

## **Sales Tax Streamlining and Modernization Commission**

Minutes of Meeting  
2018 Interim Session  
Thursday, November 15, 2018

### **I. CALL TO ORDER**

Representative Julie Stokes, Chairwoman of the Sales Tax Streamlining and Modernization Commission, called the meeting to order at 1:54 p.m. in Room 6, in the State Capitol in Baton Rouge, Louisiana. The secretary called the roll.

### **II. ROLL CALL**

#### **MEMBERS PRESENT:**

Representative Julie Stokes, Chairwoman  
Mr. Don Allison  
Mr. Roger Bergeron  
Mr. Jay Campbell  
Ms. Melanie David  
Mr. Jason DeCuir  
Mr. Gary Dressler  
Mr. Dannie Garrett  
Mr. Will Green  
Ms. Amber Hymel  
Mr. Luke Morris  
Mr. Thomas Cole for Darryl Purpera  
Senator Gary Smith  
Ms. Dawn Starns  
Ms. Jeanine Theriot

#### **MEMBERS ABSENT:**

Representative Paula Davis, Vice Chairwoman  
Ms. Jessica Elliott  
Mr. Joseph Henchman  
Senator Rick Ward  
Mr. Mark West

**STAFF MEMBERS PRESENT:**

Ms. Alison Pryor, Attorney

Ms. Catherine Zeringue, Attorney

Ms. Andrea Simmons, Secretary

**III. DISCUSSION**

Chairwoman Stokes opened the meeting by stating that the Sales Tax Streamlining and Modernization Commission (STSMC) is regrouping after the *Wayfair* decision and several efforts are taking place in the state to ensure compliance with the provisions of the Supreme Court under the *Wayfair* decision and that the commission needs certainty to implement a system of collecting sales and use tax that is certain to survive a legal challenge.

**Update on the status of the work of the Louisiana Sales and Use Tax Commission for Remote Sellers**

Luke Morris, Assistant Secretary of the Office of Legal Affairs, Louisiana Department of Revenue (LDR), 617 Third Street, Baton Rouge, LA 70802, (225) 219-4059 presented a PowerPoint presentation entitled, "Update on the LA Sales and Use Tax Commission for Remote Sellers", Exhibit A, that outlined the progression of the Louisiana Sales and Use Tax Commission for Remote Sellers (STSMC), which is included in the committee records.

Mr. Morris stated that the last time he provided an update was at the beginning of October. He stated that the LA Sales and Use Tax Commission for Remote Sellers had met a few times and have continued working with a commission consisting of four representatives of the local government and four representatives of LDR. The LA Sales and Use Tax Commission for Remote Sellers was created by Act 274 of the 2017 Regular Session. The LA Sales and Use Tax Commission for Remote Sellers is well-informed and understands the limitations due to local governments having the authority to collect and administer its own taxes. The LA Sales and Use Tax Commission for Remote Sellers aims to establish a centralized point of collection while being respectful of local governments and ensuring local governments maintain their collection authority.

Mr. Morris stated that there has been consideration of using a certified service provider (CSP) which is an outside entity of both LDR and the LA Sales and Use Tax Commission for Remote Sellers . He referenced the firm Avalara and provided an overview of the firm's capabilities and software programs that have the capabilities to pinpoint where a purchase is being delivered and can also determine the tax rate for a specific jurisdiction. Avalara's team of accountants, analysts, and attorneys have analyzed state laws and rates on the basis of tax.

Next, Mr. Morris informed the commission that the Remote Sellers Technology Subcommittee and

the LA Sales and Use Tax Commission for Remote Sellers are collaborating to incorporate the most efficient methods of technology into the commission's work.

In addition, several members of local government have done a substantial amount of work to prepare their own exemption tables based on each local jurisdiction and is also being considered by the commission.

