

## New Louisiana sales and use tax laws address budget issues

### Overview

In March 2016, Governor John Bel Edwards signed into law a number of tax bills which include the following modifications to Louisiana sales and use tax law:

- Temporarily increasing the state sales and use tax rate from 4 percent to 5 percent on certain items (this 1 percent tax rate increase is effective from April 1, 2016 through June 30, 2018)
- Temporarily eliminating many state sales and use tax exemptions and exclusions for certain periods from April 1, 2016 through June 30, 2018
- Expanding the definition of “dealer” for state sales and use tax purposes to impose additional collection requirements on certain “click-through” Internet sales or affiliate sales in Louisiana
- Providing a cap on vendor compensation allowed for collecting state sales and use tax
- Increasing the state sales tax rate on telecommunications services

This Tax Alert summarizes these law changes that have various enactment dates and effective dates as specified in the discussion that follows.

### Levies an additional 1 percent state sales and use tax

Prior to April 1, 2016, Louisiana imposes a state sales and use tax of 4 percent on sales of tangible personal property and certain services with specific exemptions and exclusions under three separate imposition provisions, with 2 percent imposed under La. Rev. Stat. § 47:302, and an additional 1 percent each imposed under La. Rev. Stat. §§ 47:321 and 331.

House Bill 62,<sup>1</sup> which was signed into law by Governor Edwards on March 15, 2016, levies an additional 1 percent state sales and use tax under a fourth provision, La. Rev. Stat. § 47:321.1. This new levy is effective April 1, 2016,<sup>2</sup> applicable to transactions beginning on April 1, 2016, through June 30, 2018.<sup>3</sup> Items that are subject to this additional 1 percent tax rate include: business utilities, certain trucks/trailers and purchases during sales tax holidays, among many other items. It should be noted that manufacturing machinery and equipment will be subject to the additional 1 percent levy, but only from April 1, 2016, until June 30, 2016.<sup>4</sup> Under this new law, La. Rev. Stat. § 47:321.1.F provides an exclusive list limiting the allowable exclusions and exemptions applicable to the additional 1% tax to 65 items. An exemption for manufacturing machinery and equipment is included in the list of allowed exempt items; however, unlike the other items, this exemption only becomes effective beginning July 1, 2016.

### Elimination of certain sales and use tax exemptions and exclusions

House Bill 61,<sup>5</sup> which was signed into law by Governor Edwards on March 15, 2016, essentially expands the state sales and use tax base levied on tangible personal property and certain services under La. Rev. Stat. §§ 47:302, 321, and 331. Under this legislation, many items previously exempt will be taxable including business utilities, manufacturing machinery and equipment, certain trucks/trailers, medical equipment, and numerous other items. The law also discontinues sales tax holidays.<sup>6</sup> This new law is effective April 1, 2016,<sup>7</sup> applicable to transactions occurring on or after April 1, 2016, through April 1, 2019, with limited exemptions expiring either July 1, 2016, or July 1, 2018.<sup>8</sup>

<sup>1</sup> Act No. 26, 2016 Extra Sess. (1st Extra. Sess.) HB 62 (Mar. 15, 2016). A copy of HB 62 is available [here](#).

<sup>2</sup> *Id.* at Sec 3.

<sup>3</sup> *Id.* at Sec 1, adding new La. Rev. Stat. § 47:321.1.E.

<sup>4</sup> *Id.* adding new La. Rev. Stat. § 47:321.1.F.(65).

<sup>5</sup> Act No. 25, 2016 Extra Sess. (1st Extra. Sess.) HB 61 (Mar. 15, 2016). A copy of HB 61 is available [here](#).

<sup>6</sup> *Id.* at Sec. 2.

House Bill 61 adds separate exclusive lists limiting the exclusions and exemptions applicable for each taxing provision levied by Louisiana,<sup>9</sup> with each such limiting list being effective for a certain specified period of time. Section V, added under La. Rev. Stat. § 47:302, (Section V) is particularly significant because it provides a list of only 32 items that will be excluded or exempt from La. Rev. Stat. § 47:302's 2 percent levy for the period April 1, 2016, through July 1, 2018.<sup>10</sup> The lists of limiting exclusions under La. Rev. Stat. §§ 47:321 and 331, which are almost identical to Section V, have lesser impact because they are only effective for the period April 1, 2016, through July 1, 2016.<sup>11</sup> In this respect, it should be noted that the difference between the three lists added under La. Rev. Stat. §§ 47:302, 321, and 331 addresses treatment of the sale, purchase, use, and lease of manufacturing machinery and equipment. Under House Bill 61, the sale, purchase, use, and lease of manufacturing machinery and equipment will be subject to the 1 percent tax levied by La. Rev. Stat. § 47:321 beginning April 1, 2016, through June 30, 2018.<sup>12</sup> However, the sale, purchase, use, and lease of manufacturing machinery and equipment are included as temporarily allowed exclusions under both La. Rev. Stat. §§ 47:302 and 331.<sup>13</sup>

