

LOUISIANA

DEPARTMENT *of* REVENUE

Legislative and Remote Sellers Commission Updates

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**2019 Annual LDR &
LSBA Tax Section
Liaison Meeting**
November 8, 2019

Informal Advice

This communication constitutes “informal advice” from the Office of Legal Affairs of the Louisiana Department of Revenue as contemplated by LAC 61:III.101 and is not binding on the Department of Revenue or the person seeking the advice.

2019 Regular Legislative Session Updates and Policy Guidance

Act 199 - Expansion of Commercial Farmer

- Creates a “student farmer exemption” for sales and use tax purposes
 - Student farmer
 - Individual under age 23
 - Enrolled in FFA, 4-H, or similar student agricultural program
 - Sales tax exemption
 - Feed and feed additives for livestock
 - Seeds or plants to produce food for consumption
 - Fertilizer to produce food for consumption by humans or livestock

Applicable to taxable periods beginning on or after January 1, 2020

Act 366 - Second Expansion of Commercial Farmer

- Definition of “commercial farmer” expanded to include landowners
 - Landowner must be party to a joint venture and lease land to commercial farmer
 - Landowner must submit documentation of
 - Joint venture arrangement
 - Report of farm income and expenses, including proof of lease income, from joint venture on federal tax form

Act 247 - Industrial Hemp-Derived CBD Tax

- Excise tax levy of 3% on each retail sale of industrial hemp-derived CBD products within the state
 - Tax reported monthly and due on the 20th day of the month following month of collection
 - Tax does not apply to sale of CBD products that
 - Has been approved for marketing as prescription by FDA
 - Recommended for therapeutic use
 - Dedicated to Early Childhood Education Fund

Act 286 - Rideshare Fee

- Levy of an state assessment fee of 1% of the gross trip fare for all prearranged rides that originate in the state
 - Gross trip fare is the base fare plus any time or distance charges, excluding additional charges such as airport or venue fees
 - Fee is remitted on a quarterly basis no later than 30 days following the close of the calendar quarter
 - LDR has sole audit authority for state and local fees

Act 304 - Ordering of Corporate NOLs

- Reverses the 2016 legislative change for ordering of corporate NOLs

Tax Year	Ordering Method
2016 and Previous Year	NOL from <u>oldest year</u> is applied to the taxable year
2017, 2018, and 2019 <i>Act 24 (1ES2016)</i>	NOL from the <u>most recent year</u> is applied to the taxable year
2020 and Future Years	NOL from <u>oldest year</u> is applied to the taxable year

- Applicability date prevents amended returns

Effective: June 11, 2019

Applicable to all tax years beginning on and after January 1, 2020

Act 331 - Therapeutic Marijuana

- Department of Agricultural assesses a 7% fee on gross sales of therapeutic marijuana
 - LDR charged with collection responsibility of fee
 - Fee is dedicated to the Community and Family Support System Fund
- Modification to corporation income
 - At federal level, taxpayers cannot deduct expenses incurred in carrying on a business selling illegal drugs
 - Modification allows Louisiana corporations to claim those expenses for state tax purposes
- Sales tax exemption for therapeutic marijuana

Act 338 - Small Town Doctor Credit

- Expands the list of health professionals eligible for the Small Town Doctor Credit
 - Former list
 - Physician
 - Dentist
 - Nurse practitioner
 - Expanded to include
 - Physician assistant
 - Optometrist
- Credit amount of lesser of tax due or \$3,600 for 5 years unchanged
- Cap of \$1.5M unchanged

Act 364 - Sales Tax Exemption on Antiques

- State and local sales tax exemption on sale of antique motor vehicles
 - Vehicle was manufactured at least 25 years ago and not used commercially
 - Vehicle valued in excess of \$10,000
 - Registers for antique license plate
- The fee for an antique was increased from \$25 to \$1,000.

