

2016 Regular Session

HOUSE BILL NO. 294

BY REPRESENTATIVE HILFERTY

TAX/SALES & USE: Requires online or catalog retailers not domiciled in Louisiana to provide notice to Louisiana purchasers that state sales and use taxes may be due on purchases

1 AN ACT

2 To enact R.S. 47:306(F), relative to state sales and use tax; to require certain online or  
3 catalog retailers to provide notice to Louisiana purchasers that Louisiana sales and  
4 use taxes may be due on purchases; provides for the details of such notice; provides  
5 for definitions; to provide for certain exceptions; prohibits the imposition of certain  
6 penalties or civil liabilities; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 47:306(F) is hereby enacted to read as follows:

9 §306. Returns and payment of tax; penalty for absorption

10 \* \* \*

11 F. Notice requirement for non-collecting retailers.

12 (1) The terms used in this Subsection shall have the following meanings:

13 (a) "De minimis online auction website" means any online auction website  
14 that facilitated in the prior calendar year total gross sales in Louisiana of less than  
15 one hundred thousand dollars and reasonably expects that Louisiana sales in the  
16 current calendar year will be less than one hundred thousand dollars.

17 (b) "De minimis retailer" means any noncollecting retailer that in the prior  
18 calendar year made total gross sales in Louisiana of less than one hundred thousand

1        dollars and reasonably expects that Louisiana sales in the current calendar year will  
2        be less than one hundred thousand dollars.

3                (c) "Noncollecting retailer" means any retailer not currently registered to  
4        collect and remit Louisiana sales and use taxes who makes sales of tangible personal  
5        property, services, or products transferred electronically from a place of business  
6        outside of Louisiana to be shipped to Louisiana for use, storage, or consumption and  
7        who is not required to collect Louisiana sales and use taxes.

8                (d) "Online auction website" means a collection of web pages on the internet  
9        that allows any person to display tangible personal property, services, or products to  
10       be transferred electronically for sale which are purchased through a competitive  
11       process where a participant places a bid with the highest bidder purchasing the  
12       property, service, or product when the bidding period ends.

13               (e) "Louisiana purchaser" means any purchaser who purchases tangible  
14       personal property, services, or products electronically to be shipped or transferred  
15       to Louisiana.

16               (2) Pursuant to this Subsection, each noncollecting retailer shall give notice  
17       that Louisiana use tax is due on nonexempt purchases of tangible personal property,  
18       services, or products transferred electronically and shall be paid by the Louisiana  
19       purchaser. The notice shall be readily visible and contain the following information:

20               (a) The noncollecting retailer is not required and does not collect Louisiana  
21       use tax.

22               (b) The purchase is subject to Louisiana state use tax unless it is specifically  
23       exempt from state taxation.

24               (c) The purchase is not exempt merely because the purchase is made over the  
25       internet, by catalog, or by other remote means.

26               (d) The state requires each Louisiana purchaser to report any purchase that  
27       was not taxed at the time of purchase and to pay the tax due on the purchase. The  
28       tax may be reported and paid on the Louisiana use tax form.

1           (e) The use tax form and corresponding instructions are available on the  
2           Louisiana Department of Revenue website.

3           (3)(a) The notice required by Paragraph (2) of this Subsection shall occur on  
4           a page necessary to facilitate the applicable transaction. The notice shall be  
5           sufficient if the noncollecting retailer provides a prominent linking notice that reads  
6           "See important Louisiana sales and use tax information regarding the tax you may  
7           owe directly to the state of Louisiana". The prominent linking notice shall direct the  
8           purchaser to the principal notice information required by Paragraph (2) of this  
9           Subsection.

10           (b) The notice required by Paragraph (2) of this Subsection for a catalog  
11           transaction shall be a part of the order form. The notice shall be sufficient if the  
12           noncollecting retailer provides a prominent reference to a supplemental page that  
13           reads "See important Louisiana sales and use tax information regarding the tax you  
14           may owe directly to the state of Louisiana on page            ". The notice on the order  
15           form shall direct the purchaser to the page that includes the principal notice required  
16           by Paragraph (2) of this Subsection.