Mr. Morris then moved to discuss the LA Sales and Use Tax Commission for Remote Sellers definition of a remote seller and cited three areas of law that define what a remote seller is. *The definition has yet to be adopted by the commission.*

- 1.) Act No. 569 of the 2016 Regular Session instituted a reporting requirement;
- 2.) R.S. 47:302(K) is the statute that gives credit to the Direct Marketer Sales Tax Return (DMR) using the remote seller to collect at the standard 8.45% rate;
- 3.) Act No. 5 of the 2018 Regular Second Extraordinary Session redefined the definition of a dealer to include remote sellers (see South Dakota statute). Our statute would define the dealer as one who makes sales in Louisiana in excess of \$100,000 in the value of sales or 200 transactions.

Ms. Kimberly L. Robinson, Secretary of Revenue, Louisiana Department of Revenue (LDR), 617 Third Street, Baton Rouge, LA 70802, made the distinction between the following three provisions:

- LA R.S. 47:309.1: Remote Retailer has threshold of \$50,000 in sales; remote retailers with \$50,000 in sales are required to report.
- LA R.S. 47:302(K): Does not have any dollar threshold. If a seller has regular sales in the state, and no physical presence in the state, the seller can collect and remit to the state for both state and local taxes at flat rate.
- LA R.S. 47:301: Based on the assumption that a remote seller does not have physical presence in the state but is making sales into the state of items that are subject to Louisiana tax.

LA R.S. 47:309.1: Distinction is that definition uses remote retailer as a reference to a seller seeking statutory provisions for certain thresholds such as:

- sales thresholds
- what is applicable to the retailer
- when does the retailer comply
- how does the retailer comply

Mr. Morris moved to discuss the commission developing a synthesized definition of remote seller.

The draft definition states a remote seller means a seller who regularly 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.

Chairwoman Stokes sought clarification of the commission determining the definition of a remote seller in open meeting format.

Secretary Robinson confirmed that it has not been determined and that it would be determined in open meeting format.

Senator Gary L. Smith, Jr., District 19 inquired about urban versus rural purchases, the access and buying power over the internet, while proportionally accrued by parish. Mr. Morris affirmed that the Commission would track and collect the rates based on where the purchases were delivered.

Secretary Robinson affirmed this method is to deliver the collected taxes to the local jurisdiction based on purchases in that local jurisdiction and not based upon a formula.

Senator Smith inquired further by asking if companies who voluntarily reported and came forth were rewarded. Secretary Robinson responded by assuring Senator Smith the tax system is currently structured as such, and those retailers who voluntarily come forth receive vendors compensation in the form a percentage of the collected taxes. Otherwise, penalties are imposed for failure to collect and remit.

Mr. Morris seconded Secretary Robinson's response by stating that the purpose of the LA Sales and Use Tax Commission for Remote Sellers is to serve as a centralized collector but have the actual collection rates imposed based on whatever area the purchase is delivered to.

Senator Smith expressed that using population as a basis is not necessarily the most accurate divide of the money where the local sales are central collections, but he wanted to ensure local taxing authorities are getting the correct share back.

Secretary Robinson assured Senator Smith that the current method is to deliver the taxes to local jurisdiction based on what was purchased in that jurisdiction and not based upon a formula.

Senator Smith stated that the current method has positive impact on the Commission accomplishing a tax collection system for remote sellers. He then moved to discuss voluntary reporting and rewarding companies that come forth.

Mr. Garrett asked if the Louisiana Department of Revenue shares its data with local collectors and asked for clarification on the assessment and collection of sales tax. Mr. Morris explained that the

Louisiana Department of Revenue is assessing and collecting consumer use tax at a rate of 8.45%. Once received, 4.45% is retained by LDR and the difference minus the Board of Tax Appeals distribution is remitted to the locals. Mr. Garrett then asked if LDR is reporting to the local collectors, to which Secretary Robinson responded that LDR has agreed to work with the uniform local sales tax board to make the information available on dealers that have reported to LDR but not on individual income tax payers.

Mr. Garrett sought clarification of a remote seller crossing the Act No. 5 dealer threshold and if the remote sellers are no longer eligible to remit the catalog tax if they meet the requirements of collecting and remitting the actual local and state tax due. Mr. Morris stated that once the Act No. 5 threshold is crossed, meeting the economic nexus, the remote seller would then file and report those sales directly to the commission. The commission would then be responsible for distributing the avails of that tax to the appropriate taxing jurisdiction.