Act 419 - Motor Vehicle Sales Tax Rebate

- Rebate of state sales tax paid on motor vehicle
 - Rebate paid to purchaser of a motor vehicle that is modified for operation by or transportation of a person who is permanently orthopedically disabled at time of purchase
 - Modifications must be based on prescription or letter from doctor, chiropractor, or driver rehabilitation specialist
 - Purchaser must submit this documentation and evidence of purchase and modification of vehicle
 - Rebates paid from current sales tax collections

Act 442 - Passthrough Entity Tax

- The election allows Subchapter S corporations, and other flow-through entities taxed as partnership for federal income tax purposes, to elect to pay Louisiana income tax at the entity level
 - Resident and nonresident individuals may exclude the passthrough income for individual income tax purposes if the income was taxed at entity level
 - Cannot exclude income not taxed at entity level (interest and dividends)

Act 442 - Rates

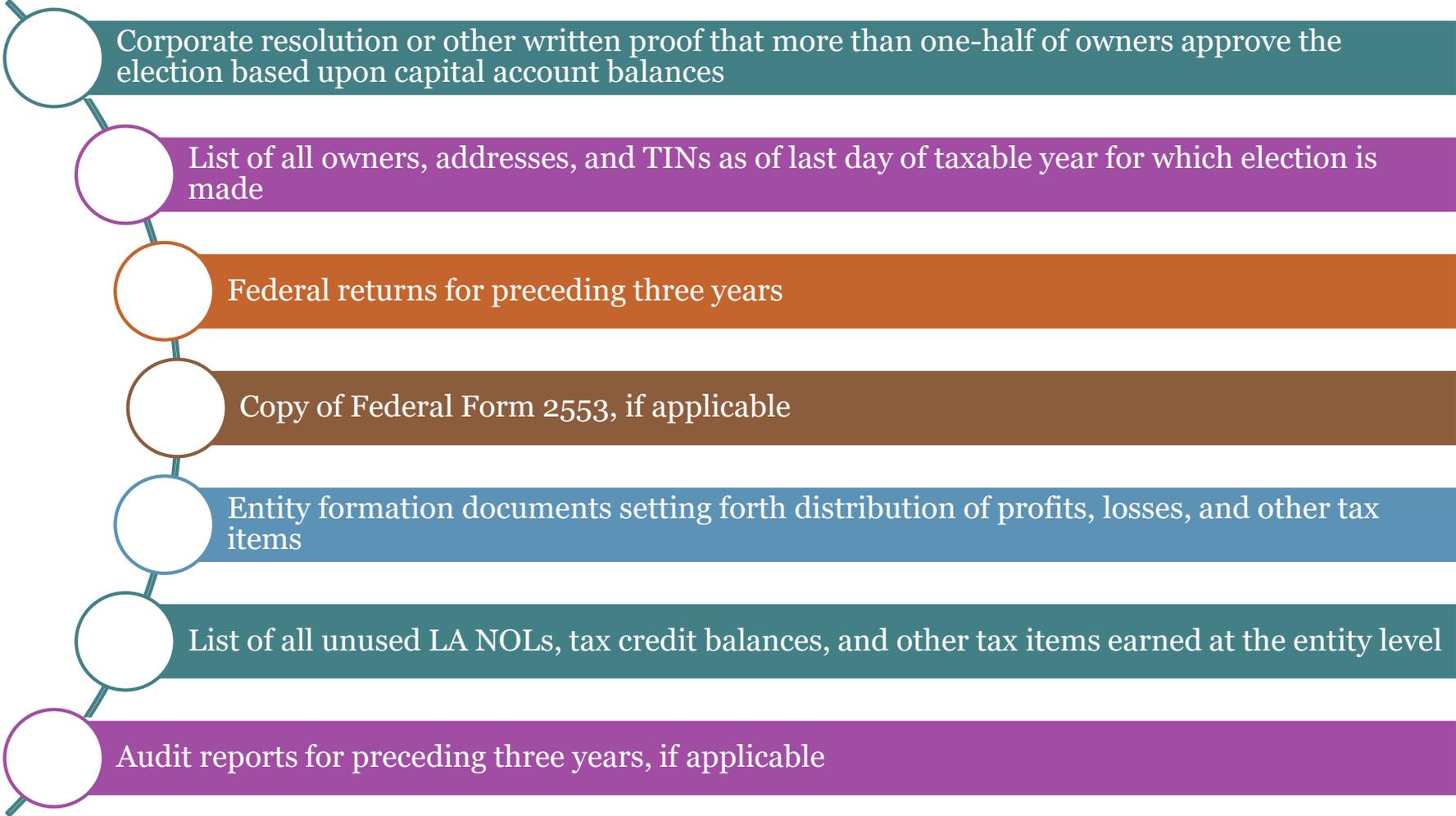
- The tax rates mirror the individual income tax rates with a married filing jointly status
- No combined standard deduction and personal exemption for the first bracket

