

2015 Regular Session

SENATE BILL NO. 199

BY SENATOR GALLOT

TAX/SALES. Constitutional amendment to provide for taxation of Internet and mail-order sales and to provide for dedication and distribution of the proceeds. (2/3-CA13s1(A)) (1/1/16)

1 A JOINT RESOLUTION

2 Proposing to add Article VII, Section 2.4 of the Constitution of Louisiana, relative to  
3 authorizing and dedicating state sales and use tax of the state; to authorize the state  
4 to levy and collect such tax on certain purchases in lieu of any political subdivision  
5 sales and use tax and to distribute the proceeds to political subdivisions; to dedicate  
6 certain state tax proceeds; to authorize the levy of state sales and use tax on certain  
7 Internet and mail-order sales; and to specify an election for submission of the  
8 proposition to electors and provide a ballot proposition.

9 Section 1. Be it resolved by the Legislature of Louisiana, two-thirds of the members  
10 elected to each house concurring, that there shall be submitted to the electors of the state, for  
11 their approval or rejection in the manner provided by law, a proposal to add Article VII,  
12 Section 2.4 of the Constitution of Louisiana, to read as follows:

13 **§2.4. Power to Tax; Sales and Use Tax on Internet and mail-order sales;**

14 **Out-of-State Sales Tax Collection Fund**

15 **A.(1) In addition to the law existing on the effective date of this**

16 **Paragraph, in order to expedite the collection of the sales tax and use tax on**

17 **Internet and mail-order sales, the following individuals or entities shall be**

1 considered a "dealer" and shall be responsible for collecting any use tax in the  
2 manner provided for by law:

3 (a) Any individual or entity transacting business in this state by  
4 maintaining directly, indirectly, or through a subsidiary, or a place or a location  
5 of business, or by having an independent contractor or any individual or entity  
6 operating within this state under the authority of or through an agreement with  
7 the individual or entity or the individual or entity's subsidiary irrespective of  
8 whether such place or location of business, or independent contractor, person,  
9 or entity is located in this state permanently or temporarily, or whether such  
10 individual or entity or the individual or entity's subsidiary is qualified to do  
11 business in this state.

12 (b) Any individual or entity soliciting business through or pursuant to  
13 an agreement with a Louisiana resident or business under which the resident  
14 or business, for a commission, referral fee, or other consideration of any kind,  
15 directly or indirectly, as an independent contractor or any other type of  
16 representative, refers potential customers, whether by link on an Internet  
17 website or otherwise, to the individual or entity, or the entity's subsidiary.

18 (c) Any individual or entity, if, for the immediately preceding four  
19 quarterly periods ending on the last day of February, May, August, and  
20 November, the cumulative total of such person's or entity's gross receipts from  
21 sales of tangible personal property delivered in this state exceeds two hundred  
22 thousand dollars and such individual or entity made more than one hundred  
23 sales of tangible personal property delivered in this state, unless the individual  
24 or entity can demonstrate, to the satisfaction of the secretary of the Department  
25 of Revenue, or his successor, that the individual or entity cannot reasonably be  
26 expected to have gross receipts in excess of two hundred thousand dollars or  
27 more than one hundred sales of tangible personal property delivered in this  
28 state for the next succeeding four quarterly periods ending on the last day of  
29 February, May, August, and November.

1           (d) Any individual or entity selling tangible personal property or  
2 services, the use of which is taxed pursuant to the laws of the state, which:

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

7           (ii) Uses the facilities or employees of a Louisiana retailer to advertise  
8 or promote sales by the individual to Louisiana purchasers, or to facilitate  
9 returns, issuance of refunds or credits, or adjustments on property sold by the  
10 individual or entity.

11           (iii) Solicits business and develops and maintains a market in Louisiana  
12 through an agent, salesman, independent contractor, solicitor, or other  
13 representative pursuant to an agreement with a Louisiana resident or business,  
14 hereinafter referred to collectively as "affiliated agent", under which the  
15 affiliated agent, for a commission, referral fee, or other consideration of any  
16 kind engages in activities in this state that inure to the benefit of the individual  
17 or entity in the individual or entity's development or maintenance of a market  
18 for its goods or services in the state, to the extent that those activities of the  
19 affiliated agent are sufficient to satisfy the nexus requirement of the United  
20 States Constitution. Furthermore, such activities of the affiliated agent shall  
21 include referral of potential customers to the individual or entity, either directly  
22 or indirectly, whether by link on an Internet website or otherwise.

