

2016 First Extraordinary Session

HOUSE BILL NO. 30

BY REPRESENTATIVES LEGER, CARPENTER, AND WHITE

AN ACT

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

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 47:302(K)(5) and (7)(a) and (U) are hereby amended and reenacted  
9 and R.S. 47:302(V) and (W) are 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           under this Subsection in lieu of collecting the sales and use tax imposed by a political  
2           subdivision of this state which tax is remitted directly to the political subdivision.

3   \*       \*       \*

4                   (7)(a) ~~Pursuant to an appropriation by the legislature~~ From the current  
5                   collections of the tax collected under this Subsection, the secretary shall make the  
6                   following distributions:

7                   (i) The secretary shall annually provide for an interagency transfer in the  
8                   amount of one hundred and thirty-two thousand dollars to the Department of State  
9                   Civil Service, Board of Tax Appeals, to be expended exclusively for the purposes of  
10                  its Local Tax Division, ~~and thereafter distribute the proceeds of the tax.~~

11                  (ii) All monies remaining after satisfaction of the requirements of Item (i)  
12                  of this Subparagraph shall be distributed quarterly to the central local sales and use  
13                  tax collector or, if none, the parish governing authority according to population. The  
14                  central local sales and use tax collector or the parish governing authority shall at no  
15                  charge distribute the tax proceeds received from the secretary to each political  
16                  subdivision within the parish which levies a sales and use tax or receives a portion  
17                  of the proceeds of a parishwide sales and use tax levy, in accordance with each such  
18                  political subdivision's pro rata share of local sales and use tax receipts collected on  
19                  all other transactions subject to local sales and use taxes during the most recent state  
20                  fiscal year for which data is available within thirty days of receipt of the proceeds.

21   \*       \*       \*

22                  U. Collection of consumer use tax. It is the duty of the secretary of the  
23                  Department of Revenue to collect all taxes imposed pursuant to this Chapter and  
24                  Chapters 2-A and 2-B of this Subtitle which may be due upon the sale by a remote  
25                  ~~seller~~ dealer of tangible personal property or services in Louisiana. The secretary is  
26                  authorized and directed to employ all means available to ensure the collection of the  
27                  tax in an equitable, efficient, and effective manner.

28                  V.(1) In addition to the definition of "dealer" as provided in R.S. 47:301(4)  
29                  for purposes of the consumer use tax, the term "dealer" includes every person who  
30                  manufactures or produces tangible personal property for sale at retail, for use or

1 consumption, or distribution, or for storage to be used or consumed in a taxing  
2 jurisdiction. "Dealer" is further defined to mean:

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

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

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

22 (ii) Solicits business and develops and maintains a market in Louisiana  
23 through an agent, salesman, independent contractor, solicitor, or other representative  
24 pursuant to an agreement with a Louisiana resident or business, hereinafter referred  
25 to collectively as an "affiliated agent", under which the affiliated agent, for a  
26 commission, referral fee, or other consideration of any kind engages in activities in  
27 this state that inure to the benefit of the person in the person's development or  
28 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 (c) In addition to those persons established as dealers according to  
6 Subparagraph (b) of this Paragraph, the provisions of this Subsection shall be  
7 presumed by a taxing authority to apply to any person who holds a substantial  
8 ownership interest, directly or through a subsidiary, in a retailer maintaining sales  
9 locations in Louisiana, or to any person who is owned in whole or in substantial part  
10 by a retailer maintaining sales locations in Louisiana, or by a parent or subsidiary  
11 thereof. For purposes of this Paragraph, "substantial ownership interest" means  
12 affiliated persons with respect to each other where one of such persons has an  
13 ownership interest of more than five percent, whether direct or indirect, in the other,  
14 or where an ownership interest of more than five percent, whether direct or indirect,  
15 is held in each of such persons by another person or by a group of other persons  
16 which are affiliated persons with respect to each other.

17 (2) 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 Paragraph (K)(5) of this Section.

21 (3) 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 W.(1) Nothing in this Subsection shall prohibit a taxpayer from electing to  
27 separately file with the applicable parish sales and use tax collector or central  
28 collection commission a use tax return and to remit the correct and full amount of  
29 use tax due pursuant to the provisions of all applicable local ordinances, hereinafter  
30 referred to as "paid local use tax return".

1           (2) If a dealer has withheld and remitted tax for a specific purchase pursuant  
2           to the provisions of this Subsection from a taxpayer who subsequently files a paid  
3           use local tax return, the taxpayer may file an annual use tax refund request with the  
4           secretary, hereinafter referred to as "refund request".

5           (3) A refund request shall be filed in a manner to be determined by the  
6           secretary, which may include electronic filing. The refund request may be made  
7           once per calendar year, and shall be accompanied by a copy of both of the following:

8           (a) All relevant paid local use tax returns.

9           (b) An affidavit affirming that the delivery and use of the taxable property  
10          will occur in a parish in which there is no use tax imposed by any local taxing  
11          authority, which affidavit has been filed with the local sales and use tax commission  
12          established under Paragraph (K)(6) of this Section.

13          (4) The secretary shall pay any refund due pursuant to this Subparagraph  
14          from current collections of any tax levied pursuant to Subsection K of this Section.

15          (5) The denial of any refund, or the failure to act within one year of the filing  
16          of the refund request, shall be appealable in the same manner as is provided for in  
17          R.S. 47:1625.

18          Section 2. The provisions of this Act shall apply to tax periods beginning on and  
19          after April 1, 2016. If the United States Congress enacts legislation authorizing states to  
20          require a remote seller to collect sales taxes on taxable transactions, such legislation shall  
21          preempt the provisions of R.S. 47:302(V) and the Department of Revenue shall have the  
22          authority to promulgate, after consultation with the sales tax commission created by R.S.  
23          47:302(K)(6), regulations under the Louisiana Administrative Procedure Act to carry out the  
24          provisions of the federal legislation. The Department of Revenue shall begin to promulgate  
25          such rules within ninety days of the effective date of the federal legislation.

26          Section 3. This Act shall become effective upon signature by the governor or, if not  
27          signed by the governor, upon expiration of the time for bills to become law without signature  
28          by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If

1 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
2 effective on the day following such approval.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_