

Regular Session, 2014

HOUSE BILL NO. 847

BY REPRESENTATIVE PUGH

TAX/SALES & USE: Requires the filing of an annual use tax return for the payment of use tax on taxable tangible personal property and services purchased from a remote seller

1 AN ACT

2 To enact R.S. 47:306(F), relative to collection of state use taxes; to provide a method for the  
3 payment of use tax on certain transactions involving remote sellers; to require and  
4 provide for the filing of an annual use tax return; to provide with respect to the  
5 determination, estimation, calculation and reporting of use tax liabilities; to provide  
6 for limitations and exclusions; to require the development of forms by the secretary  
7 of the Department of Revenue; to provide for rulemaking; to provide for  
8 effectiveness; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

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

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

12 \* \* \*

13 F. Annual consumer use tax return

14 (1) Since 1934, the state has imposed a use tax to ensure that sales tax is paid  
15 on taxable purchases made by Louisiana taxpayers if the seller was not legally  
16 obligated to collect the sales tax due on the transaction. The use tax is intended to put  
17 Louisiana retailers on an equal footing with their out of state competitors who are not  
18 required to collect sales tax because they do not have a sufficient connection with  
19 Louisiana. The rate and base are the same for both sales and use taxes.

1           (2)(a) Beginning January 1, 2015, every taxpayer who uses, stores, or  
2           consumes tangible personal property or purchases a taxable service not in the  
3           conduct of a business, and who has not paid the sales or use tax imposed by this  
4           Chapter to the dealer, shall make an annual consumer use tax payment on a return  
5           prescribed by the secretary, hereinafter referred to as "return". For taxable  
6           transactions occurring outside of the state upon which tax was paid to another  
7           jurisdiction, the credit for taxes paid allowed under R.S. 47:303(A)(3)(a) shall apply.

8           (b) The provisions of this Subsection for the reporting and payment of use  
9           tax shall not apply to the payment of sales and use taxes on any of the following  
10          types of purchases:

11           (i) Purchases by businesses.

12           (ii) A purchase for which a dealer is required to collect sales and use tax  
13          pursuant to R.S. 47:304. For purposes of this Item, "dealer" shall have the meaning  
14          provided in R.S. 47:301(4).

15           (3)(a) The secretary shall prescribe a form and instructions for the making  
16          of a use tax payment which shall include the name of the taxpayer; the total cost  
17          price of the tangible personal property stored, used, or consumed; and the total  
18          purchase price of taxable services acquired or consumed by that taxpayer within this  
19          state for the preceding taxable year. The instructions shall include a use tax table  
20          which provides estimated use tax liabilities for taxpayers based on the taxpayer's  
21          federal adjusted gross income for the previous year. The annual consumer use tax  
22          payment and tax return are due on or before the fifteenth day of the fifth month  
23          following the close of the year in which the purchases were made. In the event that  
24          the date on which the payment is due and returns shall be filed falls on a Saturday,  
25          Sunday, or legal holiday, the payment and return shall be made and filed on the next  
26          business day. The return shall be subscribed by the taxpayer or his agent and shall  
27          contain a written declaration that it is made under the penalties of perjury.

28           (b) In the preparation of the return filed to make an annual consumer use tax  
29          payment, the taxpayer shall report his use tax liabilities for one or more single

1        nonbusiness purchases of individual taxable items of tangible personal property or  
2        taxable services by electing to use either of the following methods:

3                (i) The taxpayer may calculate and report their actual use tax liabilities.

4                (ii) The taxpayer may use the use tax table to report their estimated use tax  
5        liabilities. If a taxpayer utilizes the use tax table to estimate their use tax liabilities  
6        and correctly reports their estimated use tax liabilities by using the safe harbor  
7        amount for their federal adjusted gross income range for the previous year, then the  
8        department shall not assess the difference, if any, between the estimated use tax  
9        liabilities reported and paid in accordance with the use tax table and the taxpayer's  
10       actual use tax liabilities.

11               (c) The use tax table may not be used to estimate use tax liabilities for any  
12       of the following types of purchases:

13               (i) Business purchases, including purchases made by a business which is  
14       required to hold a seller's permit or, pursuant to the Sales and Use Tax Law, to  
15       register with the department and report their use tax liabilities directly to the  
16       department.

