

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. 47:302(K)(5), (7)(a) and (U) and to enact R.S. 47:302(V),
3 relative to sales and use tax; to provide with respect to the collection and remittance
4 of sales and use tax; to provide for the definition of dealer; to provide a method for
5 reporting and remitting taxes by certain dealers; to provide for effectiveness; and to
6 provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 47:302(K)(5), (7)(a) and (U) are hereby amended and reenacted and
9 R.S. 47:302(V) is hereby enacted, to read as follows:

10 §302. Imposition of tax

11 * * *

12 K. An additional tax shall be levied as follows:

13 * * *

14 (5) The tax levied under this Subsection shall be levied and collected only
15 from vendors who qualify as a "dealer" in this state solely by virtue of engaging in
16 regular or systematic solicitation of a consumer market in this state by the
17 distribution of catalogs, periodicals, advertising fliers, or other advertising, or by
18 means of print, radio, or television media, including but not limited to television
19 shopping channels, by mail, telegraphy, telephone, computer database, cable, optic,
20 microwave, or other communication system. A vendor who qualifies as a dealer in
21 this state as provided in R.S. 47:301(4) is prohibited from collecting the tax imposed

1 manufactures or produces tangible personal property for sale at retail, for use or
2 consumption, or distribution, or for storage to be used or consumed in a taxing
3 jurisdiction. "Dealer" is further defined to mean:

4 (1) Any person engaging in business in the taxing jurisdiction which shall
5 mean the solicitation of business through an independent contractor or any other
6 representative pursuant to an agreement with a Louisiana resident or business under
7 which the resident or business, for a commission, referral fee, or other consideration
8 of any kind, directly or indirectly refers potential customers, whether by link on an
9 internet website, an in-person oral presentation, telemarketing, or otherwise to the
10 seller. If the cumulative gross receipts from sales of tangible personal property to
11 customers in this state who are referred to the person through such an agreement
12 exceeds fifty thousand dollars during the preceding twelve months, the presumption
13 regarding the status of that person as a dealer may be rebutted if the person can
14 demonstrate, to the satisfaction of the secretary, that he cannot reasonably be
15 expected to have gross receipts in excess of fifty thousand dollars for the succeeding
16 twelve months.

17 (2) Any person selling tangible personal property or services, the use of
18 which is taxed pursuant to this Chapter, who:

19 (a) Sells the same or a substantially similar line of products as a Louisiana
20 retailer under the same or substantially similar business name, using the same
21 trademarks, service marks, or trade names that are the same or a substantially similar
22 to those used by the Louisiana retailer.

23 (b) Solicits business and develops and maintains a market in Louisiana
24 through an agent, salesman, independent contractor, solicitor, or other representative
25 pursuant to an agreement with a Louisiana resident or business, hereinafter referred
26 to collectively as an "affiliated agent", under which the affiliated agent, for a
27 commission, referral fee, or other consideration of any kind engages in activities in
28 this state that inure to the benefit of the person in the person's development or
29 maintenance of a market for its goods or services in the state, to the extent that those

1 activities of the affiliated agent are sufficient to satisfy the nexus requirement of the
2 United States Constitution. For purposes of this Subparagraph, such activities of the
3 affiliated agent shall include referral of potential customers to the person, either
4 directly or indirectly, whether by link on an internet website or otherwise.

5 (3) In addition to those persons established as dealers according to Paragraph
6 (2) of this Subsection, the provisions of this Subsection shall be presumed by taxing
7 authority to apply to any person who holds a substantial ownership interest, directly
8 or through a subsidiary, in a retailer maintaining sales locations in Louisiana, or to
9 any person who is owned in whole or in substantial part by a retailer maintaining
10 sales locations in Louisiana, or by a parent or subsidiary thereof. For purposes of
11 this Paragraph, "substantial ownership interest" means affiliated persons with respect
12 to each other where one of such persons has an ownership interest of more than five
13 percent, whether direct or indirect, in the other, or where an ownership interest of
14 more than five percent, whether direct or indirect, is held in each of such persons by
15 another person or by a group of other persons which are affiliated persons with
16 respect to each other.

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

21 (5) The provisions of this Subsection holding that certain business activities
22 conducted by certain persons establishes the person as a dealer for the purposes of
23 sales and use tax levied by the state shall not be used in the determination of whether
24 such persons are liable for the payment of income and franchise taxes levied by the
25 state.

