

2015 Regular Session

HOUSE BILL NO. 555

BY REPRESENTATIVE FANNIN

1 AN ACT

2 To amend and reenact R.S. 47:302(K)(5) and (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 authorize tax refunds under
6 certain circumstances; to provide for effectiveness; and to provide for related
7 matters.

8 Be it enacted by the Legislature of Louisiana:

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

11 §302. Imposition of tax

12 * * *

13 K.

14 * * *

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

1 days from the remittance of the tax they provide the secretary with either of the
2 following:

3 (a) A certified copy of a use tax return that has been filed with the relevant
4 parish sales and use tax collector concerning the same transaction, together with the
5 proof of payment of all state and local use taxes due on the transaction.

6 (b) A certified copy of an affidavit that has been filed with the sales and use
7 tax commission established pursuant to Paragraph (K)(6) of this Section, in a form
8 prescribed by the commission, affirming that the delivery and all use of the property
9 subject to tax will be in a parish with no use tax imposed by any local taxing
10 authority.

11 V. In addition to the definition of "dealer" as provided in R.S. 47:301(4) for
12 purposes of the consumer use tax, the term "dealer" includes every person who
13 manufactures or produces tangible personal property for sale at retail, for use or
14 consumption, or distribution, or for storage to be used or consumed in a taxing
15 jurisdiction. "Dealer" is further defined to mean:

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

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

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

5 (b) Solicits business and develops and maintains a market in Louisiana
6 through an agent, salesman, independent contractor, solicitor, or other representative
7 pursuant to an agreement with a Louisiana resident or business, hereinafter referred
8 to collectively as an "affiliated agent", under which the affiliated agent, for a
9 commission, referral fee, or other consideration of any kind engages in activities in
10 this state that inure to the benefit of the person in the person's development or
11 maintenance of a market for its goods or services in the state, to the extent that those
12 activities of the affiliated agent are sufficient to satisfy the nexus requirement of the
13 United States Constitution. For purposes of this Subparagraph, such activities of the
14 affiliated agent shall include referral of potential customers to the person, either
15 directly or indirectly, whether by link on an internet website or otherwise.

16 (3) In addition to those persons established as dealers according to Paragraph
17 (2) of this Subsection, the provisions of this Subsection shall be presumed by the
18 taxing authority to apply to any person who holds a substantial ownership interest,
19 directly or through a subsidiary, in a retailer maintaining sales locations in Louisiana,
20 or to any person who is owned in whole or in substantial part by a retailer
21 maintaining sales locations in Louisiana, or by a parent or subsidiary thereof. For
22 the purposes of this Paragraph, "substantial ownership interest" means affiliated
23 persons with respect to each other where one of such persons has an ownership
24 interest of more than five percent, whether direct or indirect, in the other, or where
25 an ownership interest of more than five percent, whether direct or indirect, is held
26 in each of such persons by another person or by a group of other persons which are
27 affiliated persons with respect to each other.

28 (4) A dealer, as defined in and for the purposes of this Subsection, shall file
29 all applicable sales and use tax returns and remittances through the electronic filing

