

**ACT No. 5**

2018 Second Extraordinary Session

HOUSE BILL NO. 17

BY REPRESENTATIVES FOIL AND FALCONER

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AN ACT

To amend and reenact R.S. 47:315.1(A) and 339(A)(2) and (B)(3) and to enact R.S. 47:301(4)(m) and 302(W)(6), relative to sales and use tax; to provide with respect to collection and reporting of sales and use taxes; to provide for the definition of dealer; to provide for certain state sales and use tax refunds; to provide for effectiveness; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 47:315.1(A) and 339(A)(2) and (B)(3) are hereby amended and reenacted and R.S. 47:301(4)(m) and 302(W)(6) are hereby enacted to read as follows:

§301. Definitions

As used in this Chapter the following words, terms, and phrases have the meanings ascribed to them in this Section, unless the context clearly indicates a different meaning:

\* \* \*

(4) "Dealer" includes every person who manufactures or produces tangible personal property for sale at retail, for use, or consumption, or distribution, or for storage to be used or consumed in a taxing jurisdiction. "Dealer" is further defined to mean:

\* \* \*

(m)(i) Any person who sells for delivery into Louisiana tangible personal property, products transferred electronically, or services, and who does not have a physical presence in Louisiana, if during the previous or current calendar year either of the following criteria was met:

1                    ~~(aa) The person's gross revenue for sales delivered into Louisiana has~~  
 2                    ~~exceeded one hundred thousand dollars from sales of tangible personal property,~~  
 3                    ~~products transferred electronically, or services.~~

4                    ~~(bb) The person sold for delivery into Louisiana tangible personal property,~~  
 5                    ~~products transferred electronically, or services in two hundred or more separate~~  
 6                    ~~transactions.~~

7                    ~~(ii) A person without a physical presence in Louisiana may voluntarily~~  
 8                    ~~register for and collect state and local sales and use taxes as a dealer, even if they do~~  
 9                    ~~not meet the criteria established in Item (i) of this Subparagraph.~~

10                                               \*           \*           \*

11                    §302. Imposition of tax

12                                               \*           \*           \*

13                                               W.

14                                               \*           \*           \*

15                    ~~(6) Until the establishment of the Louisiana Sales and Use Tax Commission~~  
 16                    ~~for Remote Sellers pursuant to R.S. 47:339(A)(2) and (B)(3), dealers as defined in~~  
 17                    ~~R.S. 47:301(4)(m), shall specifically collect the additional tax authorized by~~  
 18                    ~~Subsection K of this Section and shall file all applicable sales and use tax returns.~~  
 19                    ~~In consultation with the commission, the secretary of the Department of Revenue~~  
 20                    ~~shall publish notification of the establishment date of the Louisiana Sales and Use~~  
 21                    ~~Tax Commission for Remote Sellers in a policy statement as authorized by LAC~~  
 22                    ~~61:III .101.~~

23                                               \*           \*           \*

24                    §315.1. Sales tax refund

25                    ~~A.(1) In the event tangible personal property, a part of and used in or about~~  
 26                    ~~a person's home, apartment or homestead, in this state on which Louisiana sales tax~~  
 27                    ~~has been paid by the owner of the property is destroyed by a natural disaster~~  
 28                    ~~occurring in an area in Louisiana subsequently determined by the president of the~~  
 29                    ~~United States to warrant assistance by the federal government, the owner thereof~~  
 30                    ~~who was the purchaser who paid the Louisiana sales tax shall be entitled to~~

1 reimbursement of the amount of the tax paid on such tangible personal property  
 2 destroyed for which no reimbursement was received by insurance or otherwise. Upon  
 3 receipt of a notarized statement of the owner as to the amount of the taxes paid under  
 4 the provisions of this Chapter on tangible personal property destroyed as aforesaid,  
 5 the collector shall make refund to said owner in the amount to which he is entitled.

6 (2) The refund authorized by this Subsection shall extend to tangible  
 7 personal property, including construction materials, that was a part of and used in or  
 8 about a nonpublic school which sustained damage in the flooding disaster which  
 9 occurred in August 2016, which event was the subject of Proclamation 111 JBE  
 10 2016, and numerous executive orders. In order to be eligible for the refund of  
 11 Louisiana sales taxes, the owner of a nonpublic school shall be required to meet the  
 12 same eligibility and administrative requirements as is provided for in Paragraph (1)  
 13 of this Subsection and the school shall be eligible to participate in the Federal  
 14 Emergency Management Agency Public Assistance grant program.

15 \* \* \*

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

17 A. The Louisiana Sales and Use Tax Commission for Remote Sellers,  
 18 hereinafter referred to as "commission", is created and established within the  
 19 Department of Revenue for the administration and collection of the sales and use tax  
 20 imposed by the state and political subdivisions with respect to remote sales. The  
 21 commission shall:

22 \* \* \*

23 (2) ~~With~~ Serve as the single entity in Louisiana to require remote sellers and  
 24 their designated agents to collect from customers and remit to the commission, sales  
 25 and use taxes on remote sales sourced to Louisiana on the uniform Louisiana state  
 26 and local sales and use tax base established by Louisiana law with respect to any  
 27 federal law as may be enacted by the United States Congress or final ruling by the  
 28 United States Supreme Court authorizing states to require remote sellers to collect  
 29 and remit state and local sales and use taxes on their sales in each state, except those  
 30 remote sellers who qualify for ~~the small seller~~ exceptions as may be provided by

1 federal law, ~~serve as the single entity in Louisiana to require remote sellers and their~~  
 2 ~~designated agents to collect from customers and remit to the commission sales and~~  
 3 ~~use taxes on remote sales sourced to Louisiana on the uniform Louisiana state and~~  
 4 ~~local sales and use tax base established by Louisiana law.~~

\* \* \*

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

\* \* \*

9 (3) "Federal law" shall mean any federal law as may be enacted by the  
 10 United States Congress or final ruling by the United States Supreme Court  
 11 authorizing states to require remote sellers, except those remote sellers who meet ~~the~~  
 12 ~~small seller~~ exceptions of provided by federal law, to collect and remit sales and use  
 13 taxes on remote sales sourced to Louisiana.

\* \* \*

15 Section 2. The provisions of this Act shall apply to all taxable periods beginning on  
 16 or after the date of the final ruling by the United States Supreme Court in *South Dakota v.*  
 17 *Wayfair Inc, Overstock.Com, Inc., and Newegg Inc.*, No. 17-494 (U.S. filed October 2, 2017)  
 18 finding South Dakota 2016 Senate Bill No. 106 constitutional.

19 Section 3. This Act shall become effective upon signature by the governor or, if not  
 20 signed by the governor, upon expiration of the time for bills to become law without signature  
 21 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
 22 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
 23 effective on the day following such approval.

\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

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