

**Remote Sellers Information Bulletin
No. 18-002
December 18, 2018**

**Definition of Remote Seller and
Further Guidance to Remote Sellers**

The purpose of this bulletin is to provide a general definition for remote sellers as well as to provide further administrative guidance.

General Definition of Remote Seller

A remote seller means 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.

If a seller has physical presence in Louisiana, the seller is considered a dealer as defined by LA R.S. 47:301 and subject to state and local collection and remittance requirements.

Examples of Remote Sellers

Example 1: Company A sells tangible personal property for delivery to purchasers in Louisiana through only remote means through its Internet website, catalogs, telephone, television shopping channel, or other communication systems. Company A has no physical stores, inventory, or salespersons in Louisiana.

Example 2: Company B sells tangible personal property for delivery to purchasers in Louisiana through only remote means through its Internet website, catalogs, telephone, television shopping channel, or other communication systems. Company B is an affiliate of Company C, but each company may sell different lines of products. Company C has retail stores located in Louisiana. An online purchase from Company B cannot be returned or exchanged in one of Company C's stores in Louisiana.

Example of Seller Not Considered a Remote Seller

Company D sells tangible personal property for delivery to purchasers in Louisiana through only remote means through its Internet website, catalogs, telephone, television shopping channel, or other communication systems. Company D is an affiliate of Company E. Both companies are 100% owned by the same parent company. Company E has retail stores

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located in Louisiana and sells the same line of products that Company D sells through remote means. The relationship between Company D and Company E is such that a purchase from one company may be returned to the other company for a refund, credit, or gift card.

Reporting Requirements for Remote Retailers

A remote seller with cumulative annual gross receipts in excess of \$50,000, including those gross receipts of its affiliates, per calendar year must comply with the dual reporting requirements of LA R.S. 47:309.1 as a remote retailer. For purposes of calculating annual gross receipts, the remote seller 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.

Collection and Remittance Requirements for Remote Sellers

A remote seller with gross revenue for sales delivered into Louisiana in excess of \$100,000 from sales or separate transactions of 200 or more sold for delivery into Louisiana is a dealer as defined by LA R.S. 47:301(4)(m)(i) and should voluntarily submit Form R-1031A, *Application to File Direct Marketer Sales Tax Return*, to the Louisiana Department of Revenue ("LDR"). Depending on the remote seller's facts and circumstances, additional information may be requested following submission of the application.

Upon approval, the remote seller may begin collection of sales tax on its remote sales for delivery within Louisiana immediately. To remit the collected sales tax, the remote seller must file the monthly Form R-1031, *Direct Marketer Sales Tax Return*. Note that the Form R-1031 must be filed by paper and cannot be electronically filed at this time.

Timeline of Registration

To calculate the amount and quantity of sales, remote sellers should consider sales during the current calendar year and the immediately preceding calendar year. For example, if a remote seller sold \$120,000 of tangible personal property in 1,000 separate transactions for delivery into Louisiana during 2018, the remote seller should voluntarily collect and remit sales tax in 2019.

If the remote seller has not previously registered with LDR, the remote seller should submit the Form R-1031A within thirty days of surpassing either of the thresholds of LA R.S. 47:301(4)(m)(i).¹ Assuming the application is approved by LDR, the remote seller should commence collection of sales and use tax on sales for delivery into Louisiana no later than

¹ The two thresholds are (1) gross revenue for sales delivered into Louisiana in excess of \$100,000 from sales or (2) separate transactions of 200 or more sold for delivery into Louisiana.

ninety days from the date the remote seller surpassed either of the thresholds of LA R.S. 47:301(4)(m)(i). If the application is not approved, the applicant should adhere to the instructions set forth in the notice from LDR.

Applicability of LA R.S. 47:309.1 Subsequent to Collection and Remittance

If the remote seller voluntarily collects and remits on its sales for delivery into Louisiana, the remote seller is relieved from the reporting requirements of LA R.S. 47:309.1 beginning on the date of collection. However, the portion of the calendar year preceding the date of collection remains subject to the reporting requirements discussed above.

Marketplace Facilitators

Specific definitions for marketplace facilitators, as well as collection, remittance, and administrative matters related to marketplace facilitators, will be considered by the Commission and submitted to the Legislature for consideration in the 2019 Regular Session.

There is currently one judicial determination from a district court that the statutory definition of dealer set forth in LA R.S. 47:301(4)(l) applies to a marketplace program. The decision is on appeal². Remote sellers selling through a marketplace or similar arrangement may register and voluntarily collect in accordance with the guidance in this bulletin.

Enforcement of Act 5

While this collection and remittance provision is voluntary, the Commission will enforce the collection and remittance requirements in accordance with Act 5 of the 2018 Second Extraordinary Session at a date to be determined in 2019. Remote sellers can expect at least thirty days' notice prior to the commencement of mandatory collection and remittance requirements, but should consider voluntarily collecting and remitting sales tax on remote sales in the interim. Notice will be issued as provided by LA R.S. 47:302(W)(6) following further work of the Commission and LDR. To evaluate the applicability of Act 5's amount and quantity of sales thresholds, remote sellers will need to consider both sales for delivery into Louisiana during 2018 and 2019.

Questions concerning this publication may be directed to
LARemoteSellersCommission@la.gov.

Kimberly Lewis Robinson
Chairman
Louisiana Sales and Use Tax Commission for Remote Sellers

² *Newell Normand, Sheriff and Ex-Officio Tax Collector for the Parish of Jefferson vs. Wal-Mart.com USA, LLC*, No. 769-149 (La. App. 5 Cir.) (decision pending).