

NOTICE OF INTENT

Louisiana Sales and Use Tax Commission For Remote Sellers

Requirements and Liability for “Remote Sellers;” other

Under the authority of R.S. 47:1519, 47:1520, and 47:340, and in accordance with the Administrative Procedure Act, R.S. 49:950 *et seq.*, the Louisiana Sales and Use Tax Commission For Remote Sellers, gives notice that rulemaking procedures have been initiated to adopt LAC 61:III _____, _____, and _____ to: (1) provide requirements for companies without a physical presence in the State of Louisiana who or which do not meet certain de minimus sales thresholds; (2) to clarify the definition of sales for purposes of the de minimus sales thresholds; (3) to provide prospective liability for rules and requirements for remote sellers to charge, collect and remit state and local sales and use taxes; and (4) to provide for a publicly available tool for businesses not having a physical presence in the State of Louisiana to lookup applicable state and local rates and exemptions, and provide indemnity for such businesses who or which use this tool.

Title 61

REVENUE AND TAXATION

Part III. Administrative and Miscellaneous Provisions

Chapter _____. _____

§ _____. **Obligations for Businesses Without a Physical Presence – Calculation of the De Minimus Sales Thresholds**

- A. Under R.S. 47:301(4)(m)(i), a “dealer” is defined as any person who or which does not have a physical presence in Louisiana, and who or which during the previous or current calendar year either: (1) receives gross revenue for sales delivered into Louisiana exceeding one hundred thousand dollars (\$100,000) from sales of tangible personal property, products transferred electronically, or services, or (2) made sales for delivery into Louisiana of two hundred (200) or more transactions involving the sale of tangible personal property, products transferred electronically, or services.
- B. For tax periods beginning on or after July 1, 2020, for purposes of determining whether or not any person who or which does not have a physical presence in the State of Louisiana meets the definition of “dealer” in R.S. 47:301(4)(m)(i), the calculation of “gross revenue for sales” in R.S. 47:301(4)(m)(i)(aa) will be only on taxable retail sales and on taxable services.
- C. For tax periods beginning on or after July 1, 2020, for purposes of determining whether or not any person who or which does not have a physical presence in the State of Louisiana meets the definition of “dealer” in R.S. 47:301(4)(m)(i), the calculation of “two hundred or more separate transactions” in R.S. 47:301(4)(m)(i)(bb) will be only on taxable retail sales transactions and on taxable services transactions.
- D. Under R.S. 301(4)(m)(ii), for tax periods beginning on or after July 1, 2020, any person who or which does not have a physical presence in Louisiana, and who or which during the previous or current calendar year did not meet the de minimus gross revenue sales or

sales transactions thresholds set forth in R.S. 47:301(4)(m)(i) shall not be compelled to register as a “remote seller” and be subject to any mandatory filing and remittance requirements.

§ _____. **Obligations for Businesses Without a Physical Presence – Below the De Minimus Sales Thresholds**

- A. For tax periods beginning on or after July 1, 2020, any business who or which does not have a physical presence in Louisiana and who or which does not meet the de minimus gross revenue sales or sales transactions thresholds set forth in R.S. 47:301(4)(m)(i) shall not be compelled by the Louisiana Department of Revenue (the “Department”) to register directly with the Department as a “dealer,” and/or to charge, collect and remit State sales taxes directly to the Department on taxable retail sales delivered into the State of Louisiana.
- B. For tax periods beginning on or after July 1, 2020, any business who or which does not have a physical presence in Louisiana and who or which does not meet the de minimus gross revenue sales or sales transactions thresholds set forth in R.S. 47:301(4)(m)(i) shall not be compelled by any local sales/use tax collector in the State (the “Collectors”) to register with any Collector as a “dealer” and charge, collect and remit local sales taxes to any Collector on taxable retail sales delivered into any Parish in the State of Louisiana.
- C. Any business who or which does not have a physical presence in Louisiana, and who or which does not meet the de minimus gross revenue sales or sales transactions thresholds set forth in R.S. 47:301(4)(m)(i) shall charge and collect the flat rate tax levied and imposed by R.S. 47:302(K) in lieu of any other State and local sales taxes that may otherwise apply, and shall remit said taxes to the Department on the forms prescribed by the Department for direct marketers.
- D. Any business who or which does not have a physical presence in Louisiana, and who or which does not meet the de minimus gross revenue sales or sales transactions thresholds set forth in R.S. 47:301(4)(m)(i) shall not be prohibited from charging and collecting State and local sales taxes as a “remote seller” and remitting the same to the Louisiana Sales and Use Tax Commission For Remote Sellers.
- E. Any business who or which does not have a physical presence in Louisiana, and who or which does not meet the de minimus gross revenue sales or sales transactions thresholds set forth in R.S. 47:301(4)(m)(i) shall not be prohibited from charging and collecting State and local sales taxes as a “remote seller” and remitting the same directly to the Department and directly to the applicable local Collectors.

§ _____. **Liability of Remote Sellers for State and Local Sales Taxes on Remote Sales Delivered in Louisiana**

- A. For any and all tax periods prior to July 1, 2020 and open from the accrual of prescription set forth in the Louisiana constitution, the Louisiana Department of Revenue (the “Department”) shall not pursue any remote seller for State sales taxes not charged and collected on remote sales delivered into Louisiana.

