

2016 First Extraordinary Session

HOUSE BILL NO. 93

BY REPRESENTATIVE JONES

TAX/SALES & USE: Provide with respect to the payment of advance sales tax (Item #35)

1 AN ACT

2 To enact R.S. 47:306(B), relative to collection of advance sales tax; to provide for the
3 disposition of the tax; to authorize the secretary of the Department of Revenue to
4 promulgate rules; to provide for exemptions; to provide definitions; to provide for
5 an effective date; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 47:306(B) is hereby enacted to read as follows:

8 §306. Returns and payment of tax; penalty for absorption

9 * * *

10 B. Collection by Wholesalers. (1)(a) Notwithstanding the provisions of
11 Subsection A of this Section or any other provision of this Chapter to the contrary,
12 every manufacturer, wholesaler, jobber, or supplier who sells for resale to any person
13 any article of tangible personal property, the retail sale of which is taxable under this
14 Chapter, shall collect as advance sales tax a percent of the sales price of the article
15 equal to the sales tax levied on the article by this Chapter.

16 (b) The collection of tax on motor vehicles shall be in accordance with the
17 provisions of R.S. 47:303(B).

18 (c) The secretary of the Department of Revenue shall promulgate rules and
19 regulations necessary to implement the provisions of this Subsection.

1 (2)(a) The amount paid by dealers to manufacturers, wholesalers, jobbers,
2 or suppliers shall be advance payment of the Louisiana sales tax that the dealer is
3 required to collect upon the sale at retail, and the advance payment is required only
4 as a means of facilitating collection of the sales tax.

5 (b) Manufacturers, wholesalers, jobbers, and suppliers who collect advance
6 sales tax from a dealer pursuant to this Paragraph shall remit the tax to the collector
7 of revenue in the manner provided by Subsection A of this Section for dealers and
8 in accordance with the rules and regulations prescribed by the collector.

9 (3) In making returns to the collector, dealers who have paid advance sales
10 tax shall deduct from the total tax collected upon the retail sale of the article of
11 tangible personal property the amount of advance sales tax paid by the dealer during
12 the reporting period, provided the dealer claiming the refund or credit has retained
13 the invoices evidencing the amount of tax paid. If the amount of advance sales tax
14 paid during any reporting period is greater than the tax collected by the dealer for the
15 reporting period, the excess amount paid shall be allowed as a refund or credit
16 against the tax collected by the dealer during the succeeding period or periods.

17 (4) Manufacturers, wholesalers, jobbers, and suppliers collecting advance
18 sales taxes pursuant to this Subsection shall be allowed a 0.935 percent deduction
19 from the amount of advance sales tax collected and remitted to the secretary as
20 compensation for the collection. This compensation shall be allowed only if the
21 payment of the manufacturer, wholesaler, jobber, or supplier is timely paid and the
22 return is timely filed.

23 (5)(a) Except as provided in Subparagraph (b) of this Paragraph, parishes,
24 municipalities, school boards, and other local governing authorities that levy a sales
25 tax are prohibited from requiring manufacturers, wholesalers, jobbers, or suppliers
26 to collect advance local sales taxes from dealers.

27 (b) The governing authority of each parish having a population in excess of
28 two hundred thousand, and municipalities, school boards, and other local governing
29 authorities within the parish, may require manufacturers, wholesalers, jobbers, and

1 suppliers to collect advance local sales taxes from dealers, if the dealer and the
2 manufacturer, wholesaler, jobber, or supplier are domiciled in the parish. The
3 advance collections shall be subject to the same laws, rules, and regulations as are
4 applicable to advance collections of state sales taxes; provided, however, that the
5 taxes collected shall be remitted to the parish, municipality, school board, or other
6 local governing authority imposing the tax.

7 (6) Absorption of the tax as defined in this Section by any retailer,
8 wholesaler, manufacturer, jobber, or other supplier shall constitute a misdemeanor
9 and, upon conviction, shall be punishable by a fine of not more than two thousand
10 dollars, or by imprisonment in the parish jail for not more than two years, or both.