Taxable Income	Tax Rate
\$0 - \$25,000	2%
\$25,001 - \$ 100,000	4%
\$100,001 and higher	6%

Act 442 and NOI - Election

- Form R-6980, *Tax Election for Pass-Through Entities*
- Timing
 - During the preceding taxable year
 - During the taxable year, or
 - On or before the 15th day of fourth month after the close of the taxable year
- Late filed elections may be accepted if reasonable cause exists for failure to make election timely
- LDR will start accepting elections on February 1, 2020

NOI - Election Requirements



Corporate resolution or other written proof that more than one-half of owners approve the election based upon capital account balances

List of all owners, addresses, and TINs as of last day of taxable year for which election is made

Federal returns for preceding three years

Copy of Federal Form 2553, if applicable

Entity formation documents setting forth distribution of profits, losses, and other tax items

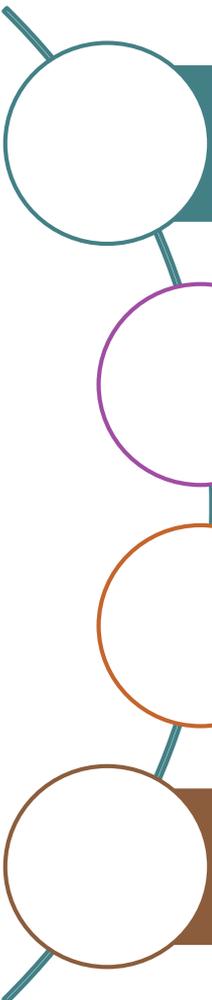
List of all unused LA NOLs, tax credit balances, and other tax items earned at the entity level

Audit reports for preceding three years, if applicable

Act 442 and NOI - FIT Deduction & Credits

- Entity receives a federal income tax deduction equal to the federal income tax the entity would have paid on its Louisiana net income if the entity had been required to file as a C Corporation
 - Current federal income tax rate for C Corporations is 21%
- Credits earned by the passthrough entity only apply at the entity level

NOI - Documentation for Return



Pro forma Federal Form 1120 completed as if the entity had filed as a C corporation for federal tax purposes including all necessary federal schedules to compute the amount of federal tax that would have been due

Schedules K-1 as actually issued to the owners of the entity for the taxable year

Form R-6981, *Statement of Owner's Share of Entity Level Tax Items* (reflects any income that remains taxable to the entity's owners such as interest and dividends)

Form R-6982, *Schedule of Tax Paid if Paid by Owner* (calculates how much tax would have been due if the entity had passed the income through to its owners and the tax had been paid at the owner level)

NOI - NOLs and E-File Mandate

- Net operating losses earned in the year the election was made or after the election was made are tax items of the entity and the loss and its carryforward must be reported on the CIFT-620.
 - Net operating losses earned in tax years prior to the election that have previously passed through to the owners are tax items of the owners and any carryforward remaining can only be used on individual income tax return.
- NOI mandates electronic filing of the CIFT-620 and all supporting documentation for any entity making the election.

Act 442 and NOI - Election

- Effective for taxable year in which the election is made and all succeeding taxable years
- Termination of Election
 - Request may be submitted to Secretary if shareholders, partners, or members holding more than 50% of the ownership interest consent to revocation request
 - Secretary may terminate election if entity shows a material change in circumstance
 - Request to termination of election must be submitted as a PLR to the Secretary
- Terminations may only apply prospectively.
 - No termination may apply to a period in which a return has already been filed.

