

Task Force on Structural Changes in Budget and Tax Policy - July 22, 2016
Resolution - Louisiana Sales and Use Tax Commission for Remote Sellers

WHEREAS, businesses located in one state have been selling goods into other states (a.k.a. remote dealers) by the way of catalogs, cable shopping networks, toll free telephone numbers and the internet for decades;

WHEREAS, the popularity of the internet has caused a tremendous growth in remote dealer activity;

WHEREAS, many of the remote dealers have chosen not to collect sales taxes outside of the state where they have physical presence (a.k.a. nexus);

WHEREAS, individuals don't often self-accrue use tax on internet purchases;

WHEREAS, a 1992 Supreme Court decision, Quill Corp. v. North Dakota 504 U.S. 298, held that Quill, a mail-order merchant, was not required to collect sales taxes for sales into states where they did not have a physical presence, and;

WHEREAS, in the Quill decision, the court ruled that requiring such a business to collect sales taxes in states where it did not have a physical presence created an "undue burden";

WHEREAS, in the Quill decision, the court also ruled that Congress has the authority to allow states to require remote sellers to collect tax;

WHEREAS, as permitted by the Quill decision, Congress has attempted to pass several bills to address the "undue burden" issue for remote dealers including the current S.698 Marketplace Fairness Act of 2015 and H.R.2775 Remote Transaction Parity Act of 2015;

WHEREAS, in 2014 the Supreme Court decision, Direct Marketing Association vs. Brohl 575U.S.____, Justice Kennedy in a concurring opinion stated that technology changes have made a powerful case that retailers doing extensive business within a state may have a sufficiently "substantial nexus" to justify imposing some tax collection duties;

WHEREAS, the Brohl decision may well have "opened the door" for a new case to challenge the current Quill decision;

WHEREAS, if either by an Act of Congress or an act of jurisprudence, the amount of burden to collect sales taxes by remote dealers will assuredly be considered;

WHEREAS, remote dealers who are not required to collect sales taxes have an unfair advantage over in-state retailers which is causing loss of sales and jobs for our in-state businesses;

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WHEREAS, Amazon when acting as a remote dealer has historically opposed collecting sales tax, and;

Whereas, Amazon now collects sales tax in 24 states and according to the Marketplace Fairness Act website, is now allied with supporters of the bill;

WHEREAS, nationwide sales tax revenues currently amount to about \$150 billion annually and make up approximately one-third of all state revenues;

WHEREAS, in the state of Louisiana sales tax revenues for many local governments accounts for nearly half of all revenues;

WHEREAS, the Louisiana Constitution grants local political subdivisions the authority to levy sales taxes at voter approved rates to fund local government necessary to provide services to its constituents;

WHEREAS, the Louisiana Constitution authorizes local government to collect, administer, and enforce local sales tax so levied;

WHEREAS, the State of Louisiana and local government desires to provide a level playing field for all retailers making sales in the state;

WHEREAS, the State of Louisiana and local government desires to capture the collect the correct amount of sales tax on all taxable transactions;

WHEREAS, local collectors understand the importance of uniformity and efficiencies in the collection and administration of local sales to successfully require remote dealers to collect state and local sales taxes throughout Louisiana, and;

WHEREAS, local government and its collectors desire to participate in developing a better system that recognizes the demands of local government officials to accurately collect and distribute local sales tax dollars while simultaneously recognizing remote dealers' concerns of the collection process;

WHEREAS, local government desires to participate with the State of Louisiana in the creation of a solution to collect both state and local sales taxes that are due, and;

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Accordingly, we request the Task Force on Structural Changes in Budget and Tax Policy explore the creation of the Louisiana Sales and Use Tax Commission for Remote Sellers established within the Department of Revenue for the administration and collection of the sales and use tax laws of the State of Louisiana and the sales and use tax ordinances of local sales and use taxing jurisdictions only with respect to remote sales.

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The Louisiana Sales and Use Tax Commission for Remote Sellers

The Marketplace Fairness Act, upon passage, would grant states the authority to require online and catalog retailers ("remote sellers"), regardless of where located, to collect sales tax at the time of a transaction as retailers with nexus are currently required. Under MFA, a state must simplify their sales tax requirements for remote dealers in order to exercise this authority.

Tax law simplification is necessary due to the United States Supreme Court's decision in *Quill Corp. v. North Dakota* 504 U.S. 298, citing concern that collecting sales tax for multiple states would be too difficult and pose an undue burden on interstate commerce.

The Marketplace Fairness Act requires states seeking collection authority two avenues for simplifying their sales tax laws:

Option 1: A state can join the Streamlined Sales and Use Tax Agreement (SSUTA) by adopting their simplification measures. To date, twenty-four states that have already voluntarily adopted the simplification measures of the SSUTA.

Option 2: A states can meet the five simplification mandates listed in the bill. The mandates are:

1. Notify retailers in advance of any rate changes within the state
2. Designate a single state organization to handle sales tax registrations, filings, and audits
3. Establish a uniform sales tax base for use throughout the state
4. Use destination sourcing to determine sales tax rates for out-of-state
5. Provide free software for managing sales tax compliance, and hold retailers harmless for any errors that result from relying on state-provided systems and data

The mandates listed in the MFA are less onerous and complicated than the voluntary provisions of the SSUTA and offer an easier path to gain the authority to tax remote sellers.

