

## Remote Sellers Information Bulletin

No. \_\_\_\_\_

\_\_\_\_\_, 2023

### **Guidance on Louisiana Marketplace Sellers, Definition of Marketplace Facilitators and Related Administrative Issues, and Classification of Certain Delivery Services**

The purpose of this bulletin is to provide guidance on: (1) the responsibilities of Louisiana-based merchants who make both marketplace sales and direct sales to consumers in the state; (2) the qualification of certain marketplace facilitators with physical nexus in Louisiana and related collection and remittance obligations with the Louisiana Sales and Use Tax Commission for Remote Sellers (the “Commission”); and (3) the classification of certain delivery services under the current statutory definition of “marketplace facilitator.”

#### **Louisiana Merchants Selling Through a Marketplace Facilitator**

A Louisiana-based merchant who sells its products through a marketplace facilitator may rely on the marketplace facilitator to collect and remit sales tax on such transactions.

Pursuant to La. R.S. 47:340.1(B), a marketplace facilitator shall be considered the dealer for each remote sale for delivery into Louisiana and transacted on a marketplace on behalf of a marketplace seller. A marketplace facilitator shall be responsible for all obligations imposed on dealers and shall keep records and information required by the commission to ensure proper collection and remittance of sales and use tax, including but not limited to exemption certificates and information from the marketplace seller that may be used to determine the taxability of remote sales. "Remote sale" means a sale made by a remote seller or a sale facilitated by a marketplace facilitator. *See* La. R.S. 47:340.1(A)(6). Thus, for a local merchant’s “remote sales,” the marketplace facilitator will step into the shoes of the local merchant and act as the dealer for sales tax collection and remittance purposes pursuant to La. R.S. 47:340.1(B).

However, if the local merchant sells its products through other venues such as craft fairs, art shows, or its brick-and-mortar location(s) located in Louisiana, then these sales would not be considered “remote sales” under La. R.S. 47:340.1(A)(6) (i.e., neither a sale made by a remote seller nor a sale facilitated by a marketplace facilitator). Instead, these sales would be considered direct, “retail sales” for Louisiana state and local sales tax purposes under La. R.S. 47:301(10)(a)(i). As such, under this scenario, the local merchant would be considered the “dealer” in these transactions and would be responsible for collecting and remitting the state and local sales tax to the relevant taxing authorities under La. R.S. 47:304.

#### **Marketplace Facilitators Located/Based in Louisiana**

A “remote seller” is defined as a seller who sells for sale at retail, use, consumption, distribution, or for storage to be used for consumption or distribution any tangible personal property, products transferred electronically, or services for delivery within Louisiana, but does not have a physical presence in Louisiana. *See* La. R.S. 47:339(B)(7) and La. R.S. 47:340.1(A)(7). However, under La. R.S. 47:339(B)(7), the term “remote seller” is also defined to include "marketplace facilitators"

as defined by R.S. 47:340.1. In turn, the definition of “marketplace facilitator” found in La. R.S. 47:340.1(A)(4) provides:

(a) "Marketplace facilitator" means any person that facilitates a sale for a marketplace seller through a marketplace, owned, operated, or otherwise controlled by the person, by any of the following:

(i) Offering for sale through any means, by a marketplace seller, tangible personal property or sales of services for delivery into Louisiana.

(ii) Collecting payment from the purchaser and transmitting all or part of the payment to the marketplace seller, regardless of whether the person receives compensation or other consideration in exchange for facilitating the sale or providing any other service directly or indirectly through any agreement or arrangement with one or more third parties.

(b) "Marketplace facilitator" shall not include any of the following:

(i) A payment processor that only handles the processing of payments between the marketplace facilitator and the purchaser.

(ii) A platform or forum that provides advertising services, including listing products for sale, so long as the advertising service platform or forum does not also engage directly or indirectly through one or more affiliated persons in the activities described in Item (a)(ii) of this Paragraph.

(iii) A derivatives clearing organization, a designated contract market, foreign board of trade or swap execution facility, registered with the Commodity Futures Trading Commission (CFTC registered platforms), and any clearing members, futures commission merchants, or brokers when using the services of CFTC registered platforms.

(iv) Any person who offers or facilitates the furnishing of sleeping rooms, cottages or cabins by hotels or who offers or facilitates the furnishing of rental cars by rental car companies.

Additionally, La. R.S. 47:340.1(A)(6) defines “remote sale” to be mean a sale made by a remote seller or a sale facilitated by a marketplace facilitator.

A review of these definitions shows that there is no requirement that a marketplace facilitator lacks physical presence in Louisiana. Thus, regardless of any existing nexus between a marketplace facilitator and Louisiana, the marketplace facilitator shall be the dealer and collect and remit sales tax for sales facilitated on its marketplace to the Commission under La. R.S. 47:340.1(B).

In turn, a marketplace facilitator physically located in Louisiana and/or affiliated with an entity that has a physical presence in Louisiana is still considered a remote seller and should file and remit sales taxes on its remote sales with the Commission.

There may be a scenario where a person who is physically located in Louisiana meets the definition of “marketplace facilitator” found in La. R.S. 47:340.1(A)(4) but also makes direct, non-marketplace sales to consumers in the state. In this situation, current law would require the marketplace facilitator to collect and remit sales tax to the Commission on sales facilitated on its marketplace pursuant to La. R.S. 47:339 *et seq.* These sales are deemed to be remote sales under La. R.S. 47:340.1(A)(6). However, as a seller physically located in Louisiana, the person would also be responsible for collecting and remitting sales tax to the proper taxing authorities on its direct, non-remote sales pursuant to La. R.S. 47:304. This “dual” mode of collection and remittance would be allowed for this person since contrary to other defined remote sellers under La. R.S. 47:340.1(A)(7), a marketplace facilitator does not lose its status as a “remote seller” by having physical nor affiliate nexus with Louisiana. *See above.*