23           (2)(a)In addition to those individuals or entities established as "dealers"  
24 who are responsible for collecting any use tax of the state pursuant to  
25 Subparagraph (1) of this Paragraph, the provisions of that Subparagraph shall  
26 be presumed by the secretary of the Department of Revenue or his successor,  
27 to apply to any individual or entity which holds a substantial ownership interest,  
28 directly or through a subsidiary, in a retailer maintaining sales locations in  
29 Louisiana; or to any entity which is owned in whole or in substantial part by a

1 retailer maintaining sales locations in Louisiana, or by a parent or subsidiary  
2 thereof.

3 (b) For the purposes of this Paragraph, "substantial ownership interest"  
4 means affiliated individuals or entities with respect to each other where one of  
5 such individuals or entities has an ownership interest of more than five percent,  
6 whether direct or indirect, in the other, or where an ownership interest of more  
7 than five percent, whether direct or indirect, is held in each of such entities by  
8 another individual or entity or by a group of other individuals or entities, which  
9 are affiliated individuals or entities with respect to each other.

10 (3) A dealer, as defined in and for purposes of this Paragraph, shall file  
11 all applicable sales and use tax returns and remittances through electronic filing  
12 options available for such purposes as provided by law.

13 (4) The provisions of this Paragraph providing that certain business  
14 activities conducted by certain individuals and entities establishes the individual  
15 as a dealer for purposes of sales and use tax levied by the state shall not be used  
16 in the determination of whether such individuals and entities are liable for the  
17 payment of income and franchise taxes levied by the state.

18 (5) Changes affecting any of the provisions of this Paragraph may be  
19 made by law enacted by a favorable vote of two-thirds of the elected members  
20 of each house of the legislature.

21 B. Notwithstanding any other provision of this constitution, in order to  
22 expedite the collection of the sales and use tax of political subdivisions on  
23 Internet and mail-order sales:

24 (1) The state may provide by law for the levy and collection of an  
25 additional sales and use tax at the same rate as the state sales and use tax upon  
26 sales of tangible personal property into the state by vendors who engage in the  
27 regular or systematic solicitation of consumers in this state, but who have no  
28 employees, solicitors, agents, inventory, sales locations or other business assets  
29 in the state. Such tax shall be otherwise levied and collected in the same manner

1 as is provided by law for the levy and collection of the state sales and use tax for  
2 the sole benefit of all local governmental subdivisions, school boards, or other  
3 political subdivisions which are granted the authority to levy taxes pursuant to  
4 Article VI, Section 29 of the Constitution of Louisiana or statute. The avails of  
5 such tax, less an administrative fee, shall be distributed to each such local  
6 governmental subdivision, school board, and political subdivision in the manner  
7 provided by law.

8 (2) The transactions taxable pursuant to this Paragraph shall be  
9 excluded from the sales and use tax of any local governmental subdivision,  
10 school board, or other political subdivision.

11 C.(1) The secretary of the Department of Revenue shall provide written  
12 notification to the commissioner of administration and to the chairs of the  
13 Senate Committee on Finance and the House Committee on Appropriations of  
14 the following:

15 (a) The effective date of any federal law which the secretary determines  
16 will directly or indirectly cause or require vendors located out-of-state to collect  
17 and remit Louisiana state sales and use tax on their Internet, mail-order, or  
18 other sales into the state.

19 (b) That he has determined that the provisions of Paragraph A of this  
20 Section has caused a substantial increase in the collections of state sales and use  
21 tax on Internet, mail-order, or other sales into the state.

22 (2)(a) The estimated amount of state sales and use taxes collected from  
23 vendors located out-of-state on Internet, mail-order, or other sales into the state  
24 either because of a federal law or because of the provisions of Paragraph A of  
25 this Section shall be deposited upon receipt in the state treasury.