The establishment of The Louisiana Sales and Use Tax Commission for Remote Sellers would be predicated on Louisiana seeking compliance with MFA under Option 2 above. The commission would be created and established within the Department of Revenue for the administration and collection of the sales and use tax laws of the State of Louisiana and the sales and use tax ordinances of local sales and use taxing jurisdictions only with respect to remote sales. The Commission would be established with the following characteristics:

Membership

The membership of the board would be as follows:

- (1) The secretary of the Department of Revenue.
- (2) Three employees or other officials of the Department of Revenue as appointed by the secretary.

(3) The four heads of a local collector's office serving on the Louisiana Uniform Local Sales and Use Tax Board.

The commission members would be prohibited from receiving compensation; however members may be reimbursed for reasonable expenses incurred in the performance of their duties.

The commission may employ an executive director, and any necessary agents, assistants, auditors, clerks, inspectors, investigators, or other experts and employees necessary to conduct operations. The commission may enter into a joint services agreement with any other agency, board, or political subdivision concerning the performance of its functions.

The domicile of the Commission shall be East Baton Rouge Parish, Louisiana but the commission could meet and conduct business at other location within the state from time to time as determined.

Authorities, Duties and Responsibilities:

The authority, duties, and responsibilities of the commission would be as follows:

(1) Promote, to the extent feasible and in accordance with law, uniformity and simplicity in sales and use tax compliance in Louisiana, while reserving to political subdivisions their authority to impose and collect sales and use taxes as provided in Article VI, Section 29 of the Constitution of Louisiana and other laws.

(2) With respect to Senate Bill 698 of the 114th United States Congress, the "Marketplace Fairness Act of 2015" or such similar federal law as may be enacted by the United States Congress authorizing states to require remote sellers, except those remote sellers who qualify for the small seller exceptions as provided by federal law, to serve as the single entity in Louisiana to require remote sellers and their designated agents to collect from customers and remit to the commission sales and use taxes on remote sales sourced to Louisiana on the uniform Louisiana state and local sales and use tax base established by Louisiana law;

(a) Provide the minimum tax administration, collection, and payment requirements required by federal law with respect to the collection and remittance of sales and use tax imposed on remote sales;

(b) Provide at no expense to remote sellers and their agents software programs which may include, but not be limited to, Parish E-File or some other electronic system or method to facilitate the filing, reporting, payment, and remittance of state and local sales and use taxes to the appropriate local Louisiana jurisdictions to which remote sales are sourced;

(3) Maintain a free Internet database (a.k.a. sales tax matrix) that provides information for the use of remote sellers regarding the taxability of products and services sourced to Louisiana, along with any product and service exclusions and exemptions from sales and use taxes, state and local jurisdiction tax rates, and territorial boundaries;

(4) Provide for, in accordance with federal law, remote sellers software that calculates the sales and use tax due on each transaction at the time the transaction is completed, that files sales and use tax returns, and that is updated to reflect changes in rates or bases;

(5) If necessary, establish a fiscal agent solely for the purpose of remote seller remittances;

(6) Provide remote sellers and certified software providers within thirty days, or as required by federal law, notice of a rate change by the state or any local taxing jurisdiction in the state, and relieve remote sellers and certified software sellers who collect taxes at the immediately preceding effect rate during the thirty-day notice period if the required notice is not provided from liability as a result thereof;

(7) Provide a procedure for persons to be approved as certified software providers;

(8) Provide to remote sellers, and at no cost to them, an electronic sales and use tax remote sales tax return format for use in reporting and remitting state and local sales taxes on remote sales sourced to Louisiana; and

(9) Provide an electronic means for remote sellers to determine the appropriate local taxing authority to receive the tax on remote sales sourced to Louisiana, the name and contact information of the single sales tax collector, and the current rate of tax applicable to such sales.

(10) To serve as the single entity within the State of Louisiana responsible for all state and local sales and use tax administration, return processing, and audits for remote sales sourced to Louisiana;

(11) To provide a free Web-based portal as the single filing point for both local and state sales and use tax returns for remote sales and to serve as the central, single agency to which remote sellers shall make state and local sales and use tax remittances;

(12) To assign and direct a single audit of remote sellers for the state and all local taxing authorities;

(13) To serve as the single State of Louisiana agency to represent both state and local taxing authorities in taking appropriate action to enable Louisiana to participate in programs designed to allow Louisiana to receive additional state and local sales and use taxes on sales made by remote sellers;

(14) To conduct administrative hearings as requested by aggrieved remote sellers, administer oaths, and make adjustments to assessments when justified by the facts and the law, and render decisions following such hearings;

(15) To require remote sellers to register with the Commission;

(16) To provide, on or before June 1 for the preceding calendar year, to the single tax collector for each parish an annual report of revenues collected and distributed.

(17) Authorize the Commission to enter into agreements to waive or suspend prescription as to local taxes;

(18) With the consent of the affected local taxing authority, issue notices of intent to assess, notices of assessments, enforce collection of local taxes by distraint and sale, institution of summary proceedings or ordinary proceedings for collection of local taxes;

(19) To sue and be sued;

The Commission would remit monies collected, less any refunds and fees, to the appropriate jurisdiction monthly by electronic funds to the designated bank account of the appropriate jurisdiction on or before the tenth (10) business day of the month following the month of collection. Records of gross collections, refunds, and fees shall be made accessible to the jurisdiction on a monthly basis.

Funding

The Commission and its operations would be funded by a fee equal to actual expenses incurred not to exceed one-percent of the amount collected pursuant to the state and local sales tax on remote sales as collected by the Commission. This fee would be deducted and paid to the Commission on a monthly basis prior to distribution to the state and relevant local collectors.