17               (ii) The purchase of any item of tangible personal property which is required  
18       to be licensed or registered under any state or federal law.

19               (4) Safe harbor amounts are based on the taxpayer's federal adjusted gross  
20       income for the tax year in which the purchases were made, regardless of filing status,  
21       as provided in Subparagraph (j) of this Paragraph.

22               (a) If the taxpayer's federal adjusted gross income is less than or equal to ten  
23       thousand dollars, the safe harbor use tax amount is four dollars.

24               (b) If the taxpayer's federal adjusted gross income is greater than ten  
25       thousand dollars, but less than or equal to twenty thousand dollars, the safe harbor  
26       use tax amount is twelve dollars.

27               (c) If the taxpayer's federal adjusted gross income is greater than twenty  
28       thousand dollars, but less than or equal to thirty thousand dollars, the safe harbor use  
29       tax amount is twenty dollars.

1           (d) If the taxpayer's federal adjusted gross income is greater than thirty  
2           thousand dollars, but less than or equal to forty thousand dollars, the safe harbor use  
3           tax amount is twenty-eight dollars.

4           (e) If the taxpayer's federal adjusted gross income is greater than forty  
5           thousand dollars, but less than or equal to fifty thousand dollars, the safe harbor use  
6           tax amount is thirty-six dollars.

7           (f) If the taxpayer's federal adjusted gross income is greater than fifty  
8           thousand dollars, but less than or equal to seventy thousand dollars, the safe harbor  
9           use tax amount is forty-eight dollars.

10           (g) If the taxpayer's federal adjusted gross income is greater than seventy  
11           thousand dollars, but less than or equal to eighty thousand dollars, the safe harbor use  
12           tax amount is sixty dollars.

13           (h) If the taxpayer's federal adjusted gross income is greater than eighty  
14           thousand dollars, but less than or equal to one hundred thousand dollars, the safe  
15           harbor use tax amount is seventy-two dollars.

16           (i) If the taxpayer's federal adjusted gross income is greater than one hundred  
17           thousand dollars, the safe harbor use tax amount is determined by multiplying the  
18           federal adjusted gross income by eight ten thousandths (.0008).

19           (j) For purposes of this Subsection, "taxpayer" means a married couple filing  
20           a joint income tax return, or an individual filing an income tax return as either single,  
21           head of household, qualifying widow(er), or married filing separately. "Taxpayer"  
22           shall not include any person who, pursuant to R.S. 47:101, is not required to file a  
23           tax return.

24           (5) Beginning January 1, 2015, the department shall annually recalculate the  
25           safe harbor use tax table based on:

26           (a) The most current consumer expenditure data published by the United  
27           States Bureau of Labor Statistics.

1           **(b) Total spending at electronic shopping and mail order houses, determined**  
2           **by reference to the most current electronic shopping and mail order house spending**  
3           **data published by the United States Census Bureau.**

4           **(c) The percentage of total spending at electronic shopping and mail order**  
5           **houses that are not included in the constitutionally exempted items, by reference to**  
6           **the most current retail trade product lines statistics by kind of business data**  
7           **published by the United States Census Bureau.**

8           **(d) The department shall annually determine the new use tax table and shall**  
9           **publish such schedule no later than the March issue of the Louisiana Register as a**  
10           **potpourri notice.**

11           **(6) If a taxpayer fails to make a return, the secretary shall make an estimate,**  
12           **based upon the information available, of the amount of taxes due for the period for**  
13           **which the taxpayer is delinquent, and shall add a penalty equal to ten percent of the**  
14           **amount of taxes due, plus interest on the delinquent taxes at the rate imposed under**  
15           **R.S. 47:1601. Thereafter, the department shall give to the delinquent taxpayer**  
16           **written notice of the estimated taxes, penalty, and interest, which notice shall be to**  
17           **the last address the taxpayer provided to the department. Such estimate shall**  
18           **constitute a notice of tax due as provided in R.S. 47:1562.**

19           **(7) The provisions of this Subsection shall terminate and cease to be**  
20           **effective upon the effective date of a federal law that requires remote or out of state**  
21           **dealers to collect and remit Louisiana state sales and use tax on their Internet, mail**  
22           **order, or other remote sales into the state. For purposes of this Paragraph, the**  
23           **department shall publish the effective date of the federal law in the Louisiana**  
24           **Register as a potpourri notice.**

25           Section 2. This Act shall become effective upon signature by the governor or, if not  
26 signed by the governor, upon expiration of the time for bills to become law without signature  
27 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
28 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
29 effective on the day following such approval.