Purpose of Passthrough Entity Tax

- During testimony before the Committees on Ways and Means and Revenue and Fiscal Affairs, the President of S Corporation Association stated the purpose of this measure is to avoid the \$10,000 SALT limitation imposed by Congress as part of the Tax Cuts and Jobs Act.
- The AICPA released a position paper in October 2018 detailing concerns with this workaround.

Example

1. S Corporation has taxable income of \$10 million dollars.
2. S Corporation has 3 shareholders. Each shareholder files married filing jointly with no dependents.
3. Each shareholder itemizes deductions at the federal level. Itemized deductions are average amount based on range of income.

	2017		2018		2019	
	Shareholder		Shareholder		Shareholder	S Corporation
	Federal	Louisiana	Federal	Louisiana	Federal	Files Election
Adjusted Gross Income/Taxable Income	3,333,333	3,333,333	3,333,333	3,333,333	3,333,333	9,410,000
Itemized Deductions	(375,000)	(362,300)	(266,236)	(242,236)	(260,696)	
Exemptions	(8,100)					
Federal Income Tax Deduction (LA Only)		(1,113,523)		(1,074,205)		(1,976,100)
Taxable Income (Shareholder)	2,950,233	1,857,510	3,067,097	2,016,892	3,072,637	7,433,900
Tax	1,113,523	108,764	1,074,205	114,304	1,076,255	443,887

- Assuming election is taken, Shareholders would each pay \$147,962 for S Corporation liability (\$443,887/3).
- Election results in \$100,975 higher tax at S Corporation level. *(Revenue increase for Louisiana of \$100,975.)*

Guidance on Federal Tax Reform

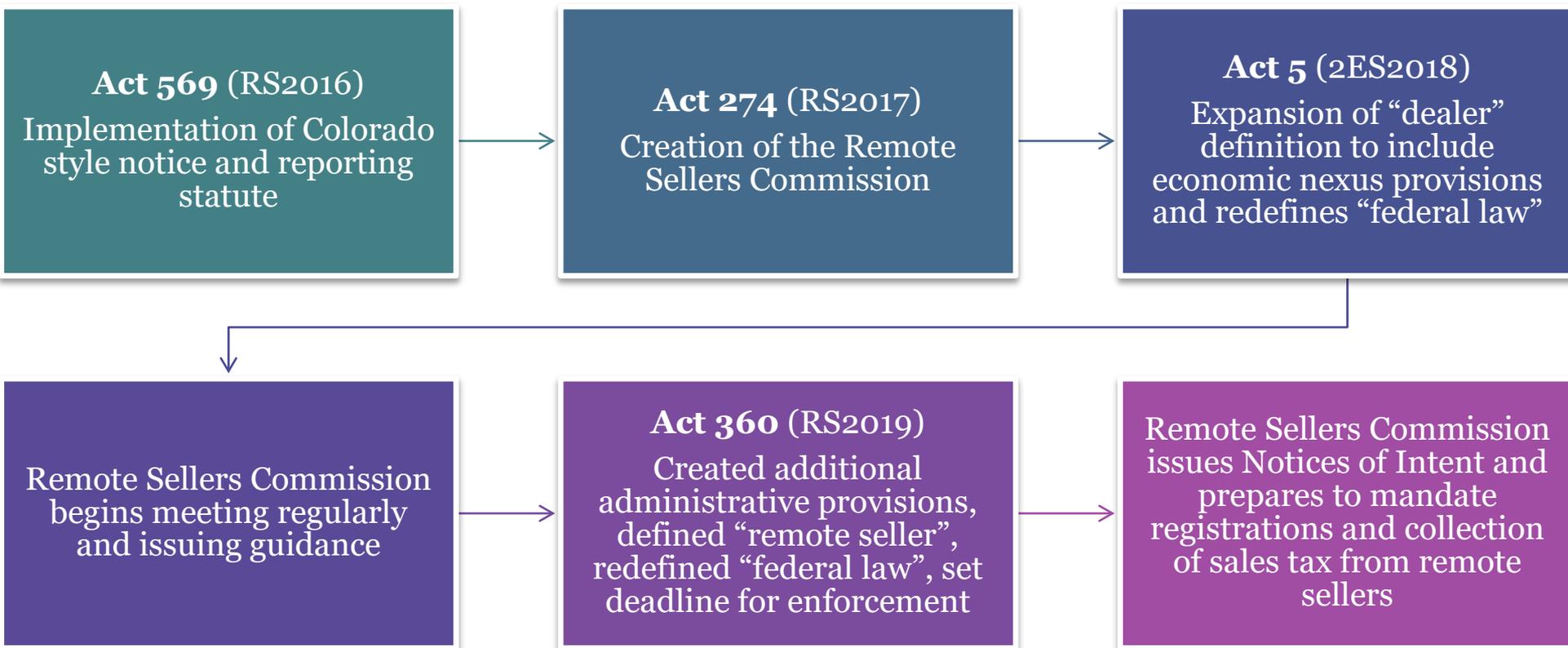
- RIB 19-010
 - Base Erosion and Anti-Abuse Tax (“BEAT”)
 - BEAT replaced the repealed corporate AMT
 - BEAT is structured to apply when a multinational corporation reduces its regular U.S. tax liability to less than 3% of its taxable income after adding back deductible base eroding payments and a percentage of tax losses claimed that were carried from another year.
 - BEAT is not eligible for the corporate Federal Income Tax deduction.

