

2016 Regular Session

HOUSE BILL NO. 1037

BY REPRESENTATIVE CONNICK

TAX/SALES & USE: Establish notification and reporting requirements relative to retail sales made in Louisiana by remote retailers

1 AN ACT

2 To amend and reenact R.S. 47:302(U) and 309.1, relative to sales and use taxes; to provide
3 with respect to sales of tangible personal property and taxable services in Louisiana;
4 to require that certain notifications be provided to purchasers of such property and
5 services for purposes of collection of use taxes under certain circumstances; to
6 require the filing of annual statements by certain remote retailers; to provide for
7 definitions; to provide for the powers and duties of the secretary of the Department
8 of Revenue; to require rulemaking; to authorize the subpoena of certain information;
9 to establish and authorize the assessment of penalties; to provide for effectiveness;
10 and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 47:302(U) and 309.1 are hereby amended and reenacted to read as
13 follows:

14 §302. Imposition of tax

15 * * *

16 U. Collection of consumer use tax. It is the duty of the secretary of the
17 Department of Revenue to collect all taxes imposed pursuant to this Chapter and
18 Chapters 2-A and 2-B of this Subtitle which may be due upon the sale by a remote
19 ~~seller~~ retailer of tangible personal property or services in Louisiana. The secretary

1 is authorized and directed to employ all means available to ensure the collection of
2 the tax in an equitable, efficient, and effective manner.

3 * * *

4 §309.1. Dealers required to furnish list of purchasers Sales in Louisiana of tangible
5 personal property and taxable services by a remote retailer; notices and
6 statements by retailer

7 ~~A. Any dealer selling property or services, the aggregate value per sale of~~
8 ~~which exceeds two hundred fifty dollars, to residents of this state, shall, upon request~~
9 ~~of the secretary, provide a list of such sales to the secretary of the Department of~~
10 ~~Revenue. The list shall include the names and addresses of the purchasers and the~~
11 ~~amount of the sale. The secretary shall pay to any dealer furnishing a list under this~~
12 ~~Section, an amount equal to the reasonable cost of reproducing the list.~~

13 A. Definitions. As used in this Section, the following words and phrases
14 have the following meanings unless the context clearly indicates otherwise:

15 (1) "Engaging in business in Louisiana" means any of the following:

16 (a) The manufacture or production of tangible personal property for retail
17 sale, or for use, consumption, or storage to be used or consumed in this state.

18 (b) The retail sale of tangible personal property for use, consumption, or
19 storage to be used or consumed in this state.

20 (c) The lease or rental of tangible personal property for consideration,
21 permitting the use or possession of the property without transferring the title thereto.

22 (d) The sale or furnishing of taxable services in this state.

23 (e) The regular or systematic solicitation of a market in Louisiana by the
24 distribution of catalogs or periodicals, or by advertising by means of print, radio,
25 television, mobile telecommunications, or any other type of digital media or
26 communication system.

27 (2) "Louisiana purchaser" or "purchaser" means a person who purchases
28 tangible personal property or taxable services in a transaction with a remote retailer

1 for property or a service that is delivered for use or benefit in Louisiana, and no
2 Louisiana sales and use tax was collected or paid on the transaction.

3 (3) "Remote retailer" or "retailer" means a retailer engaging in business in
4 Louisiana who meets all of the following criteria:

5 (a) Is not required by applicable law, ordinance, or regulation to register as
6 a dealer in Louisiana, and thus is not otherwise required to collect Louisiana sales
7 and use taxes.

8 (b) Makes retail sales of tangible personal property or taxable services where
9 the property is delivered into Louisiana or the beneficial use of the service occurs in
10 Louisiana, and the cumulative annual gross receipts for the retailer and its affiliates
11 from those sales exceeds fifty thousand dollars per calendar year.

12 (c) Does not collect and remit Louisiana sales and use tax with respect to
13 their retail sales in this state, including the tax imposed under R.S. 47:302(K).