Therefore, based on the additional 1 percent state tax levy under House Bill 62, and the elimination of certain exemptions provided under House Bill 61, the resulting state sales and use tax rates for business utilities and manufacturing machinery and equipment generally will apply as follows:

- Business utilities
  - April 1, 2016 through June 30, 2016 – state tax levied at 5 percent<sup>14</sup>
  - July 1, 2016 through June 30, 2018 – state tax levied at 4 percent<sup>15</sup>
  - July 1, 2018 through July 1, 2018 – state tax levied at 3 percent<sup>16</sup>
  - July 2, 2018 through March 31, 2019 – state tax levied at 1 percent<sup>17</sup>
- Manufacturing machinery and equipment
  - April 1, 2016 through June 30, 2016 – state tax levied at 2 percent<sup>18</sup>
  - July 1, 2016 through June 30, 2018 – state tax levied at 1 percent<sup>19</sup>
  - July 1, 2018 through March 31, 2019 – state tax levied at 0 percent<sup>20</sup>

In addition to the elimination of certain sales and use tax exemptions and exclusions, House Bill 61 repeals the credit allowing dealers to claim up to \$25 per register to recoup costs incurred to reprogram cash registers due to changes in the sales tax rate or base.<sup>21</sup>

### Remote dealer nexus

House Bill 30,<sup>22</sup> which was signed into law by Governor Edwards on March 14, 2016, expands the definition of “dealer” to include persons who manufacture or produce 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.<sup>23</sup> This expansion essentially broadens Louisiana’s sales and use tax levy to account for the expanded tax base provided in House Bill 61, as well as the additional tax levy enacted by House Bill 62, both previously discussed.

Dealer is also expanded to mean:

Persons soliciting business through independent contractors or representatives under an agreement with a Louisiana resident or business whereby the resident or business refers potential customers, whether by link

<sup>9</sup> La. Rev. Stat. §§ 47:302, 321, and 331.

<sup>10</sup> Act No. 25, 2016 Extra Sess. (1st Extra. Sess.) HB 61 (Mar. 15, 2016) adding new La. Rev. Stat. § 47:302.V.

<sup>11</sup> *Id.* adding new La. Rev. Stat. § 47:321.O and new La. Rev. Stat. § 47:331.S.

<sup>12</sup> *Id.* adding new La. Rev. Stat. § 47:321.O.

<sup>13</sup> *Id.* at new La. Rev. Stat. § 47:302.V(16) and new La. Rev. Stat. § 47:331.S(16).

<sup>14</sup> La. Rev. Stat. § 47:302, § 47:321, § 47:331 and § 47:321.1

<sup>15</sup> La. Rev. Stat. § 47:302, § 47:331 and § 47:321.1

<sup>16</sup> La. Rev. Stat. § 47:302 and § 47:331

<sup>17</sup> La. Rev. Stat. § 47:331

<sup>18</sup> La. Rev. Stat. § 47:321 and § 47:321.1

<sup>19</sup> La. Rev. Stat. § 47:321.

<sup>20</sup> *Id.* at Sec 2.

<sup>21</sup> Act No.386, 1990 Reg. Sess. at Sec. 4, and *Id.* at Sec. 3 repealing Act No. 386, 1990 Reg. Sess. in its entirety.

<sup>22</sup> Act No. 22, 2016 Extra Sess. (1st Extra. Sess.) HB 30 (March 14, 2016). A copy of HB 30 is available [here](#).

<sup>23</sup> *Id.* at Sec. 1 amending La. Rev. Stat. § 47:302.K.(5).

on an internet website, an in-person oral presentation, telemarketing, or otherwise to the seller for consideration of any kind.<sup>24</sup>

**Presumption:** If total gross receipts from sales of tangible personal property to customers in Louisiana in the previous year through such agreement exceed \$50,000, there is a rebuttable presumption that person is a dealer. The presumption may be rebutted if the person can demonstrate to the satisfaction of the secretary that gross receipts cannot reasonably be expected to exceed \$50,000 for the succeeding twelve months.<sup>25</sup>

Finally, the definition of a dealer is expanded via affiliate nexus provisions to include a person selling taxable tangible personal property or services who:

Sells the same or a substantially similar line of products as a Louisiana retailer under the same or substantially similar business name, using the same trademarks, service marks, or using trade names that are the same or substantially similar to those used by the Louisiana retailer;<sup>26</sup> or

Solicits business and develops and maintains a market in Louisiana through an “affiliated agent” under which the affiliated agent, for consideration, engages in activities in Louisiana that develop or maintain a market for its goods or services to the extent that those activities are sufficient to satisfy the nexus requirement of the United States Constitution. Activities of the affiliated agent include referral of potential customers, directly or indirectly, by a link on an internet website or otherwise.<sup>27</sup>

Affiliate nexus also applies to any person:

- Who holds a “substantial ownership interest,” directly or through a subsidiary, in a retailer maintaining sales locations in Louisiana; or
- Who is owned in whole or in substantial part by a retailer maintaining sales locations in Louisiana; or by a parent or subsidiary thereof.<sup>28</sup>

For this purpose “substantial ownership interest” means an ownership interest of more than 5 percent, directly or indirectly, or where an ownership interest of more than 5 percent, directly or indirectly, is held by another person or by a group persons which are themselves affiliated.<sup>29</sup>

House Bill 30 provides that these new remote dealer nexus provisions applicable for state sales and use tax purposes shall *not* be used in the determination of whether such persons are liable for the payment of state income and franchise taxes.<sup>30</sup>

House Bill 30 is effective for tax periods beginning on or after April 1, 2016.<sup>31</sup> However, if federal legislation is enacted authorizing the states to require remote sellers to collect sales taxes on taxable transactions, such federal legislation preempts these new remote dealer nexus standards.<sup>32</sup>

### Vendor compensation

House Bill 43,<sup>33</sup> which was signed into law by Governor Edwards on March 10, 2016, caps the annual vendor compensation payment at \$1,500 per month (\$18,000 per year) per dealer with one or more business locations in Louisiana. This compensation is only allowed on the taxes levied pursuant to Louisiana’s original law (i.e. under La. Rev. Stat. §§ 47:302, 321, 331, and La. Rev. Stat. § 51:1286), which generally amounts to the taxes levied at the 4 percent state sales tax rate. Any additional sales tax levied by Louisiana (e.g., La. Rev. Stat. § 47:321.1) will *not* qualify for a vendor compensation payment.<sup>34</sup> This new law is effective April 1, 2016, applicable to transactions occurring on or after April 1, 2016.<sup>35</sup>

<sup>24</sup> *Id.* at Sec. 1 adding new La. Rev. Stat. § 47:302.V.

<sup>25</sup> *Id.* adding new La. Rev. Stat. § 47:302.V.(1)(a).

<sup>26</sup> *Id.* adding new La. Rev. Stat. § 47:302.V.(1)(b)(i).

<sup>27</sup> *Id.* adding new La. Rev. Stat. § 47:302.V.(1)(b)(ii).

<sup>28</sup> *Id.* adding new La. Rev. Stat. § 47:302.V.(1)(c).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* adding new La. Rev. Stat. § 47:302.V.(3).

<sup>31</sup> *Id.* at Sec. 2.

<sup>32</sup> *Id.*

<sup>33</sup> Act No. 15, 2016 Extra Sess. (1st Extra. Sess.) HB 43 (March 10, 2016). A copy of HB 43 is available [here](#).

<sup>34</sup> *Id.* at Sec. 1, amending La. Rev. Stat. § 47:306.A.(3)(a).

<sup>35</sup> *Id.* at Sec. 2.

## Increased sales tax on telecommunications services

House Bill 72,<sup>36</sup> which was signed into law by Governor Edwards on March, 9, 2016, maintains the total state sales tax rate on interstate telecommunications services at 2 percent. Prior law had authorized a 2 percent sales tax on interstate telecommunications services, with a scheduled tax rate decrease to 1 percent on April 1, 2016.<sup>37</sup> House Bill 72 removes the scheduled April 1, 2016, tax rate decrease on interstate telecommunications services, thus leaving the total state sales tax on interstate telecommunications services at the current rate of 2 percent.<sup>38</sup> House Bill 72 is effective April 1, 2016.<sup>39</sup>

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<sup>36</sup> Act No. 9, 2016 Extra Sess. (1st Extra. Sess.) HB 72 (March 9, 2016). A copy of HB 72 is available [here](#).

<sup>37</sup> La. Rev. Stat. §§ 47:302.C.(2) and 47:331.C.(2)(ii).

<sup>38</sup> *Id.* at Sec. 1, amending La. Rev. Stat. §§ 47:302.C. and 47:331.C.

<sup>39</sup> *Id.* at Sec. 2.