Guidance on Federal Tax Reform

- RIB 19-016
 - Global Intangible Low-Tax Income (“GILTI”)
 - Corporations
 - GILTI income is classified as dividend income and not subject to Louisiana CIT
 - However, related GILTI deduction must be added-back for Louisiana tax purposes (*See LA R.S. 47:287.81*)
 - Individuals and Fiduciaries
 - GILTI income is included in Federal AGI (individuals) and Federal Taxable Income (fiduciaries)
 - Subject to Louisiana income tax without modification

Remote Sellers Commission Updates

Louisiana Timeline



Remote Sellers Application and Return Process

Remote Seller submits Form R-1031A, *Application to File Direct Marketer Sales Tax Return* to Department electronically.



Department reviews application with emphasis on whether physical presence exists.



If no physical presence, the Department approves the application and issues an Approval Letter.



Department distributes tax to local political subdivisions on quarterly basis in accordance with LA R.S. 47:302(K).



Remote Sellers remits tax on Form R-1031, *Direct Marketer Sales Tax Return* electronically (Tax collected in Month 1 must be remitted by the 20th day of Month 2.)



On or after the date of the Approval Letter, Remote Seller begins collection of sales tax at combined 8.45% rate.

Historical Collections of Sales Tax from Remote Sellers Pursuant to R.S. 47:302(K)

Fiscal Year	Tax Rate*	Period of Collections	Direct Marketer Return
FY2016	8%	July 2015 - March 2016**	358,536.00
	9%	April 2016 - June 2016	464,713.00
			823,249.00
FY2017	9%	July 2016 - Sept 2016	737,746.00
	9%	Oct 2016 - Dec 2016	646,354.00
	9%	Jan 2017 - March 2017	748,072.00
	9%	April 2017 - June 2017	982,419.00
			3,114,591.00
FY2018	9%	July 2017 - Sept 2017	1,033,600.00
	9%	Oct 2017 - Dec 2017	901,082.00
	9%	Jan 2018 - Mar 2018	934,299.20
	9%	April 2018 - June 2018	744,705.00
			3,613,686.20
FY2019	8.45%	July 2018 - Sept 2018	741,775.26
	8.45%	Oct 2018 - Dec 2018	1,389,027.26
	8.45%	Jan 2019 - Mar 2019	3,361,593.03
	8.45%	April 2019 - June 2019	5,906,932.83
			11,399,328.38
FY2020	8.45%	July 2019 - Sept 2019	11,125,804.13
			30,076,658.71

Definition of “Remote Seller”

General Definition of Remote Seller

A remote seller means a seller who sells for sale at retail, use, consumption, distribution, or for storage to be used for consumption or distribution any taxable tangible personal property, products transferred electronically, or services for delivery within Louisiana but does not have physical presence in Louisiana.

