

2019 Regular Session

HOUSE BILL NO. 524

BY REPRESENTATIVE FOIL

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

REVENUE DEPARTMENT: To provide for market place facilitators

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AN ACT

To amend and reenact R.S. 47:302(W)(3) and (6), 339(A)(2), (B)(3), (5) through (8), 340(E)(3),(F), (G)(1), and (H)(1) and Section 2 of Act No. 5 of the 2018 Second Extraordinary Session of the Legislature and to enact R.S.47:339(B)(9), 340(G)(6)(a) and (b), and (11), 340.1, and 1407(6), relative to the collection of certain sales and use tax; to provide for the collection of sales and use tax; to provide for the collection of sales and use tax from marketplace facilitators and remote sellers; to provide for definitions; to provide for certain requirements; to provide for certain limitations; to provide for certain conditions; to provide for applicability; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 47:302(W)(3) and (6), 339(A)(2), (B)(3), (5), (6), (7), and (8), 340(E)(3),(F), (G)(1), and (H)(1) are hereby amended and reenacted and R.S. 47:339(B)(9), 340(G)(6)(a) and (b), and (11), 340.1, and 1407(6) are hereby enacted to read as follows:

§302. Imposition of tax

\* \* \*  
W.  
\* \* \*

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

4 (a) ~~All~~ all relevant paid local use tax returns.

5 (b) ~~An affidavit affirming that~~ If the delivery and use of the taxable property  
6 will occur in a parish in which there is no sales and use tax imposed by any local  
7 taxing authority, ~~which affidavit has been filed with the local sales and use tax~~  
8 ~~commission established under Paragraph (K)(6) of this Section.~~ an affidavit  
9 confirming such will be accepted in lieu of paid local use tax returns.

10 \* \* \*

11 (6) ~~Until the establishment of the Louisiana Sales and Use Tax Commission~~  
12 ~~for Remote Sellers pursuant to R.S. 47:339(A)(2) and (B)(3);~~ Until the Louisiana  
13 Sales and Use Tax Commission for Remote Sellers enforces collection and  
14 remittance of state and local sales and use tax based on the applicable state and local  
15 rates and bases, dealers as defined in R.S. 47:301(4)(m); shall specifically collect the  
16 additional tax authorized by Subsection K of this Section and shall file all applicable  
17 sales and use tax returns. ~~In consultation with the commission, the secretary of the~~  
18 ~~Department of Revenue shall publish notification of the establishment date of the~~  
19 ~~Louisiana Sales and Use Tax Commission for Remote Sellers in a policy statement~~  
20 ~~as authorized by LAC 61:III.101.~~ Notice of enforcement by the Louisiana Sales and  
21 Use Tax Commission for Remote Sellers shall be published in a policy statement as  
22 authorized by LAC 61:III.101 no later than thirty days prior to the effective date of  
23 the enforcement.

24 \* \* \*

25 §339. Louisiana Sales and Use Tax Commission for Remote Sellers

26 A. The Louisiana Sales and Use Tax Commission for Remote Sellers,  
27 hereinafter referred to as "commission", is created and established within the  
28 Department of Revenue for the administration and collection of the sales and use tax

1 imposed by the state and political subdivisions with respect to remote sales. The  
2 commission shall:

3 \* \* \*

4 (2) Serve as the single entity in Louisiana to require remote sellers and their  
5 designated agents to collect from customers and remit to the commission, sales and  
6 use taxes on remote sales sourced to Louisiana on the uniform Louisiana state and  
7 local sales and use tax base established by Louisiana law with respect to any federal  
8 law as may be enacted by the United States Congress authorizing states to require  
9 remote sellers to collect and remit state and local sales and use taxes on their sales  
10 in each state or ~~final ruling~~ a decision by the United States Supreme Court  
11 ~~authorizing states to require remote sellers to collect and remit state and local sales~~  
12 ~~and use taxes on their sales in each state,~~ overrules the physical presence requirement  
13 for a remote seller to collect and remit state and local sales and use tax on remote  
14 sales for delivery into the state, except those remote sellers who qualify for  
15 exceptions as may be provided by federal law.