Mr. Garrett then asked the commission if there were intentions to essentially take the responsibility from local collectors or will companies who have registered as dealers with the local collector continue to remit directly to the local collector?

Secretary Robinson responded to Mr. Garrett stating that the commission taking the responsibility from the local collectors has been a topic of discussion for the LA Sales and Use Tax Commission for Remote Sellers. She also stated that it would be an ongoing matter if the remote seller is out of state and does not have physical presence but was previously registered.

Secretary Robinson further stated that each local collector is evaluating how they want to handle the matter and guidance will be issued from the commission as to whether those individuals can simply register with the commission, remit a single return to the commission, or if they will continue to be registered with the local or individual collector. She also stated the commission is hopeful in providing this guidance before the end of the year.

Mr. Morris informed the STSMC of the following items currently under review:

- Marketplace facilitators considerations will be considered in the 2019 Regular Session
- Direct Marketer Return (DMR) application process, sales and transaction totals indicative of nexus thresholds, voluntary reporting pending enforcement of Act No. 5, time constraints on remote sellers, and reporting and registering with the LA Sales and Use Tax Commission for Remote Sellers
- Developing a remote sellers tax return to be filed electronically and used by certified software providers to develop a filing system

Mr. Morris also explained that the certified software provider will develop a combined two page return that the commission will use to ensure the correct amount of taxes are remitted to each taxing

jurisdiction.

Mr. Morris also informed the commission of the Multi State Tax Commission's (MTC) meeting held last week and the release of the 95 page white paper which consists of issues reviewed, public comments received, and administrative aspects for states requiring marketplace facilitators to collect and remit sales and use tax from online sales. The information provided by the MTC will also be used to develop legislation.

Chairwoman Stokes questioned whether the facilitator bore the responsibility of being audited and if liability of protection would be afforded to the individual seller and not to the facilitator. Secretary Robinson affirmed that the individual seller would have the liability of protection due to the facilitator making the determination of what is taxable and non-taxable.

Mr. Morris stated that the commission will meet again twice in November and that the commission intends to establish a mandatory collection date and provide advance notice to remote sellers. The commission is also reviewing existing legislation and using the MTC model to see if any recommendations need to be made to the legislature for further advancements in developing a definition for remote sellers. Lastly, the commission would further adopt an actual sales tax return.

Chairwoman Stokes requested an update on the progress of implementing mandatory compliance by January 1, 2019.

Secretary Robinson confirmed that the date has not changed and the commission is still aiming to implement mandatory compliance by January 1, 2019.

Mr. Morris informed the commission that the next LA Sales and Use Tax Commission for Remote Sellers meeting is scheduled on November 27 at 1:30 p.m. He also stated that the Louisiana Department of Revenue website contains meeting information, meeting minutes, the 95 page white paper from the MTC, and instructions on how to reach the commission via email.

Chairwoman Stokes sought clarification of what constitutes a retailer being part of the remote sellers system by asking if retailers with a physical store in Louisiana will be exempt from the remote sellers requirements. Secretary Robinson assured Chairwoman Stokes that retailers with stores in Louisiana are not a part of the remote sellers system.

Chairwoman Stokes then asked if remote sellers could remit remote sales tax to the remote system.

Secretary Robinson replied by stating that at the current time the commission has not issued specific guidance to that effect. She further stated that the question was posed in a previous meeting and a different definition was introduced through the commission's mailbox that would allow for remote sellers or stores that have a physical store in the state but have a separate online website be able to

remit the tax for their online sales through the LA Sales and Use Tax Commission for Remote Sellers.

Chairwoman Stokes inquired about the marketplaces disagreeing.

Secretary Robinson stated that the marketplaces have different positions. Different marketplaces have different structures and different relationships with their third party sellers, so depending upon the relationship and the way that they structure their marketplace they have a different position.

