

LOUISIANA SALES AND USE TAX COMMISSION FOR REMOTE SELLERS

Minutes of June 29, 2018 Meeting

The Louisiana Sales and Use Tax Commission for Remote Sellers was established by Act 274 of the 2017 Regular Legislative Session within the Department of Revenue (LDR) for the administration and collection of the sales and use tax imposed by the state and political subdivisions with respect to remote sales.

- I. **Call to Order/Roll Call** - The first meeting of the Louisiana Sales and Use Tax Commission (Commission) was called to order at 10:05 AM by Secretary, Kimberly Robinson of the Louisiana Department of Revenue. Members present were:
 1. Kimberly Robinson (LDR)
 2. Darlene Allen (LDR)
 3. Kelli Jumper (LDR)
 4. Vanessa LaFleur (LDR)
 5. Donna Andries (ULSTB)
 6. Tiffani Delapasse (ULSTB)
 7. Amber Hymel (ULSTB)
 8. Gregory Ruppert (ULSTB)

- II. **Business of the Commission**
 - a. **Chairman** – A motion was made by member Donna Andries to elect Secretary Robinson chairman of the Commission. The motion was seconded by member Vanessa LaFleur and the board all agreed.
 - b. **Vice-Chairman** – A motion was made by member Donna Andries to elect Tiffani Delapasse as Vice Chair of the Commission. The motion was seconded by Secretary Robinson and the board all agreed.
 - c. **Executive Director** – Roger Bergeron currently serves as the Executive Director of the Louisiana Uniform Local Sales Tax Board (ULSTB) and as per Act 274 shall serve as the Ex-Officio Executive Director of the Commission unless otherwise directed by the commission. After discussion of the members, it was determined that the commission will take on the duties of the Executive Director until a budget can be established and discussion held at a later date.
 - d. **Other Officers** – It was determined that Krissy Thomas of LDR would be responsible for recording the meeting minutes of the Commission and administrative matters as far as scheduling of meetings.
 - e. **Terms of Office** – Ex-Officio Executive Director Roger Bergeron suggested that yearly the position of Chair and Vice-Chair be one representative from

the Department of Revenue and the Uniform Local Sales Tax Board and that they are interchangeable every year with a representative of both serving in either position at all times. Member Donna Andries made a motion to adopt this as a rule of the Commission and it was seconded by member Tiffani Delapasse.

- f. **Meeting Schedule** – The Commission decided to meet on the second Thursday of every month at 1:30 PM at the Department of Revenue to minimize travel and coincide with the meeting of the ULSTB meetings.

III. Supreme Court Decision on South Dakota v. Wayfair

- The Supreme Court removed the physical presence requirement for remote sellers
- Louisiana is currently not a Streamlined Sales Tax Member but we can decide on a path forward for collecting sales and use tax from remote sellers and issue guidance to the remote seller community.
- The ULSTB is currently looking for software for compiling information to become more uniform and closer to Streamlined Sales Members which could aid the Commission in its mission.
- LDR has sent letters to remote retailers making them aware of Act 569 of the 2016 Regular Session that required a remote retailer to send an annual notice to each LA purchaser who purchased from the retailer. The letter also provided notice that the remote retailers must report the sales to LDR by March 1st of each year.

IV. Act 5 of 2018 Second Extraordinary Session

- Provides for the definition of “dealer”. R.S. 47:301(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. Sections 301 (4)(m)(i), (aa)(bb)(ii) were also updated to further define dealer.
- Provides that upon final ruling by the Supreme Court authorizing states to collect and remit state and local sales tax on sales to each state or any federal laws that may be enacted by Congress authorizing the same.
- The provisions of this Act shall apply to all taxable periods beginning on or after the date of the final ruling by the Supreme Court in South Dakota v. Wayfair finding South Dakota 2016 Senate Bill No. 106 constitutional.
- Discussion was had about potential legislation to implement procedures of Act 5 is deemed necessary. We can clearly collect what is constitutionally allowed under R.S. 47:302(K) and from any dealer who registers voluntarily under the \$100K/200 transaction threshold. The question is whether the Supreme Court’s decision overturning *Quill* and remanding the case is a finding of constitutionality sufficient to trigger the provisions of Act 5.

- Online hotels – hotel motel tax is in place and is being distributed based on location (zip code and LATA rates associated) monthly.
- Define “remote sellers” – \$100K or over 200 transactions?

V. HR No. 7 – Aggregate Remote Dealer Collections

- HR 7 of Third Special Session provides that the Department of Revenue provide to the legislature aggregated data concerning the magnitude of sale and use tax collections remitted by remote dealers on transactions in Louisiana.
- LDR can currently only provide data on returns filed under R.S. 47:302K.
- Software – Donna Andries suggests the Commission should attempt to write its own software. The Office of Motor Vehicles has a system which indexes the data that could be an example of a starting point.
- Andre Burvant of Jones Walker, LLP asked “what should be done right now?” Secretary Robinson answered that retailers can voluntarily register, collect and remit collections.
- Parish Collections – Question on whether the parishes will be uniform and whether they will seek retroactive collections. Many are already registered with the locals and collecting and remitting. Discussion on ensuring there is a process in place to verify those remote sellers that are collecting and remitting through R.S. 47:302K.

VI. HCR No. 7 – Sales Tax Streamlining and Modernization Commission

- Established to continue the comprehensive study of Louisiana’s state and local sales and use tax systems, and to make recommendations to the legislature regarding revision of practices, administrative procedure, statutory law, and the Constitution of Louisiana, all for the purpose of streamlining and modernizing the vital sales tax revenue source for the state and its local governments.
- May begin meeting in August.
- Report due March 15, 2019 to Governor, President of the Senate and Speaker of the House of Representatives.

VII. Other Business - Tasks

1. LDR to send letters to the remote retailers that reported having sales in LA advising them that they can register and collect Louisiana sales tax under R.S. 47:302(K) if they have not already done so.
2. Review of the Marketplace Fairness Act to determine how Congress dealt with uniformity issues.
3. Review of the reaction to the Wayfair Decision from Streamlined Member States.
4. LDR to add information to its quarterly distributions to the parishes regarding which remote sellers are voluntarily complying with the collection and

remittance of sales taxes and how much is being collected via this voluntary compliance.

5. Review of the Multistate Tax Commission's reaction to the Wayfair Decision.

VIII. Public Comment

IX. Adjournment

- Motion to adjourn meeting made by Donna Andries and seconded by Tiffani Delapasse. Meeting was adjourned at approximately 11:45 AM.