14 B. Notification of purchaser. (1) At the time of sale, the remote retailer
15 shall notify the Louisiana purchaser that the purchase is subject to Louisiana use tax
16 unless it is specifically exempt, and that there is no exemption specifically based on
17 the fact that a purchase is made over the Internet, by catalog, or by other remote
18 means. Further, the sale notice shall include a statement that Louisiana law requires
19 that use tax liability be paid annually on the individual income tax return, or through
20 other means as may be required by administrative rule by the secretary in accordance
21 with the Administrative Procedure Act, hereinafter referred to as "administrative
22 rule". Failure to provide a sale notice shall subject the retailer to a penalty of five
23 dollars for each failure; however, all or a portion of the penalty may be waived by
24 the secretary if the retailer shows reasonable cause for the failure.

25 (2) Annually, during the month of January, a remote retailer shall send to
26 each Louisiana purchaser who has purchased property or services from the retailer
27 in the immediately preceding calendar year an annual notice containing the total
28 amount paid by the purchaser for purchases in that preceding calendar year, and
29 other information required by the secretary as established through administrative

1 rule. If available, the annual notice shall include a listing of the dates and amounts
2 of purchasers, and if known by the retailer, whether the property or service is exempt
3 from sales and use taxes. The annual notice shall clearly disclose the name of the
4 retailer and shall state that Louisiana use tax may be due on the purchases made from
5 the retailer and that Louisiana law requires the payment of an individual's use tax
6 liability on the individual income tax return or through other means as may be
7 required by administrative rule. The notification shall be sent by first class mail and
8 shall not be included with any other shipment or mailing from the retailer. Further,
9 the exterior of the envelope in which the notice is sent shall include the words
10 "IMPORTANT TAX DOCUMENT ENCLOSED". Failure to send an annual notice
11 shall subject the retailer to a penalty of ten dollars for each failure; however, all or
12 a portion of the penalty may be waived by the secretary if the retailer shows
13 reasonable cause for the failure.

14 C. Annual statements submitted by remote retailers. Annually, during the
15 month of March, a remote retailer who made retail sales of tangible personal
16 property or taxable services to Louisiana purchasers in the immediately preceding
17 calendar year shall file with the secretary an annual statement for each purchaser
18 which includes the total amount paid by the purchaser to that retailer in the
19 immediately preceding calendar year. Under no circumstances shall the statement
20 contain detail as to specific property or services purchased, but it shall include the
21 total amount paid. The statement shall be submitted on forms to be developed and
22 provided by the secretary. The secretary is authorized to require the electronic filing
23 of statements by a remote retailer who had sales in Louisiana in excess of one
24 hundred thousand dollars in the immediately preceding calendar year. Failure to
25 submit an annual statement shall subject the retailer to a penalty of ten dollars for
26 each purchaser for whom an annual statement was not submitted; however, all or a
27 portion of the penalty may be waived by the secretary if the retailer shows reasonable
28 cause for the failure.

1 D. Powers and duties of the secretary. (1) In addition to the powers and
2 duties of the secretary established under Chapter 18 of Subtitle II of this Title, the
3 secretary may, by subpoena, compel witnesses and the production of documents for
4 purposes of enforcement of the requirements of this Section relative to the required
5 notices and annual statements concerning taxable transactions occurring in Louisiana
6 which involve a remote retailer. The secretary may also seek letters rogatory when
7 appropriate for the enforcement of this Section. If the retailer fails to respond to the
8 subpoena, the secretary may request that the subpoena be enforced on the order of
9 a court.

10 (2) With respect to all penalties assessable under this Section, the conditions
11 for assessment of the penalty and a definition of "reasonable cause" shall be
12 established by the secretary through administrative rule.