Mr. Jason DeCuir, Louisiana Association of Business and Industry, Ryan, LLC, 301 Main Street, Suite 1500, Baton Rouge, LA 70801, referenced Mr. Morris' remarks regarding whether or not the LA Sales and Use Tax Commission for Remote Sellers has the constitutional authority to do what it is doing. Mr. DeCuir stated that there are 63 parishes in Louisiana that have the possibility of being involved with the remote sales. Mr. DeCuir questioned if all 63 parishes were in agreement with the LA Sales and Use Tax Commission for Remote Sellers moving forward in the direction it was currently going. Mr. DeCuir further elaborated that he was concerned due to another board being created and there was an inquiry as to whether or not the board had the constitutional authority to do what it was doing. Further stating that if a parish disagrees, they can potentially file a lawsuit. Mr. DeCuir raised another question of what would happen at the point of a lawsuit filed against the STSMC.

Secretary Robinson replied to Mr. DeCuir stating that 302(K) has been on the books for over 20 years and has never been challenged. Local collectors have not expressed any concerns to the commission about the commission moving forward in the manner that it is for remote sales. Secretary Robinson stated that if a problem were to arise, the commission will work together to address the concerns of local governments. It was also stated that one concern voiced pertained to the collection of the actual local rate not being collected. Ms. Robinson clarified that the commission will collect actual local rates and that the constitution gives local governments the authority to both collect their own tax or contract and agree to having someone else collect on their behalf. The LA Sales and Use Tax Commission for Remote Sellers would be in the role of collecting on the local government's behalf. She further elaborated that the LA Sales and Use Tax Commission for Remote Sellers will ensure compliance to the U.S. Supreme Court jurisprudence when collecting sales tax outside the state of Louisiana.

Mr. DeCuir asked Ms. Robinson if there was only a verbal agreement between each parish and the state or if a MOU or CEA will be required for the parishes to be in agreement with the LA Sales and Use Tax Commission for Remote Sellers moving forward.

Secretary Robinson responded to Mr. DeCuir stating that the status of the individual parishes was based off of information received from the Uniform Sales Tax Board and the LATA. She concluded by stating that when the commission is prepared with a return and collections mechanism, the

commission will discuss the papering agreements needed between the state and each jurisdiction at that time. As of right now, use tax is currently being remitted to local governments without a CEA, and there are no other agreements in place pursuant to the statutory authority.

Secretary Robinson then informed the commission that the LA Sales and Use Tax Commission for Remote Sellers currently collects other local taxes and remits them without a CEA or other agreement in place and is done pursuant to the statutory authority. Secretary Robinson believes they will continue to collect and remit in the current manner. Should members of the commission and local government decide they want to do CEA's or any other document to memorialize collection agreements the commission is willing to do so.

Mr. DeCuir then asked if it would be fair to state that the process for remote sales is being centralized by the LA Sales and Use Tax Commission for Remote Sellers, to which Secretary Robinson responded stating that the statutory language states the process is centralized.

Mr. DeCuir asked if there was anything that could prevent the parishes from agreeing to centralize the collection process as a whole by agreement.

Secretary Robinson stated that there is only a statutory provision for remote sales.

Mr. DeCuir asked Secretary Robinson's opinion on the parishes agreeing to give their entire authority to the LA Sales and Use Tax Commission for Remote Sellers as a whole.

Secretary Robinson stated that there is a provision in the law that allows a local collector to agree to have someone else collect on their behalf and made a reference to one parish that currently collects for more than a single parish in North Louisiana.

Mr. DeCuir then asked if there was anything that could prevent the LA Sales and Use Tax Commission for Remote Sellers from expanding and becoming a centralized body to which Secretary Robinson replied stating that the existing law allows local collectors to agree to have another entity collect taxes on their behalf.

Mr. DeCuir requested assurance of his understanding in terms of sales tax administration as a whole for the state of Louisiana by asking if the Louisiana Department of Revenue will still have its independent authority to collect sales tax and do business as the agency has been doing outside of remote sales and if each parish outside of remote sales will still have its own independent authority.