16 \* \* \*

17 B. As used in this Chapter, unless the context clearly indicates otherwise, the  
18 following terms shall be defined as follows:

19 \* \* \*

20 (3) "Federal law" shall mean any federal law as may be enacted by the  
21 United States Congress authorizing states to require remote sellers, except those  
22 remote sellers who meet exceptions provided by federal law, to collect and remit  
23 sales and use taxes on remote sales for delivery into Louisiana or ~~final ruling~~ a  
24 decision by the United States Supreme Court ~~authorizing states to require remote~~  
25 ~~sellers, except those remote sellers who meet exceptions provided by federal law, to~~  
26 ~~collect and remit sales and use taxes on remote sales sourced to Louisiana.~~ overrules  
27 the physical presence requirement for a remote seller to collect and remit state and  
28 local sales and use tax on remote sales for delivery into the state.

29 \* \* \*

1           (5) ~~The term "non-remote sale" means a sale that is not a remote sale. The~~  
2           ~~terms "marketplace", "marketplace facilitator", and "marketplace seller" shall have~~  
3           ~~the meanings provided for in R.S. 47:340.1.~~

4           (6) ~~The term "non-remote seller" means a seller that is not a remote seller.~~  
5           ~~The term "remote sale" means a sale that is made by a remote seller or facilitated by~~  
6           ~~a marketplace facilitator on a marketplace for delivery into Louisiana. The term~~  
7           ~~"non-remote sale" means a sale that is not a remote sale.~~

8           (7) ~~The term "person" shall have the meaning as defined by federal law for~~  
9           ~~purposes of remote sales but shall retain the meaning as provided in R.S. 47:301(8)~~  
10          ~~for all other purposes in state and local sales and use tax law. The term "remote~~  
11          ~~seller" means a seller who sells for sale at retail, use, consumption, distribution, or~~  
12          ~~for storage to be used for consumption or distribution any taxable tangible personal~~  
13          ~~property, products transferred electronically, or services for delivery within~~  
14          ~~Louisiana, but does not have physical presence in Louisiana, and is not considered~~  
15          ~~a dealer as defined by R.S. 47:301(4)(a) through (l). The term "non-remote seller"~~  
16          ~~means a seller that is not a remote seller.~~

17          (8) ~~"Sales and use taxes" and "taxes" shall mean the sales and use taxes~~  
18          ~~levied by the state of Louisiana under the provisions of Title 47 of the Louisiana~~  
19          ~~Revised Statutes of 1950 and the sales and use taxes levied by local taxing~~  
20          ~~authorities in Louisiana under the provisions of the Constitution of Louisiana,~~  
21          ~~statutory laws authorizing the imposition of such taxes, and local sales and use tax~~  
22          ~~ordinances. The term "person" shall have the meaning provided for in R.S. 47:301(8)~~  
23          ~~for all purposes in state and local sales and use tax law.~~

24          (9) "Sales and use taxes" and "taxes" shall mean the sales and use taxes  
25          levied by the state of Louisiana under the provisions of Title 47 of the Louisiana  
26          Revised Statutes of 1950, and the sales and use taxes levied by local taxing  
27          authorities in Louisiana under the provisions of the Constitution of Louisiana,  
28          statutory laws authorizing the imposition of sales and use taxes, and local sales and  
29          use tax ordinances.

1 §340. Louisiana Sales and Use Tax Commission for Remote Sellers; members;  
2 powers

3 \* \* \*

4 E.

5 \* \* \*

6 (3) The commission and its operations shall be funded by an amount equal  
7 to actual expenses incurred which amount shall not exceed one percent of the total  
8 amount of state and local sales and use tax collected on remote sales by the  
9 commission. Subject to the limitations provided in this Paragraph, this amount shall  
10 be retained by the commission on a monthly basis from current collections of state  
11 and local sales tax on remote sales as collected by the commission prior to monthly  
12 distribution to the state and local collectors. The commission shall have no authority  
13 to retain these monies unless and until a federal law authorizing states to require  
14 remote sellers and their agents to collect state and local sales and use taxes on their  
15 sales in each state has been enacted and becomes effective; or a decision by the  
16 United States Supreme Court overrules the physical presence requirement for a  
17 remote seller to collect and remit state and local sales and use tax on remote sales for  
18 delivery into the state. Upon distribution of the local sales and use tax collected from  
19 remote sellers by the Commission, the local collectors may retain the usual and  
20 customary percentage of collections in accordance with local ordinances or  
21 agreements.

22 F. (1) The commission shall develop rules and procedures in accordance  
23 with the Administrative Procedure Act with respect to implementation of the  
24 provisions of this Chapter. Unless contrary to a rule adopted in accordance with this  
25 Subsection, the provisions of Chapter 18 of this Subtitle may be utilized by the  
26 commission, or its duly authorized agents and employees, in the exercise of any  
27 power authorized by this Section in the same manner that the provisions of Chapter  
28 18 of this Subtitle may be utilized by the secretary.