26 (b) After compliance with the requirements of Article VII, Section 9(B)  
27 of the Constitution of Louisiana relative to the Bond Security and Redemption  
28 Fund and prior to any money being placed into the general fund or any other  
29 fund, an amount equal to that deposited as required by Subparagraph (1) of this

1           **Paragraph shall be credited by the treasurer to a special fund hereby created**  
2           **in the state treasury to be known as the Out-of-State Sales Tax Collection Fund.**  
3           **Subject to an annual appropriation by the legislature, monies in the fund shall**  
4           **be allocated and restricted to the following purposes:**

5                       **(i) Seventy-five percent shall be used for public institutions of higher**  
6                       **education for operational expenses.**

7                       **(ii) The remaining twenty-five percent shall be used for the provision of**  
8                       **health care services.**

9                       **(c)(i) The money in the fund shall be invested by the treasurer in the**  
10                      **same manner as money in the state general fund and interest earned on the**  
11                      **investment of the money shall be credited to the fund after compliance with the**  
12                      **requirements of Article VII, Section 9(B) relative to the Bond Security and**  
13                      **Redemption Fund.**

14                      **(ii) All unexpended and unencumbered money in the fund at the end of**  
15                      **the fiscal year shall remain in the fund.**

16           Section 2. Be it further resolved that it is the intention of this proposed amendment  
17           that the provision of law codified as R.S. 47:302(K) of the Louisiana Revised Statutes of  
18           1950 shall be considered as the law which implements the provisions of this proposed  
19           amendment.

20           Section 3. Be it further resolved that this proposed amendment shall become effective  
21           on January 1, 2016.

22           Section 4. Be it further resolved that this proposed amendment shall be submitted  
23           to the electors of the state of Louisiana at the statewide election to be held on October 24,  
24           2015.

25           Section 5. Be it further resolved that on the official ballot to be used at said election  
26           there shall be printed a proposition, upon which the electors of the state shall be permitted  
27           to vote YES or NO, to amend the Constitution of Louisiana, which proposition shall read as  
28           follows:

29                       Do you support an amendment to redefine the law to attempt to collect sales

1 tax from Internet and mail-order sellers; to dedicate sales tax collected from  
 2 Internet and mail-order sellers to a fund to pay 75% of the fund for the  
 3 operational expenses of public institutions of higher education and 25% for  
 4 providing health care services; and to authorize the state to levy and collect  
 5 an additional sales tax at the same rate as the state sales tax upon sales into  
 6 the state by Internet and mail-order vendors who have no contacts with the  
 7 state, such tax to be levied in lieu of any local sales tax and to be distributed  
 8 to each political subdivision in the manner provided by law?  
 9 (Adds Article VII, Section 2.4 )

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The original instrument and the following digest, which constitutes no part  
 of the legislative instrument, were prepared by Riley Boudreaux.

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	DIGEST	
SB 199 Original	2015 Regular Session	Gallot
	In-Lieu Sales Tax	

Present constitution authorizes "local governmental subdivisions" (defined as parishes and municipalities) and school boards to levy sales and use taxes.

Present constitution authorizes the legislature to grant tax authority to political subdivisions and special districts.

Proposed constitutional amendment authorizes the state to provide by law for the levy and collection of an additional sales and use tax at the same rate as the state sales and use tax upon sales into the state by vendors who engage in the regular or systematic solicitation of consumers in this state, but who have no employees, solicitors, agents, inventory, sales locations, or other business assets in the state. The tax is to be levied and collected in the same manner as is provided by law for the levy and collection of the state sales tax. The avails of the tax must be distributed to each political subdivision in the manner provided by law. Such taxable transactions are excluded from the sales tax of political subdivisions.

#### Dedication of Internet and Mail-Order Sales Tax

Proposed constitutional amendment requires the secretary of the Department of Revenue to provide written notification to the commissioner of administration and to the chairs of the Senate Committee on Finance and the House Committee on Appropriations of the following:

- (1) The effective date of any federal law which the secretary determines will directly or indirectly cause or require vendors located out-of-state to collect and remit Louisiana state sales and use tax on their Internet, mail-order, or other sales into the state.
- (2) That he has determined that the provisions of the proposed constitutional amendment expanding the definition of "dealer" (below) has caused a substantial increase in the collections of state sales and use tax on Internet, mail-order, or other sales into the state.

