

Frequently Asked Questions Louisiana Sales and Use Tax on Remote Sales

1. What is a Remote Seller?

A Remote Seller is 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.

For more information, refer to *Remote Sellers Information Bulletin 18-002: Definition of Remote Seller and Further Guidance to Remote Sellers.*

2. What if a seller has 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.

3. What is physical presence?

Physical presence includes, but is not limited to, the following activities in Louisiana, whether done permanently or temporarily, directly or indirectly or through an agent or subsidiary:

- owning or operating retail spaces;
- owning, leasing, maintaining, occupying, or using, an office, place of distribution, sales or sample room, warehouse or storage place or other place of business;
- having an employee, representative, agent, salesman, canvasser or solicitor operating in Louisiana under the authority of the retailer or subsidiary; and
- storage of property in third party facility.

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

4. Is there a minimum threshold for physical presence?

No.

5. What is nexus (for sales tax purposes)?

Nexus can be established by either physical presence or economic nexus. A seller having physical presence is a Dealer and subject to regular state and local sales tax collection and remittance requirements. A seller without physical presence but having economic nexus is a Remote Seller. Presently, Direct Marketers voluntarily register, collect and remit sales and use tax through the Louisiana Department of Revenue ("LDR") using the Direct Marketer application and reporting forms (i.e., Form R-1031A, *Application to File Direct Marketer Sales Tax Return*, and Form R-1031, *Direct Marketer Sales Tax Returns*).

6. What is the difference between a Remote Retailer, Direct Marketer, and Remote Seller?

While the terms appear synonymous, each has a separate legal meaning in Louisiana.

Remote Retailers

Remote Retailers are out of state sellers with cumulative annual gross receipts in excess of \$50,000, including those gross receipts of its affiliates, for sales delivered into Louisiana per calendar year and must comply with the dual reporting requirements of LA R.S. 47:309.1. For purposes of calculating annual gross receipts, the Remote Retailer and its affiliates must include all receipts from retail sales of tangible personal property or taxable services where the property is delivered into Louisiana or the beneficial use of the service occurs in Louisiana. See LDR Revenue Information Bulletin 18-006 for more information.

A Remote Retailer is relieved from the reporting requirements of LA R.S. 47:309.1 if the Remote Retailer voluntarily registers, collects, and remits on its sales for delivery into Louisiana. This relief commences on the date of collection. The portion of the calendar year preceding the date of collection remains subject to the reporting requirements of LA R.S. 47:309.1.

Direct Marketers

Direct Marketers are sellers without physical presence in Louisiana who may voluntarily collect sales tax at the 8.45% rate pursuant to the LA R.S. 47:302(K).

If a Direct Marketer does not meet the economic nexus thresholds (as set forth in the *Remote Sellers* section below), the Direct Marketer may continue to voluntarily collect at the 8.45% after July 1, 2020, and remit to the LDR. If the Direct Marketer later establishes nexus in Louisiana, the Direct Marketer is deemed a Dealer (See Question No. 2).

Remote Sellers

Remote Sellers are required to collect and remit use tax if during the previous or current calendar year they have gross revenue in excess of \$100,000 from sales of tangible personal property delivered into Louisiana or 200 or more separate transactions for delivery into Louisiana.

7. When are Remote Sellers required to register and start collecting Louisiana sales and use tax?

Pursuant to LA R.S. 47:302 (W)(6) and LA R.S. 47:340(G)(6)(b), the Louisiana Sales and Use Tax Commission for Remote Sellers (“Commission”) is required to enforce collections, no later than July 1, 2020. The Commission is also required to provide notice of enforcement no later than 30 days prior to enforcement. On and after this date, Remote Sellers satisfying the economic thresholds set forth in LA R.S. 47:301(4)(m) will be required to register with the Commission and collect and remit state and local sales and use tax based upon actual applicable bases and rates.