1 H. Nothing in this Chapter shall be construed to:

2 (1) Authorize or require any expenditure unless and until a federal law  
3 authorizing states to require remote sellers and their agents to collect state and local  
4 sales and use taxes on their sales in each state has been enacted and becomes  
5 effective: or a decision by the United States Supreme Court overrules the physical  
6 presence requirement for a remote seller to collect and remit state and local sales and  
7 use tax on remote sales for delivery into the state.

8 \* \* \*

9 §340.1. Marketplace facilitators; collection and remittance of state and local sales  
10 and use tax

11 A. Definitions. For purposes of this Section, the following words and phrases  
12 shall have the following meanings unless the context clearly indicates otherwise:

13 (1) "Commission" means the Louisiana Sales and Use Tax Commission for  
14 Remote Sellers set forth in this Chapter.

15 (2) "Marketplace" means any method through which a marketplace seller  
16 may sell or offer for sale tangible personal property, admissions, or services which  
17 are subject to taxation under this Subtitle for delivery into Louisiana.

18 (3)(a) "Marketplace Facilitator" means any person that facilitates a sale for  
19 a marketplace seller through a marketplace by any of the following:

20 (i) Offering for sale through any means, by a marketplace seller, tangible  
21 personal property, admissions, or services which are subject to taxation under this  
22 Subtitle for delivery into Louisiana.

23 (ii) Collecting payment from a purchaser and transmitting the payment to the  
24 marketplace seller, regardless of whether the person receives compensation or other  
25 consideration in exchange for facilitating the sale or providing any other service  
26 directly, or indirectly through any agreement or arrangement with one or more third  
27 parties.

1           (b) "Marketplace Facilitator" shall not be construed to include a payment  
2           processor which only handles the processing of payments between the marketplace  
3           facilitator and the purchaser.

4           (4) "Marketplace Seller" means a person who sells or offers for sale tangible  
5           personal property, admissions, or services which are subject to taxation under this  
6           Subtitle for delivery into Louisiana through a marketplace that is owned, operated,  
7           or controlled by a marketplace facilitator.

8           (5) "Remote Sale" means a sale made by a remote seller or a sale facilitated  
9           by a marketplace facilitator.

10          (6) "Remote Seller" means a seller who sells for sale at retail, use,  
11          consumption, distribution, or for storage to be used for consumption or distribution  
12          any taxable tangible personal property, products transferred electronically, or  
13          services for delivery within Louisiana, but does not have physical presence in  
14          Louisiana, and is not considered a dealer as defined by R.S. 47:301(4)(a) through (l).

15          (7) "Secretary" means the secretary of the Department of Revenue.

16          B. Duties of Marketplace Facilitators. A marketplace facilitator shall be  
17          considered the dealer for each remote sale for delivery into Louisiana and transacted  
18          on a marketplace on behalf of a marketplace seller. A marketplace facilitator shall  
19          be responsible for all obligations imposed on dealers under this Subtitle and keep  
20          records and information required by the Commission to ensure proper collection and  
21          remittance of sales and use tax, including but not limited to exemption certificates  
22          and information from the marketplace seller that may be used to determine the  
23          taxability of remote sales.

24          C. Calculation of Remote Sales and Criteria

25          (1) A marketplace facilitator shall collect and remit state and local sales and  
26          use tax on all taxable remote sales for delivery into Louisiana which the marketplace  
27          facilitator transacts on its own behalf or facilitates on behalf of a marketplace seller  
28          regardless of whether the marketplace seller is a dealer, has registered as a dealer in

1        Louisiana, or otherwise would have been required to collect state and local sales and  
2        use tax if the remote sale had not been facilitated by the marketplace facilitator.

3                (2) The requirement of Paragraph (1) of this Subsection shall only apply to  
4        a marketplace facilitator who is a dealer or who facilitates a remote sale for delivery  
5        in Louisiana of tangible personal property, products transferred electronically, or  
6        services, if during the previous or current calendar year either of the following  
7        criteria are met:

8                (a) The marketplace facilitator's gross revenue for sales delivered into  
9        Louisiana exceeded one hundred thousand dollars from sales of tangible personal  
10       property, products transferred electronically, or services.

11               (b) The marketplace facilitator sold for delivery into Louisiana tangible  
12       personal property, products transferred electronically, or services in two hundred or  
13       more separate transactions.