Secretary Robinson assured Mr. DeCuir that he was correct in his assumption regarding sales tax administration and the Louisiana Department of Revenue.

Mr. DeCuir then asked if the commission would be enacting a third administrative system just for

purposes of remote sales to which Secretary Robinson replied that a third system has already been enacted during the 2017 Regular Legislative Session.

Mr. DeCuir asked if the system would only be for remote sales and if sales outside of the remote sales jurisdiction would be handled by the departmental state, the parish and local collecting authorities.

Secretary Robinson responded to Mr. DeCuir by stating that the third administrative system for remote sales is statutorily in place at the current time.

Mr. DeCuir asked if The Uniform Local Sales Tax Board (ULSTB) would be associated with remote sales to which Secretary Robinson replied by informing him that The Uniform Local Sales Tax Board deals with uniformity among local tax collectors and uniform interpretation of local sales tax provisions and is not related to remote sellers, other than the fact that uniformity impacts remote sellers but is still considered a separate entity.

Mr. DeCuir then asked if there would be four different entities that have dealings with sales tax collections or some authority to deal with sales tax administration in the state.

Secretary Robinson stated that there will not be four entities due to the ULSTB collecting for the 63 local jurisdictions, the LA Sales and Use Tax Commission for Remote Sellers collecting for remote sales, as well as the Louisiana Department of Revenue.

Chairwoman Stokes stated that after authoring the bill she would suggest viewing it from the point of taking the 63 collectors and eventually narrowing it down to one organization that can act on their behalf and instead of having 63 collectors, there would be local, remote sales, and state.

Mr. DeCuir asked Chairwoman Stokes if she envisioned the remote sales commission collapsing under the ULSTB so that there is just one collector. Chairwoman Stokes responded by stating when the legislation was written the Supreme Court hadn't decided Wayfair, and the commission wanted to have a safe guard so the commission would be able to begin collecting remote sales tax. Chairwoman Stokes emphasized that the commission should not lose sight of the fact that the legislation does represent a positive move forward and not an additional error of bureaucracy if things go as planned.

Mr. DeCuir stated to Secretary Robinson that from a taxpayer standpoint a taxpayer has to determine which path to take and what will be faced. He then inquired about the administrative appeals process if a taxpayer disagrees.

Secretary Robinson responded by stating that the appeals process is outlined in the statute passed in 2017. She further stated that the statute specifically provides that the commission would issue

assessments when assessments need to be issued and would go through the normal appeal process. She also informed the commission that guidance has not been issued on the appeals process because collections are not required at the current moment.

Mr. DeCuir then asked if the notice was issued would there be an administrative appeal to the Remote Sales Commission or the respective parish, further inquiring on the protocol before an assessment is issued.

Secretary Robinson stated that the notice would be issued by the commission as the commission is the collector.

Mr. DeCuir then asked if the commission currently has staff. To which Secretary Robinson replied by stating that the commission is currently using the resources of LDR and are not expending revenues that have not been collected.

Mr. Roger Bergeron, Louisiana Municipal Association, 547 Sixth Street, Port Allen, LA 70767, informed the commission that the Uniform Local Sales Tax Board's primary purpose is to promote uniformity and provide support services to the locals and does not have collection responsibilities.

#### **Update on the status of the Louisiana Uniform Local Sales Tax Board's Work**

Ms. Jeanine Theriot, Louisiana Sheriff's Association, 1233 Westbank Expy., Building B - Room 414, Harvey, Louisiana 70058 gave an overview of the Uniform Local Sales Tax Board.

Ms. Theriot stated that she has only been a member since September and although she has read all literature she was not in attendance at every meeting.

The board consists of eight members, each represented by the Louisiana Municipal Association, Sheriff's Association, Policy Jury Association, School Board Association and the four main collectors in Louisiana. Each organization is represented by its executive director unless a proxy has been appointed.