The Commission provided the required notice of “*Effective Date for Remote Seller Registration and Collection of State and Local Sales and Use Tax at Actual Rates*” by Remote Sellers Information Bulletin 20-002 issued on May 7, 2020. The date of mandatory registration with the Commission is July 1, 2020.

8. I am currently a Direct Marketer who meets the economic nexus threshold and currently registered and filing the Direct Marketers’ Sales Tax Return with LDR. Will I have to re-register with the Louisiana Sales and Use Tax Commission for Remote Sellers?

No. Such taxpayers will receive notification from LDR and the Commission providing them guidance on how to complete their registration with the Commission. LDR will provide the underlying taxpayer account information to the Commission. However, it may be necessary for the taxpayer to verify or provide additional information to complete the conversion of such accounts.

9. What rate of sales and use tax do Remote Sellers collect on remote sales for delivery into Louisiana?

Prior to July 1, 2020, Remote Sellers may collect and remit sales and use tax at the combined 8.45% rate in accordance with LA R.S. 47:302(K), as provided by Remote Sellers Information Bulletin 18-002 and LA R.S. 47:302(W)(6). Tax collected prior to July 1, 2020, is remitted to LDR for distribution to the state and local tax collectors.

Beginning July 1, 2020, Remote Sellers are required to collect and remit state and local sales and use tax based upon actual applicable bases and rates. At this time, Remote Sellers will remit tax collected to the Commission instead of LDR.

10. When is the Remote Sellers Tax Return due?

The Remote Sellers Tax Return and tax payments for state and local sales tax on remote sales are due on or before the 20th of the month following the close of the calendar month of the

reporting period. The first Remote Sellers Tax Return will be for the July 2020 sales tax period and will be due on August 20, 2020.

11. How will the Commission calculate interest and penalties on delinquent tax payments?

The Commission shall collect and remit the actual interest and penalties due to each taxing jurisdiction based on the applicable taxing jurisdiction's statutory interest and penalty rates. Unlike the pro-rata distribution of tax, the actual interest and penalties due to each taxing jurisdiction will be distributed directly to the taxing jurisdiction upon collection by the Commission.

12. Will Remote Sellers receive a deduction for vendor's compensation?

Yes. Vendor's compensation shall be allowed as a deduction against tax due. However, vendor's compensation is only allowed when (1) the Remote Sellers Tax Return is filed timely on or before the 20th of the month following the month of collection and (2) all tax shown due on the Remote Sellers Tax Return is remitted on or before the 20th of the month following the month of collection.

13. How will the Commission distribute partial tax collections when a Remote Sellers does not remit the entire tax balance due?

In the event a Remote Seller remits less than the full amount of sales and use tax shown due on a return, the amount of tax actually collected will be distributed to each applicable taxing jurisdiction on whose behalf the tax is collected. The distribution will be on a pro-rata basis on the total amount of tax due to each jurisdiction.

Example

Remote Seller sells for delivery into Louisiana. Remote Seller collects \$200 of tax from Louisiana purchasers due to the following taxing jurisdictions:

1. State of Louisiana - \$100
2. Taxing Jurisdiction within Parish A - \$70
3. Taxing Jurisdiction with Parish B - \$30

Although the Remote Sellers Tax Return reflects \$200 of state and local sales and use tax due, Remote Seller only remits \$50. While the outstanding \$150 of tax is subject to collection by the Commission, the Commission must distribute the \$50 remitted in accordance with LA R.S. 47:340(E)(2). The \$50 shall be remitted by the Commission to the taxing jurisdictions on a pro-rata basis, as follows:

1. State of Louisiana - \$25 ($\$100/\$200 \times \50)

2. Taxing Jurisdiction within Parish A - \$17.50 ($\$70/\$200 \times \50)

3. Taxing Jurisdiction within Parish B - \$7.50 ($\$30/\$200 \times \50)

When the remote seller remits the remaining \$150, it will be distributed based on the same pro-rata distribution to the taxing jurisdictions. Interest and penalties shall accrue on the outstanding \$150 balance until remitted in full.