14               (3) In determining whether the criteria of Paragraph (2) of this Subsection has  
15       been met, all taxable remote sales described in Paragraph (1) of this Subsection shall  
16       be considered. However, a marketplace facilitator may voluntarily register for and  
17       collect state and local sales and use tax as a dealer regardless of whether the  
18       marketplace facilitator meets the criteria established in Paragraph (2) of this  
19       Subsection.

20               D. Timing of Application and Collection

21               (1) No later than thirty calendar days after surpassing either of the criteria of  
22       Paragraph (2) of Subsection C of this Section, a marketplace facilitator shall submit  
23       an application for approval to collect state and local sales and use tax on remote sales  
24       for delivery into Louisiana to the Commission on a form prescribed by the  
25       Commission. A marketplace facilitator shall commence collection of state and local  
26       sales and use tax, once notified the Commission has approved the application, no  
27       later than sixty days after surpassing either of the criteria of Paragraph (2) of  
28       Subsection C of this Section.

1           (2) A marketplace facilitator who is a dealer as defined by R.S. 47:301(4)(a)  
2           through (1) shall collect state and local sales and use tax on remote sales for delivery  
3           into Louisiana in accordance with R.S. 47:306.

4           E. Administration of Requirements to Collect and Remit State and Local  
5           Sales and Use Tax

6           (1) For remote sales transacted on a marketplace, the marketplace facilitator  
7           shall be responsible for the determination of taxability of remote sales for delivery  
8           into Louisiana. Except as provided in Paragraph (6) of this Subsection, the  
9           marketplace facilitator shall collect and remit to the Commission state and local  
10          sales and use tax based on the applicable state and local rates and bases.

11          (2)(a) If a marketplace facilitator fails to collect sales tax as required by  
12          Paragraph (1) of this Subsection due to incorrect or insufficient information provided  
13          by the marketplace seller, the marketplace facilitator shall be relieved of liability for  
14          failure to collect or remit the tax provided that the relief under this Paragraph shall  
15          not exceed five percent of the total sales tax due from sales made or facilitated in this  
16          state by the marketplace facilitator. If a marketplace facilitator is relieved of liability  
17          under this Paragraph, the marketplace seller shall be liable for any amount of  
18          uncollected or unremitted tax due.

19          (a) No relief authorized by this Paragraph shall be permitted for remote sales  
20          made by a marketplace seller who is affiliated with the marketplace facilitator. For  
21          purposes of this Section, persons or entities shall be considered affiliated if one  
22          entity owns more than five percent of the other entity or both entities are subject to  
23          the control of a common entity that owns more than five percent of each of the  
24          entities.

25          (3) The state and local sales and use tax required to be collected by the  
26          marketplace facilitator shall be due and payable monthly. For the purpose of  
27          ascertaining the amount of tax payable, all marketplace facilitators shall transmit to  
28          the Commission returns on forms prescribed, prepared, and furnished by the  
29          Commission showing the gross sales, purchases, gross proceeds from lease or rental,

1 gross payments for lease or rental, gross proceeds derived from sales of services, or  
2 gross payments for services arising from all taxable transactions during the preceding  
3 calendar month, on or before the twentieth day of the month following the month in  
4 which this tax is required to be collected. Thereafter, like returns shall be prepared  
5 and transmitted to the Commission by marketplace facilitators on or before the  
6 twentieth day of each month for the preceding calendar month. These returns shall  
7 show any further information the Commission may require to correctly compute and  
8 collect the tax levied. At the time of making the return required hereunder every  
9 marketplace facilitator shall compute and remit to the Commission the required tax  
10 due for the preceding calendar month, and failure to remit the tax shall cause the tax  
11 to become delinquent. In the event the tax becomes delinquent, interest and penalties  
12 imposed by Part IV of Chapter 18 of this Subtitle shall be an obligation to be  
13 assessed, collected, and enforced against the marketplace facilitator in the same  
14 manner as if it were a tax due.

15 (4) The marketplace facilitator shall be the sole person or entity subject to  
16 audit for sales made by marketplace sellers but facilitated by the marketplace  
17 facilitator. Marketplace sellers shall not be subject to audit for sales facilitated by  
18 the marketplace facilitator except to the extent the marketplace facilitator seeks relief  
19 under Paragraph (2) of this Subsection.

20 (5) A class action shall not be maintained against a marketplace facilitator by  
21 or on behalf of purchasers arising from or related to an overpayment of sales or use  
22 tax collected by the marketplace facilitator under this Section, regardless of whether  
23 the action is characterized as a tax refund claim, provided the marketplace facilitator  
24 did not intentionally collect state and local sales and use tax on remote sales without  
25 regard to applicable state and local rates and bases.