Proposed constitutional amendment creates the Out-of-State Sales Tax Collection Fund in

the state treasury to receive the estimated amount of state sales and use taxes collected from vendors located out-of-state on Internet, mail-order, or other sales into the state because of such federal law or because of the provisions of the proposed constitutional amendment expanding the definition of "dealer" (below).

Proposed constitutional amendment provides that the money in the fund shall be appropriated by the legislature to be allocated and restricted to the following purposes:

- (1) 75% shall be used for public institutions of higher education for operational expenses.
- (2) The remaining 25% shall be used for the provision of health care services.

Proposed constitutional amendment provides that interest earnings on the fund shall be credited to the fund and all unexpended and unencumbered monies in the fund at the end of the fiscal year shall remain in the fund.

#### Redefining "Dealer" to Include Internet and Mail-Order Sales

Proposed law, in addition to present law existing on the effective date of the proposed constitutional amendment, in order to expedite the collection of the sales tax and use tax on Internet and mail-order sales, requires the following individuals or entities to be considered a "dealer" responsible for collecting any use tax in the manner provided for by law:

- (1) Any seller, or seller's subsidiary, transacting business in this state at a place or a location of business, or by having an independent contractor or any individual or entity operating under the authority of or through an agreement with him irrespective of whether such place or location of business, or independent contractor, person, or entity is located in this state permanently or temporarily, or whether such seller or seller's subsidiary is qualified to do business in this state.
- (2) Any seller soliciting business through or pursuant to an agreement with a Louisiana resident or business under which the resident or business, for consideration as an independent contractor or representative, refers potential customers, whether by link on an Internet website or otherwise, to the seller, or the seller's entity's subsidiary.
- (3) Any seller for four quarterly periods has a cumulative total of sales in this state exceeding \$250,000 and more than 100 sales delivered in this state, unless the seller cannot reasonably be expected to have the same delivered in this state for the next succeeding four quarterly periods.
- (4) Any seller who:
  - (a) Sells the same or substantially similar line of products as a Louisiana retailer under the same or a substantially similar business name, using the same trademarks, service marks, or trade names that are the same or substantially similar to those used by the Louisiana retailer.
  - (b) Uses the facilities or employees of a Louisiana retailer to advertise or promote sales to Louisiana purchasers, or to facilitate returns, issuance of refunds or credits, or adjustments on property sold by the seller.
  - (c) Solicits business and develops and maintains a market in Louisiana through an agent, salesman, independent contractor, solicitor, or other representative pursuant to an agreement with a Louisiana resident or business, hereinafter referred to collectively as "affiliated agent", under which the affiliated agent, for consideration engages in activities in this state that inure to the benefit of



the seller in the seller's development or maintenance of a market for its goods or services in the state, to the extent that those activities of the affiliated agent are sufficient to satisfy the nexus requirement of the U. S. Constitution. The activities of the affiliated agent includes referral of potential customers to the seller, either directly or indirectly, whether by link on an Internet website or otherwise.

- (5) The secretary of the Department of Revenue is to presume that the criteria for a "dealer" (above) applies to any seller which holds a substantial ownership interest, directly or through a subsidiary, in a retailer maintaining sales locations in Louisiana; or to any entity which is owned in whole or in substantial part by a retailer maintaining sales locations in Louisiana, or by a parent or subsidiary thereof.

"Substantial ownership interest" is defined as affiliated sellers with respect to each other where one of such sellers has an ownership interest of more than 5%, whether direct or indirect, in the other, or where an ownership interest of more than 5%, whether direct or indirect, is held in each of such sellers by another seller or by a group of other sellers, which are affiliated sellers with respect to each other.

- (6) Such "dealers" must file all applicable sales tax returns and remittances through electronic filing options available for such purposes as provided by law.
- (7) The provisions of this portion of the proposed constitutional amendment shall not be used in the determination of whether such sellers are liable for the payment of income and franchise taxes.
- (8) Changes affecting any of the provisions of this portion of the proposed constitutional amendment may be made by a law enacted by a favorable vote of 2/3 of the elected members of each house of the legislature.

Effective January 1, 2016.

Specifies submission of the amendment to the voters at the statewide election to be held on October 24, 2015.

(Adds Const. Art. VII, Sec. 2.4)