11 (7) The provisions of this Subsection shall not apply to the sale of
12 telecommunication services, as defined in R.S. 47:301(14)(i).

13 (8) Notwithstanding any provision of law to the contrary, the following shall
14 be exempt from the payment of advance sales tax:

15 (a) Businesses categorized as lumber dealers, as farm implement dealers, and
16 as mobile, motorized self-propelled earth moving and construction equipment
17 dealers, which were issued an exemption identification number in calendar year 1965
18 by the Department of Revenue exempting the business from the payment of advance
19 sales taxes.

20 (b) Wholesalers or other dealers making the sales for resale of menhaden bait
21 in one hundred-pound lots to commercial fisherman shall be exempt from the
22 collection or payment of advance sales tax on the sales pursuant to R.S. 47:305.20.

23 (c) Dealers of all-terrain vehicles or of marine products who are licensed by
24 the Louisiana Used Motor Vehicle and Parts Commission shall be exempt from the
25 collection or payment of advance sales tax.

26 (d) Any dealer, fifty percent or more of whose sales are made to industrial
27 users, shall be exempt from the payment of advance sales taxes and shall be issued
28 an exemption identification number by the Department of Revenue. For purposes
29 of this Subparagraph, an "industrial user" shall be a business engaged in the

1 manufacture of tangible personal property for sale, whose sales are primarily to other
2 dealers for resale. A "contractor" shall be a business that constructs, alters, repairs,
3 improves, or demolishes fixed structures, either directly or indirectly. A dealer who
4 is exempt from the payment of advance sales under this Paragraph shall collect the
5 taxes due on the sales made by the dealer and remit the taxes to the state as otherwise
6 required by this Chapter.

7 (9)(a) Notwithstanding any other provision of law to the contrary, the sale
8 of tangible personal property by a manufacturer to an out-of-state wholesale dealer
9 in building materials who has not been issued an exemption identification number,
10 but that has delivered by drop shipment to Louisiana, shall be exempt from advance
11 sales tax if the out-of-state wholesale dealer subsequently transfers the property to
12 a wholesale dealer in building materials that has been issued an exemption
13 identification number. The manufacturer shall note on the invoice the transitory
14 nature of the sale and the exemption identification number of the wholesale dealer
15 receiving the property.

16 (b) For purposes of this Section, a "wholesale dealer" is any person whose
17 retail sales, as defined by this Chapter, constitute less than fifty percent of total
18 yearly sales. Sales made in interstate commerce or sales where delivery is made
19 outside the territorial jurisdiction of the state of Louisiana are not considered retail
20 sales for the purposes of determining whether a person qualifies as a wholesaler.

21 (10)(a) The secretary of the Department of Revenue is authorized to issue
22 an exemption from the payment of advance sales taxes and an exemption
23 identification number to any dealer meeting all of the following requirements:

24 (i) The dealer is registered with and has filed sales tax returns with the
25 Department of Revenue for a minimum of one year.

26 (ii) The dealer has sales of three million dollars or more on sales of tangible
27 personal property for a consecutive twelve-month period, exclusive of the tax due
28 on purchases by the dealer, and has timely filed the returns and remitted the tax due
29 during the twelve-month period.

1 (b) The secretary shall determine the base periods for a dealer's eligibility.

2 An exemption identification number shall be effective for a period not to exceed five
3 years as determined by the secretary. The secretary may reissue exemption
4 identification numbers to dealers who continue to meet the qualifications under this
5 Paragraph and may revoke the exemption identification number of dealers who no
6 longer meet the qualifications. The secretary may refuse the issuance of an
7 exemption identification number or remove the exemption identification number of
8 any dealer when the secretary determines the dealer's audit, filing, or payment
9 histories indicate that a greater level of tax compliance could be achieved by the
10 dealer's payment of the advance sales tax on purchases of tangible personal property
11 for resale.