If a seller has physical presence in Louisiana, the seller is considered a dealer as defined by LA R.S. 47:301(4) and subject to state and local collection and remittance requirements.

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

What if the Remote Seller is found to have physical presence after Approval Letter is issued?

- If the Department discovers the Remote Seller has physical presence in Louisiana, the Approval Letter will be rescinded and authorization to collect and remit pursuant to LA R.S. 47:302(K) will be revoked.
 - Depending on the facts and circumstances, legal action may be pursued against Remote Seller.
- The Department will issue notice of rescinded Approval Letters to local political subdivisions through LATA.

What if a Remote Seller registered with the local tax collector and was later issued an Approval Letter?

- If the Remote Seller mistakenly registered with local tax collectors, but does not have physical presence, the Department will issue the Approval Letter. However, the Approval Letter will contain language that the Remote Seller must resolve local registrations.
- The Department will issue notice to local political subdivisions through the Uniform Local Sales Tax Board of the approved Remote Seller that has previously registered with local tax collectors, if known.

Approval Letter

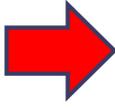
(Remote Seller Previously Registered in One or More Parishes)

RE: Approval of Application to File Direct Marketer Return

Dear Remote Seller:

This will serve as your approval letter to file the Direct Marketer Sales Tax Return. This approval is based on the information provided by you on your application. You have a duty to provide complete and accurate information and to supplement or amend your application should any information change, including but not limited to issues related to physical presence in Louisiana.

As a qualifying remote seller, you may now collect and remit sales and use tax in accordance with Louisiana Revised Statute 47:302(K)(5). Beginning July 1, 2018, the combined state and local sales tax to be collected pursuant to La. R.S. 47:302(K) is 8.45%.



However, as you are currently registered in a number of parishes, we recommend that you contact each parish to resolve your account status and any other outstanding issues. By copy of this letter, we have notified the parishes of our decisions to approve your application with an effective date of March 1, 2019.

What about Louisiana taxpayers in parishes with a rate less than 4%?

R-1031S (7/19)

LOUISIANA
DEPARTMENT of REVENUE

**Claim for Refund of Tax Remitted
to Direct Marketer**
LA R.S. 47:302(W)

Mail to:
Louisiana Department of Revenue
Taxpayer Compliance Division-SSEW
P.O. Box 66362
Baton Rouge, LA 70896-6362
Phone: (225) 219-2270
Email: LDRTax.Refunds@LA.gov

Refund Request Schedule (Please round to the nearest dollar)				
1	2	3	4	5
Reporting Period Year _____	Total Purchase Price per Period	Additional Use Tax Rate (4% of 8.45%)	Additional Use Tax Remitted to Direct Marketer (Col 2 x 3)	Local Use Tax Paid to Local Collector (Col 2 x applicable local rate)
Jan	\$	4%	\$	\$
Feb	\$	4%	\$	\$
March	\$	4%	\$	\$
April	\$	4%	\$	\$
May	\$	4%	\$	\$

What is included in the quarterly distributions?

- In addition to tax remitted by Remote Sellers, the quarterly distributions also include consumer use tax reported by individual income taxpayers.

Consumer Use Tax Collections			
April 1, 2019 through June 30, 2019			
	Total Collections	State Collections	Parish Collections
Individual Income Tax Return	\$922,726.56	500,682.03	\$422,044.53
Consumer Use Tax Return R-1035	14,548.04	7,862.53	6,685.51
Direct Marketers- Catalog R-1031	5,906,932.83	3,110,751.52	2,796,181.31
Total Consumer Use Tax Collected	\$6,844,207.43	\$3,619,296.08	\$3,224,911.35
Less LDR Collection Fee			(32,249.11)
Less Distribution to BTA			(234,000.00)
Remaining Balance Distributed to Parishes			\$2,958,662.24