Ms. Theriot informed the committee that at the current time there is a proxy for the Louisiana Sheriff's Association, School Board Association, and the Police Jury Association. Further stating that each association nominated an administrator to sit on the board and are represented by Jeanine Theriot, Louisiana Sheriff's Association from Jefferson Parish, Amber Hymel, School Board Association of Jefferson Davis Parish, Donna Andries, Police Jury Association of Rapides Parish, and Tiffany Delapasse, Louisiana Municipal Association of East Baton Rouge Parish.

Ms. Theriot then informed the committee of the following officers being elected at the Louisiana Uniform Local Sales Tax Board meeting in October 2017:

- Chairperson: Donna Andries
- Vice Chair Person: Gregory Ruppert
- Secretary: Amber Hymel

Ms. Theriot also informed the committee that the board hired legal counsel, Mr. Roger Bergeron as the Executive Director, and Mr. J. A. Kline as a contractor to assist in policy drafting. She also referenced a current litigation issue and stated that it will not be discussed during the meeting.

Ms. Theriot then informed the commission of the following goals and objectives of the ULSTB:

- Complete private letter rulings by the end of the year
- Making a website available by the end of the year
- Multi-parish refunds processes and forms available by the end of the year
- Education and training to local collectors in conjunction with the Association of Louisiana Tax Administrators
- Educational seminar for local collectors in the early part of 2019

Chairwoman Stokes requested to be brought up to speed on the current litigation and asked if a trial was still ongoing.

Mr. Bergeron stated that a trial was held on the merits today and a decision would not be provided for months.

Mr. Garrett stated that he filed the lawsuit on behalf of two clients and that it was solely objective and no opinions. Mr. Garrett further stated that the trial was held on November 15, 2018 and that post trial memos would be completed. He informed the commission that Judge Fields indicated he will issue a ruling from the bench on January 14, 2019 at 9:30 a.m. He also stated that the issue before the court was the funding of the board through the additional costs of collection started at 0.2 percent that flows through the Office of Motor Vehicles (OMV).

Mr. Allison asked if the board was operating at full capacity in the midst of a pending lawsuit and if the lawsuit was preventing the board from operating. Ms. Theriot responded by confirming that the board was operating at full capacity.

Mr. Bergeron followed with a clarification that Act 274 requires the board to adopt a strategic plan by July 1, 2018. Further stating that the board has adopted a strategic plan and is now proceeding to achieve every objective required under that strategic plan. Mr. Bergeron assured the commission that the board was on schedule.

**To consider and discuss uniform policies concerning the state and local sales and use tax bases in light of changes adopted by the Legislature in Act No. 1 of the 2018 3rd Extraordinary Session and the DRAFT of the final report of the Sales Tax Streamlining and Modernization Commission established pursuant to Act No. 405 of the 2015 Regular Session of the Legislature.**

Chairwoman Stokes referenced the spreadsheet, (Exhibit B) provided to the committee and asked that each member of the committee review the spreadsheet and provide feedback.

Mr. Bergeron suggested that the commission consider the ramifications if a recommendation is going to made, be introduced in one meeting and cannot be adopted until the subsequent meeting, except by unanimous vote. He also suggested the information pertaining to tax exemptions with a 2015 date be updated and before any action is taken on altering the current exemptions a fiscal note should be created.

Chairwoman stokes agreed with Mr. Bergeron and stated that she would like to request the fiscal office be present at the next meeting due to it being a significant impediment. She also suggested the committee vote on the issue at the next meeting.

#### **IV. OTHER BUSINESS**

There was no other business.

#### **V. ANNOUNCEMENTS**

There were no announcements.

#### **VI. ADJOURNMENT**

Ms. Theriot made a motion to adjourn the meeting at 3:54 p.m. The motion passed by a vote of 14 yeas and 0 nays. Representative Julie Stokes, Don Allison, Roger Bergeron, Jay Campbell, Melanie David, Jason DeCuir, Gary Dressler, Dannie Garrett, Will Green, Amber Hymel, Luke Morris, Thomas Cole for Darryl Purpera, Senator Gary Smith, Dawn Starns, and Jeanine Theriot.

Respectfully Submitted,

Chairwoman Julie Stokes  
Sales Tax Streamlining and Modernization Commission