26 (6) Until the Commission enforces collection and remittance of state and  
27 local sales and use tax based on the state and local rates and bases, marketplace  
28 facilitators shall collect and remit state and local sales and use tax to the secretary in  
29 accordance with R.S. 47:302(K). Notice of enforcement by the Commission shall be

1 published in a policy statement as authorized by LAC 61:III.101 no later than thirty  
2 days prior to the effective date of the enforcement.

3 F. Rules. (1) The Commission may establish specific procedures and  
4 requirements concerning marketplace facilitators and the collection and remittance  
5 of state and local sales and use tax through rules promulgated in accordance with the  
6 Administrative Procedures Act. Unless contrary to a rule adopted in accordance with  
7 this Subsection, the provisions of Chapter 18 of this Subtitle may be utilized by the  
8 commission, or its duly authorized agents and employees, in the exercise of any  
9 power authorized by this Section, in the same manner that the provisions of Chapter  
10 18 may be utilized by the secretary.

11 (2) The Commission, or its duly authorized agents and employees, may take  
12 any action related to the collection of tax within its jurisdiction that the secretary in  
13 Chapter 18 of this Subtitle is authorized to take and any person aggrieved by any  
14 such action shall have the same rights, including appeal or review as provided for in  
15 Chapter 18 of this Subtitle.

16 (3) Any consideration of a request for refund and any appeal of the  
17 Commission's denial of a refund made to the Board of Tax Appeals shall occur in the  
18 same manner and subject to the same deadlines as provided for in Chapter 18 of this  
19 Subtitle.

20 (4) The Commission shall be considered a state collector for the purposes of  
21 R.S. 47:1418(7)(d) and the related provisions of Chapter 17 of this Subtitle II.

22 \* \* \*

23 §1407. Jurisdiction of the board

24 The jurisdiction of the board shall extend to the following:

25 \* \* \*

26 (6) All matters relating to appeals of administrative hearings, assessments,  
27 and refund denials by the Louisiana Sales and Use Tax Commission for Remote  
28 Sellers.



notice by the commission to commence enforcement shall be published no later than 30 days prior to the date of enforcement.

Present law defines "non-remote sales", "non-remote sellers", "person", "sales and use taxes" and "taxes". Proposed law retains present law but also provides definitions for "marketplace facilitator", "marketplace seller", "remote sale", "remote seller" and changes the definition of "person."

Present law establishes a method of funding the commission's operations, however the Commission shall not be authorized to use these funds unless and until a federal law authorizes states to require remote sellers to collect state and local sales and use taxes becomes effective.

Proposed law retains present law but expands the definition of federal law for the purposes of this Section. Proposed law also provides that local collectors may be allowed to retain the usual and customary percentage of the taxes they collect.

Present law provides that the commission shall develop rules and procedures to carry out its purpose. Proposed law retains present law and expands the actions in which the commission is allow to take.

Present law provides for the powers and duties of the commission including requiring remote sellers to register with the commission. Proposed law retains present law but provides for time periods in which remote sellers much register.

Proposed law provides that marketplace facilitators must register with the Commission and shall collect and remit state and local sales and use tax on all taxable remote sales for delivery into La. which the marketplace facilitator transacts on its own behalf or facilitates on behalf of a marketplace seller.

Proposed law provides that the marketplace facilitator shall be responsible for the determination of taxability of remote sales for delivery into La.

Proposed law provides for the administrative requirements of filing a monthly return and remitting tax collected to the commission.

Present law provides for the jurisdiction of the Board of Tax Appeals. Proposed law expands the Board of Tax Appeal's jurisdiction to all matters related to the commission.

Present law, regarding the applicability of the provisions of present law relative to the commission and collection of state and local sales and use taxes on remote sales provides that the provisions of present law apply to all taxable periods beginning on or after the date of the final ruling by the U.S. Supreme Court in *South Dakota v. Wayfair Inc, Overstock.com, Inc., and Newegg Inc.*, finding South Dakota 2016 Senate Bill No. 106 constitutional.

Proposed law repeals the contingent applicability provisions thereby giving the provisions of present law immediate applicability.

(Amends R.S. 47:302(W)(3) and (6), 339(A)(2), (B)(3), (5) through (8), 340(E)(3),(F), (G)(1), and (H)(1) and §2 of Act No. 5 of the 2018 2<sup>nd</sup> E.S.; Adds R.S.47:339(B)(9), 340(G)(6)(a) and (b), and (11), 340.1, and 1407(6))