13 ~~B. Any dealer~~ E. Any remote retailer selling property or services to residents
14 of this state, where the property is delivered into this state or the beneficial use of the
15 service occurs in this state, is considered to have consented to the jurisdiction of the
16 courts of ~~this state~~ Louisiana and the Board of Tax Appeals for the exclusive purpose
17 of enforcing this Section. Notwithstanding any other provision of law to the
18 contrary, service of process upon dealers subject to this Section may be made by
19 service outside this state in the same manner provided for service within this state
20 with the same force and effect as though service had been made within this state.

21 Section 2. This Act shall become effective upon signature by the governor or, if not
22 signed by the governor, upon expiration of the time for bills to become law without signature
23 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
24 vetoed by the governor and subsequently approved by the legislature, this Act shall become
25 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 1037 Original

2016 Regular Session

Connick

Abstract: Requires annual notifications to purchasers and the Dept. of Revenue by remote retailers who make sales in La. in excess of \$50,000 per year.

Present law authorizes the secretary of the Dept. of Revenue (secretary) to require that a dealer furnish a list to the secretary concerning their sales of property and services which exceed \$250. The secretary is authorized to compensate a dealer for the preparation and submission of the list.

Proposed law repeals present law.

Proposed law establishes requirements for the provision of notices to consumer and annual statements to the Dept. of Revenue concerning sales by remote retailers of property delivered into La. or services occurring in La.

Proposed law establishes definitions for "engaging in business in Louisiana", "Louisiana purchaser", and "remote retailer".

Proposed law excludes from the requirements of proposed law remote retailers who make retail sales in La. whose cumulative annual gross receipts from those sales is less than \$50,000 per calendar year.

Proposed law requires, at the time of sale, that the remote retailer notify the La. purchaser that their purchase is subject to La. use tax unless it is specifically exempt, and that there is no exemption specifically based on the fact that a purchase is made over the Internet, by catalog, or by other remote means. A retailer is subject to a \$5 penalty for each failure to provide this sales notice; however, all or a portion of the penalty may be waived by the secretary if the retailer shows reasonable cause for the failure.

Proposed law requires a remote retailer to send, each January, an annual notice to all La. purchasers who made purchases from them in the immediately preceding calendar year. The annual notice shall report the total amount paid for purchases in that preceding calendar year, and other information required by the secretary through administrative rule. If available, this notice may include a listing of the dates and amounts of purchases, and whether the property or service is exempt from sales and use taxes. A retailer is subject to a penalty of \$10 for each annual notice which was not sent; however, all or a portion of the penalty may be waived by the secretary if the retailer shows reasonable cause for the failure.

Proposed law requires a remote retailer who made retail sales of tangible personal property or taxable services to La. purchasers in the immediately preceding calendar year to file, each March, with the secretary an annual statement with regard to each purchaser. The statement shall provide the total amount paid by the purchaser to that retailer in the immediately preceding calendar year, but shall not contain any detail as to specific property or services purchased. The secretary is authorized to require the electronic filing of annual statements by a remote retailer who had sales in La. in excess of \$100,000 in the immediately preceding calendar. A retailer is subject to a penalty of \$10 for each annual statement that was not sent; however, all or a portion of the penalty may be waived by the secretary if the retailer shows reasonable cause for the failure.

Proposed law establishes powers of the secretary for purposes of enforcement of proposed law which include the authority to subpoena or compel witnesses and the production of documents. The secretary is also authorized to seek letters rogatory when appropriate, and in the event of the failure by a retailer to respond to a subpoena, the secretary may request that the subpoena be enforced through a court order.

Present law provides that any dealer selling property or services to residents of La., where the property is delivered into the state or the beneficial use of the service occurs in the state, is considered to have consented to the jurisdiction of the courts of La. for the exclusive purpose of enforcing present law. Further, service of process upon dealers subject to present law may be made by service outside of La. in the same manner provided for service within the state with the same force and effect as though service had been made within the state.

Proposed law retains present law and adds jurisdiction for the Board of Tax Appeals.

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

(Amends R.S. 47:302(U) and 309.1)