12 (c) Eligibility for the exemption identification numbers provided for in this
13 Paragraph shall be based on sales of tangible personal property attributable to each
14 sales location of the dealer applying for the exemption identification number.
15 However, the secretary, by rule, may provide standards not inconsistent with these
16 provisions, for the issuance of the exemption identification numbers to multi-location
17 consolidated sales tax filers, and to new business locations of dealers who have
18 received exemption identification numbers under this Paragraph.

19 * * *

20 Section 2. This Act shall become effective upon signature by the governor or, if not
21 signed by the governor, upon expiration of the time for bills to become law without signature
22 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
23 vetoed by the governor and subsequently approved by the legislature, this Act shall become
24 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 93 Original

2016 First Extraordinary Session

Jones

Abstract: Requires advance payment of sales tax to be collected and remitted by certain wholesalers and authorizes compensation for those wholesalers collecting advance sales tax.

Present law provides for returns and monthly or quarterly payment of sales tax by dealers. Further requires certain reporting relative to sales by dealers. Authorizes a vendor's compensation of 0.935% of the sales tax remitted by a dealer for timely remitting the sales tax. Requires registration by certain nonresident contractors. Provides for payment of the tax by a licensed vehicle dealer.

Proposed law retains present law and requires collection of advance sales tax by manufacturers, wholesalers, jobbers, and suppliers from any retail sale that would be taxable under the provisions of present law.

Proposed law provides an exemption for the advance payment of sales tax for the following:

- (1) Lumber dealers, farm implement dealers, and mobile, motorized self-propelled earth moving and construction equipment dealers that were issued an exemption identification number by the dept. in 1965.
- (2) Sales of menhaden bait in 100-pound lots.
- (3) Dealers of all-terrain vehicles or marine products who are licensed by the La. Used Motor Vehicle and Parts Commission.
- (4) Dealers whose sales are comprised of more than 50% to industrial users.

Proposed law defines "industrial user" as a business engaged in the manufacture of tangible personal property for sale, whose sales are primarily to other dealers for resale.

Proposed law exempts certain out-of-state wholesale dealers from payment of advance sales tax when transferring property to wholesale dealers who have an exemption identification number. Further defines "wholesale dealer" as a dealer who has at least 50% of sales that do not constitute retail sales.

Proposed law requires the advance payment amount collected by the wholesaler from the dealer to be the same amount the dealer would be required to collect upon the sale of the item.

Proposed law authorizes dealers to deduct out of the sales tax collected upon the retail sale of an item that amount of advance sales tax paid by the dealer to the wholesaler for the item.

Proposed law authorizes manufacturers, wholesalers, jobbers, and suppliers collecting advance sales tax to deduct 0.935% from the amount collected and remitted as compensation for the collection.

Proposed law prohibits local governing bodies from requiring advance sales tax collection, except for parishes having a population in excess of 200,000. Local governing authorities within a parish that has a population in excess of 200,000 may require advance sales tax if

the dealers and wholesalers, manufacturers, jobbers, and suppliers are located within the parish.

Proposed law prohibits absorption of the tax by any retailer, wholesaler, manufacturer, or other supplier. Proposed law establishes a misdemeanor crime for absorption, punishable by a fine of not more than \$2,000, not more than two years in parish jail, or both.

Proposed law authorizes the secretary of the Dept. of Revenue to issue exemption identification numbers for certain dealers. To be eligible to receive an exemption identification number, a dealer must meet the following requirements:

- (1) Be registered and filing sales tax returns for a minimum of one year.
- (2) Have sales over a 12 consecutive month period to be \$3 million or more.
- (3) Have timely filed returns for the same period.

Proposed law grants the secretary discretion in determining eligibility. Further authorizes the secretary to refuse the issuance of an exemption identification number.

Proposed law authorizes the secretary to promulgate rules to administer advance sales tax implementation.

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

(Adds R.S. 47:306(B))