26 Section 2. The provisions of this Act shall apply to tax periods beginning on and
27 after July 1, 2015. If the United States Congress enacts legislation authorizing states to
28 require a remote seller to collect sales taxes on taxable transactions, such legislation shall
29 preempt the provisions of R.S. 47:302(V) and the Department of Revenue shall have the

1 authority to promulgate, after consultation with the sales tax commission created by R.S.
2 47:301(K)(6), regulations under the Louisiana Administrative Procedure Act to carry out the
3 provisions of the federal legislation. The Department of Revenue shall begin to promulgate
4 such rules within ninety days of the effective date of the federal legislation.

5 Section 3. This Act shall become effective upon signature by the governor or, if not
6 signed by the governor, upon expiration of the time for bills to become law without signature
7 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
8 vetoed by the governor and subsequently approved by the legislature, this Act shall become
9 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 Reengrossed

2015 Regular Session

Pugh

Abstract: For purposes of collection of the additional 4% state sales and use tax by a remote dealer, expands the definition of "dealer" to include persons who have certain substantial relationships and similarities with La. retailers, engage in business using certain agreements with a La. resident, or who engage in business in La. through the use of certain affiliated agents.

Present law levies an additional 4% state sales and use tax to be collected only by a person who qualifies as a dealer in La. solely by virtue of engaging in regular or systematic solicitation of a consumer market in La. by the distribution of catalogs, and other print media, radio, television, and other electronic and digital media.

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 and expands the definition of dealer for purposes of the collection of the additional 4% state sales and use tax to include the following activities and attributes:

- (1) The solicitation of business through an independent contractor or any other representative pursuant to an agreement with a La. resident under which the resident, for a commission, referral fee, or other consideration of any kind, directly or indirectly refers potential customers, whether by website link, personal presentation, telemarketing, or otherwise, to the seller. For purposes of qualification as a "dealer" through an agreement with a La. resident to maintain a business in La., the presumption that a person is a dealer, based upon annual gross receipts from sales of property delivered in La. that exceed \$50,000, is rebuttable if the person can demonstrate that he cannot reasonably be expected to have gross receipts in excess of \$50,000 in the following 12 months.
- (2) Sale of the same or a substantially similar line of products as a La. retailer under the same or substantially similar business name.

- (3) Holding 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.
- (4) Solicitation of business or maintenance of a market in La. through an agent, salesman, independent contractor, or other representative (affiliated agent), through an agreement with the dealer.

Proposed law prohibits a La. retailer from collecting the additional 4% state sales and use tax in lieu of the sales and use tax levied by a political subdivision and remitted to the political subdivision.

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.

Proposed law prohibits the determination that certain business activities establishes a person as a dealer for purposes of sales and use tax from being used in a determination of whether the person is liable for the payment of state income or franchise taxes.

Present law requires the secretary of the Dept. of Revenue to annually distribute the avails of the tax to parish governing authorities based on population, which monies are then distributed to the local taxing authorities in the respective parish.

Proposed law retains present law, but changes the frequency of distributions by the secretary to the parishes from annually to quarterly.

Proposed law provides that if the U.S. Congress enacts legislation authorizing states to require a remote seller to collect sales taxes on taxable transactions, the federal law shall preempt the provisions of proposed law. Further, directs the secretary of the Dept. of Revenue to promulgate rules to carry out the provisions of the federal law within 90 days of its effectiveness. However, the Dept. of Revenue, for purposes of the promulgation of the rules, shall consult with the sales and use tax commission established under present law for purposes of the distribution of the proceeds of the additional 4% state sales and use tax to the parishes.

Applicable to tax periods beginning on and after July 1, 2015.

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

(Amends R.S. 47:302(K)(5), (7)(a) and (U); Adds R.S. 47:302(V))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Ways and Means to the original bill:

1. Add to the definition of "dealer" with respect to methods of transacting and solicitation of business.
2. Change the threshold level of sales activity for purposes of the definition of "dealer" from a cumulative total of \$250,000 or 100 sales of tangible personal property in one year to \$50,000 in sales of tangible personal property in one year.
3. Specify that the provisions of proposed law shall apply to tax periods beginning on and after July 1, 2015.

4. Add provisions that if the U.S. Congress enacts legislation authorizing states to require a remote seller to collect sales taxes on taxable transactions, the federal law shall preempt the provisions of proposed law. Further, directs the secretary of the Dept. of Revenue to promulgate rules to carry out the provisions of the federal law within 90 days of its effectiveness.

The House Floor Amendments to the engrossed bill:

1. Add a prohibition that a La. retailer shall not collect the additional 4% state sales and use tax in lieu of collecting the sales and use tax imposed by a political subdivision.
2. Add a requirement that before promulgation of rules for purposes of implementing federal law with regard to collection of state and local sales and use taxes on sales involving remote dealers, the Dept. of Revenue shall consult with the sales and use tax commission for purposes of the distribution of the proceeds of the additional 4% state sales and use tax to the parishes.