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**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)]

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Pugh

HB No. 847

**Abstract:** Requires the annual payment of consumer use tax which is due on property and services bought from a remote seller who did not collect the tax due at the time of sale; further, provides a use tax table of safe harbor amounts which a taxpayer may pay instead of estimating actual use taxes due.

Present law imposes a total of 4% in state use tax on the use of certain tangible personal property and services.

Proposed law requires the annual reporting and payment of consumer use tax using a tax return (return) to be prescribed by the secretary of the Dept. of Revenue (secretary) beginning Jan. 1, 2015. The taxes and return are due on or before the 15th day of May following the close of the year in which the purchases were made.

Proposed law defines "taxpayer" for purposes of proposed law as a married couple filing a joint income tax return, or an individual filing an income tax return as either single, head of household, qualifying widow(er), or married filing separately. The definition of "taxpayer" does include a person who would otherwise not be required to file an income tax return under present law.

Proposed law excludes purchases by a business from the provisions of proposed law.

Present law requires dealers to collect sales and use tax on transactions involving taxable tangible personal property and services in La.

Proposed law excludes from proposed law any sales and use taxes due on sales by La. dealers who are required to collect sales and use tax at the time of sale pursuant to present law.

Proposed law provides for the content of and instructions for the return.

Proposed law requires the instructions for the return to include a use tax table which provides estimated use tax liabilities as "safe harbor" amounts which are based on a taxpayer's federal adjusted gross income for the previous year.

Proposed law requires that in reporting estimated use tax liabilities on the return, the taxpayer must elect to either calculate, report, and pay actual use tax liabilities, or to estimate use tax liabilities by paying the safe harbor amounts provided for such purpose in the use tax table. If a taxpayer utilizes the use tax table and pays the appropriate safe harbor amount for their income level, the secretary shall not assess the difference, if any, between the estimated use tax liabilities reported and paid and the taxpayer's actual use tax liabilities.

Proposed law prohibits the utilization of the use tax table and payment of a safe harbor amount for estimating use tax due on any item of tangible personal property which is required to be licensed or registered by any state or federal law.

Proposed law provides for the following safe harbor amounts:

<u>Consumer's federal adjusted gross income</u>	<u>Safe Harbor Amount</u>
Less than or equal to 10,000	\$4
\$10,000 to 20,000	\$12
\$20,000 to 30,000	\$20
\$30,000 to 40,000	\$28
\$40,000 to 50,000	\$36
\$50,000 to 70,000	\$48
\$70,000 to 80,000	\$60
\$80,000 to 100,000	\$72

If the taxpayer's adjusted gross income is greater than \$100,000 the safe harbor amount shall be determined by calculating the federal adjusted gross income by 0.0008.

Proposed law requires the department to annually determine the new use tax table for safe harbor amounts and to publish the schedule no later than the March issue of the La. Register as a potpourri notice. The safe harbor use tax table shall be recalculated based on consumer spending data published by the United States Bureau of Labor Statistics and the United States Census Bureau.

Proposed law provides that if a taxpayer fails to make a return, the secretary shall make an estimate, based upon the information available, of the amount of taxes due for the period for which the taxpayer is delinquent, and shall add a penalty equal to 10% of the amount of taxes due, plus interest on the delinquent taxes as provided by present law. Thereafter, the department shall provide to the delinquent taxpayer, written notice of the estimated taxes, penalty, and interest, which notice shall be mailed to the last address the taxpayer provided to the department.

Proposed law terminates and ceases to be effective upon the effective date of a federal law which requires remote sellers to collect and remit La. sales and use taxes on Internet, mail order, and other remote sales into the state.

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

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

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Ways and Means to the original bill.

1. Specified that the secretary of the Dept. of Revenue shall prescribe the tax return to be utilized for the annual payment of consumer use tax.
2. Excluded from the provisions of proposed law any purchases for which a La. dealer has a duty to collect sales and use tax pursuant to present law.
3. Defined "taxpayer" for purposes of proposed law.
4. Terminated proposed law on the effective date of a federal law which requires remote sellers to collect and remit La. sales and use taxes on their sales inside La.
5. Added effectiveness.