- B. For any and all tax periods prior to July 1, 2020 and open from the accrual of prescription set forth in the Louisiana constitution, local sales tax collectors (“Collectors”) shall not pursue any remote seller for any local sales taxes not charged and collected on remote sales delivered into Louisiana.
- C. For any and all tax periods prior to July 1, 2020 and open from the accrual of prescription set forth in the Louisiana constitution, the Louisiana Sales and Use Tax Commission For Remote Sellers (the “Commission”) shall not pursue any remote seller for either State or local sales taxes not charged and collected on remote sales delivered into Louisiana.
- D. Nothing herein shall operate to prohibit the Department, Collectors, or the Commission from pursuing any remote seller for State and/or local sales taxes charged and collected by remote sellers but not remitted to any taxing authority.

§ _____. **Liability of Businesses Without a Physical Presence in the State Who or Which do not Meet the De Minimus Sales Thresholds**

- A. For any and all tax periods prior to July 1, 2020 and open from the accrual of prescription set forth in the Louisiana constitution, for any business who or which does not have a physical presence in Louisiana and who or which does meet the de minimus gross revenue sales or sales transactions thresholds set forth in R.S. 47:301(4)(m)(i), the liability for failure to charge and collect sales taxes shall be limited to the requirements set forth in R.S. 47:302(K).
- B. Nothing herein shall operate to prohibit the Louisiana Department of Revenue, any local sales tax collectors, or the Louisiana Sales and Use Tax Commission For Remote Sellers from pursuing any person for State and/or local sales taxes charged and collected by any person but not remitted to any taxing authority.

§ _____. **Tax Rate Lookup Tool for Remote Sellers and Limitation of Liability**

- A. The Louisiana Uniform Local Sales Tax Board created at R.S. 47:337.102 shall publish on its website a free, publicly available sales tax rate lookup tool that provides the applicable state and local sales tax rates, as well as any applicable state or local sales tax exemptions/exclusions (the “Rate Lookup Tool”). If any remote seller uses this Rate Lookup Tool for purposes of calculating the sales tax rate to charge and collect from customers on a remote sale delivered into Louisiana, such information provided by the Rate Lookup Tool shall be an absolute defense and the remote seller shall be indemnified against any liability for charging, collecting and remitting an incorrect tax rate.
- B. The Louisiana Sales and Use Tax Commission For Remote Sellers (the “Commission”) shall develop a process and procedure for the certification of sales tax software that provides for the proper State and local sales tax rates to charge and provides for applicable state or local sales tax exemptions/exclusions. The Commission shall publish and update on its website those vendors who or which have sales tax software that has been certified. If any remote seller uses any software that is certified by the Commission for purposes of calculating the sales tax rate to charge and collect from customers on a remote sale delivered into Louisiana, such information provided by the certified software shall be an

absolute defense and the remote seller shall be indemnified against any liability for charging, collecting and remitting an incorrect tax rate.

The full text of these proposed Regulations may be viewed in the “Documents” section of the Commission’s website at <https://remotesellers.louisiana.gov/Document> until the date the Commission sets consideration of this Regulation for public hearing on _____.

Family Impact Statement

This Family Impact Statement is provided as required by Act 1183 of the 1999 Regular Session of the Louisiana Legislature.

1. Implementation of this proposed Regulations will have no impact on the stability of the family.
2. Implementation of this proposed Regulations will have no effect on the authority and rights of parents regarding the education and supervision of that children.
3. Implementation of this proposed Regulations will have no effect on the functioning of the family.
4. Implementation of this proposed Regulations will have no impact on family earnings and family budget.
5. Implementation of this proposed Regulations will have no effect on the behavior and personal responsibility of children.
6. Implementation of this proposed Regulations will have no effect on the ability of the family or a local government to perform this function.

Poverty Impact Statement

The proposed Regulations have no known impact on poverty as described in R.S. 49:973

Small Business Impact Statement

The proposed Regulations has no known impact on Louisiana small businesses as described in R.S. 49:978.2 through R.S. 49:978.6. The proposed Regulations shall clarify statutory law regarding potential out-of-state small businesses which engage in e-commerce with businesses and/or individuals domiciled in the State or Louisiana. It is impossible to identify with certainty the number of out-of-state small businesses who or which these Regulations may impact; however, the Regulations have the potential to impact every out-of-state small business who or which engages in e-commerce with businesses and/or individuals in Louisiana in excess of 200 separate transactions or \$100,000 in sales on an annualized basis. These Regulations operate to limit out-of-state businesses’ potential liability and burdens of sales tax collection and remittance on e-commerce transactions delivered into Louisiana.

These Regulations clarify statutory law and require that businesses who or which meet the *de minimis* sales thresholds must register with the Louisiana Commission for Remote Sellers; businesses must charge and collect state and local sales taxes on taxable retail sales made and delivered into the State of Louisiana; and businesses must remit said taxes with monthly sales and use tax returns filed with the Louisiana Commission for Remote Sellers. These Regulations will have a minimal record-keeping and reporting impact on out-of-state small businesses consistent with similar requirements and burdens placed by all other states in the Country which impose a sales tax and require out-of-state retailers to charge, collect and remit said taxes with filed tax returns.

Provider Impact Statement

The proposed rule has no known or foreseeable effect on the provider. Specifically:

1. The rule will not affect the staffing levels, requirements, or qualifications required to provide the same level of service.
2. The rule will not affect the total direct and indirect costs to the provider to provide the same level of service.
3. The rule will not affect the overall ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written data, views, arguments, or comments regarding this proposed rule to Renee Roberie, Executive Director of the Louisiana Sales and Use Tax Commission For Remote Sellers, P.O. Box 2068, Baton Rouge, LA 70821. Written comments must be received no later than _____ on _____, January __, 2022.

[Insert Name, Title]