17           (4)(a) For any internet purchase made pursuant to this Subsection, the  
18           invoice notice shall occur on the electronic order confirmation. The notice shall be  
19           sufficient if the noncollecting retailer provides a prominent linking notice that reads  
20           "See important Louisiana sales and use tax information regarding the tax you may  
21           owe directly to the state of Louisiana". The invoice notice link shall direct the  
22           purchaser to the principal notice required by Paragraph (2) of this Subsection. If the  
23           noncollecting retailer does not issue an electronic order confirmation, the complete  
24           notice shall be placed on the purchase order, fill receipt, sales slip, order form, or  
25           packing statement.

26           (b) For any catalog or phone purchase made pursuant to this Subsection, the  
27           complete notice shall be placed on the purchase order, bill, receipt, sales slip, order  
28           form, or packing statement.

1           (5)(a) For any internet purchase made pursuant to this Subsection, notice on  
2           the check-out page fulfills both the website and the invoice requirements  
3           simultaneously. The notice shall be sufficient if the noncollecting retailer provides  
4           a prominent linking notice that reads "See important Louisiana sales and use tax  
5           information regarding the tax you may owe directly to the state of Louisiana". The  
6           check-out page notice link shall direct the purchaser to the principal notice required  
7           by Paragraph (2) of this Subsection.

8           (b) If a retailer is required to provide a similar notice for another state in  
9           addition to Louisiana, the retailer may provide a consolidated notice so long as the  
10          notice includes the information required by Paragraph (2) of this Subsection,  
11          specifically references Louisiana, and meets the placement requirements of this  
12          Subsection.

13          (6) A noncollecting retailer may not state, display, or imply that no tax is due  
14          on any Louisiana purchase unless the display is accompanied by the notice required  
15          by Paragraph (2) of this Subsection each time the display appears. If a summary of  
16          the transaction includes a line designated "sales tax" and shows the amount of sales  
17          tax as zero, this constitutes a display implying that no tax is due on the purchase.  
18          This display shall be accompanied by the notice required by Paragraph (2) of this  
19          Subsection.

20          (7) Notwithstanding the limitation contained in this Subsection, if a  
21          noncollecting retailer knows that a purchase is exempt from Louisiana tax pursuant  
22          to Louisiana law, the noncollecting retailer may display or indicate that no sales or  
23          use tax is due even if the display is not accompanied by the notice required by  
24          Paragraph (2) of this Subsection.

25          (8)(a) With the exception of notification on an invoice, the provisions of this  
26          Subsection shall apply to online auction websites.

27          (b) De minimis retailers and de minimis online auction websites shall be  
28          exempt from the notice requirements of this Subsection.

1                    (c) No criminal penalty nor civil liability may be applied or assessed for  
2                    failure to comply with the provisions of this Subsection.

## DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 294 Original

2016 Regular Session

Hilferty

**Abstract:** Requires retailers not currently registered to collect and remit La. sales and use taxes to provide notice to La. residents who make electronic purchases that La. sales and use tax is due on nonexempt purchases.

Proposed law requires online and catalog retailers outside of La. to give notice to customers that they may owe sales and use taxes to the state for purchases made through their website, online auction site, or catalogs.

Proposed law defines "noncollecting retailers" as any retailer not currently registered to collect and remit state sales and use taxes who sells tangible personal property, services, or products electronically from outside of La. to be shipped to La. for use, storage, or consumption and who is not required to collect La. sales and use taxes.

Proposed law requires that the noncollecting retailer's notice contain information such as that the purchase is subject to state sales and use tax unless specifically exempted, that the purchase is not exempt merely because it was purchased over the internet, by catalog, or other remote means, and that the tax may be reported and paid on the La. use tax form.

Proposed law specifies that the notice required by proposed law shall be placed on a page necessary to facilitate the applicable transaction such as on the order form if the purchase is made via catalog or on the electronic order confirmation if the purchase is made over the internet. The notice shall include the following reference:

"See important Louisiana sales and use tax information regarding the tax you may owe directly to the state of La."

Proposed law exempts, with the exception of notification on an invoice, de minimis online auction websites and de minimis retailers which have total gross sales in La. of less than \$100,000 which reasonably expect La. sales in the current year to be less than \$100,000, from the requirements of proposed law.

Proposed law prohibits a retailer that does not collect the sales tax from claiming that the purchases are tax free and prohibits criminal penalties or civil liabilities for failure to comply with the requirements of proposed law.

(Adds R.S. 47:306(F))