales locations in La.

Proposed law requires persons who meet the definition of a dealer under proposed law to electronically file tax returns and remittances to the state and local taxing authorities.

Present law levies an additional 4% state sales and use tax to be collected only by dealers who qualify as a dealer in this state solely by virtue of engaging in regular or systematic solicitation of a consumer market in La. by the distribution of catalogs, periodicals, advertising fliers, or other advertising, or by means of print, radio, or telephone media, including but not limited to television shopping channels, by mail, telegraphy, telephone, computer database, cable optic, microwave, or other communication system.

Proposed law specifies that present law regarding the levy and collection of the additional 4% sales and use tax shall apply to persons who are defined as dealers pursuant to proposed law.

Provisions of proposed law apply prospectively.

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

(Amends R.S. 47:301(4)(h); Adds R.S. 47:301(m))