

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA**

HALSTEAD BEAD, INC., an Arizona corporation,

Plaintiff,

v.

KIMBERLY LEWIS, in her official capacity as Louisiana Secretary of Revenue, and

AMANDA GRANIER, in her official capacity as Sales and Use Tax Administrator of Lafourche Parish, Louisiana, and

DONNA DRUDE, in her official capacity as Sales and Use Tax Administrator of Tangipahoa Parish, Louisiana, and

JAMIE BUTTS, in her official capacity as Sales Tax Auditor, Washington Parish, Louisiana, and

LAFOURCHE PARISH, LOUISIANA, a Home Rule Chartered Parish, and

TANGIPAHOA PARISH, LOUISIANA, a Home Rule Chartered Parish, and

WASHINGTON PARISH, LOUISIANA, a Home Rule Chartered Parish,

Defendants.

CIVIL ACTION NO. 2:21-cv-02106

JUDGE: JANE TRICHE MILAZZO

MAGISTRATE: KAREN WELLS ROBY

**JOINT MOTION TO DISMISS
PLAINTIFF'S COMPLAINT PURSUANT TO RULE 12**

NOW INTO COURT, through undersigned counsel, come Defendants, AMANDA GRANIER, in her official capacity as Sales Tax Collector, Lafourche Parish, Louisiana; DONNA DRUDE, in her official capacity as Sales and Use Tax Administration of Tangipahoa Parish, Louisiana, and JAMIE BUTTS, in her official capacity as Sales Tax Auditor, Washington Parish,

Louisiana (collectively, “Defendants”), who, for the reasons set forth in the accompanying Memorandum in Support, hereby collectively move this Honorable Court for dismissal of the claims of Plaintiff, Halstead Bead, Inc.

1. Defendants incorporate the Memorandum in Support of Motion to Dismiss Plaintiff’s Complaint Pursuant to Rule 12 and all attached exhibits *in extensor* as if recited herein.

WHEREFORE, for the reasons set forth in the accompanying Memorandum in Support, Defendants respectfully request that this Court grant the instant Motion to Dismiss Plaintiff’s Complaint Pursuant to Rule 12, and that there be a Judgment dismissing Plaintiff’s complaint against Defendants herein.

This the 22nd day of December, 2021.

SIGNATURE BLOCKS CONTAINED ON THE FOLLOWING PAGE

RESPECTFULLY SUBMITTED,

s/ Patrick M. Amedee

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Counsel for Donna Drude, in her official

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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of December 2021, I electronically filed the foregoing Motion to Dismiss Plaintiff's Complaint Pursuant to Rule 12 and Memorandum in Support Thereof with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to attorneys of record.

s/ Patrick M. Amedee

PATRICK M. AMEDEE (02448)

**IN THE UNITED STATES DISTRICT COURT
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HALSTEAD BEAD, INC., an Arizona corporation,

Plaintiff,

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LAFOURCHE PARISH, LOUISIANA, a Home Rule Chartered Parish, and

TANGIPAHOA PARISH, LOUISIANA, a Home Rule Chartered Parish, and

WASHINGTON PARISH, LOUISIANA, a Home Rule Chartered Parish,

Defendants.

CIVIL ACTION NO. 2:21-cv-02106

JUDGE: JANE TRICHE MILAZZO

MAGISTRATE: KAREN WELLS ROBY

**JOINT MEMORANDUM IN SUPPORT OF MOTION TO DISMISS
PLAINTIFF'S COMPLAINT PURSUANT TO RULE 12**

NOW COMES, AMANDA GRANIER, in her official capacity as Sales Tax Collector, Lafourche Parish, Louisiana; DONNA DRUDE, in her official capacity as Sales and Use Tax Administration of Tangipahoa Parish, Louisiana, and JAMIE BUTTS, in her official capacity as Sales Tax Auditor, Washington Parish, Louisiana, (collectively, "Defendants" or the

“Collectors”), who collectively submit the following Memorandum in Support of their Motion to Dismiss Pursuant to Rule 12, to wit:

INTRODUCTION

Halstead Bead, Inc. (“Plaintiff”), an Arizona based company, files suit seeking to restrain the assessment and collection of Louisiana state and local sales and use tax related to remote sales delivered into Louisiana.¹ Specifically, Plaintiff asks for a declaratory judgment that Louisiana’s current sales and use tax system be found unconstitutional under the Commerce Clause and the Due Process Clause of the United States Constitution. Additionally, it requests this Court to enjoin Louisiana and its parishes from enforcing local-level sales and use tax registration and reporting requirements against out-of-state sellers.

As set forth more fully below, Plaintiff seeks declaratory and injunctive relief on the grounds that the core sales and use tax powers granted to the Collectors under the Louisiana Constitution and related statutes, which comprise the essential structure and content of Louisiana’s sales state and local sales tax system, unconstitutionally burden interstate commerce in violation of the Commerce Clause and the Due Process Clause of the United States Constitution. If granted, the foregoing relief requested by Plaintiff would constitute one of the most pervasive and disruptive intrusions by a federal court into a state tax system.

¹ While Plaintiff represents itself as a family-owned, Arizona business with a genuine interest in conducting additional business in Louisiana, it is worth noting to this Court that through its Treasurer, Mr. Robert (“Brad”) Scott, Plaintiff has been featured in a pattern of articles advocating against the current regulation and taxation of small businesses at a multi-state/national level. *See, e.g.,* Tripp Baltz, *A Retailer's Struggle to Survive a Post-Wayfair Sales Tax World*, BLOOMBERG (Oct. 24, 2019, 1:43 P.M.); Bradley Scott, *Coronavirus Relief May Doom America’s Small Businesses*, Law360 (March 24, 2020, 8:15 P.M.). Mr. Brad Scott (in his corporate role) has even testified before U.S. Congress regarding *Wayfair’s* impact on Plaintiff’s sales tax practices, which consisted of some of the same state sales tax issues present before this Court. *See South Dakota v. Wayfair, Inc.: Online Sales Taxes and Their Impact on Main Street: Hearing Before the H. Comm. on Small Business*, 116th Cong. 10-12 (2020) (statement of Brad Scott).

Additionally, Plaintiff's alleged injury from these provisions of law is that it "risks" losing potential revenue from Louisiana by refusing, on its own volition, to surpass the economic thresholds set forth under La. R.S. 47:301(4)(m)(i).² However, the majority of the hypothetical burdens contemplated by Plaintiff in the Petition currently do not, and will not, apply to Plaintiff as a remote dealer for Louisiana sales tax purposes. Thus, without an actual injury suffered by Plaintiff – either present or anticipatory – the Petition is reduced to nothing more than a general grievance of Louisiana's state and local sales and use tax system.

Furthermore, Plaintiff's Complaint is predicated on false and misleading allegations concerning Louisiana's state and local sales and use tax system and the allegedly undue burden imposed on remote dealers. Specifically, one of Plaintiff's main contentions is that Louisiana's state and local sales and use tax system imposes the undue burden of potentially requiring Plaintiff to file more than 750 different state and parish sales tax returns annually, and that such burden is cost prohibitive.³

For whatever reason, either due to Plaintiff's ignorance of the existence of the Louisiana Sales and Use Tax Commission for Remote Sellers (hereinafter the "Remote Sellers Commission") created by the Louisiana Legislature in 2017,⁴ or as a result of the intentional omission of facts regarding the Remote Sellers Commission, the pleadings are false and misleading with regard to the hypothetical burdens/costs contemplated by Plaintiff. The Remote Sellers Commission is the sole collector for all remote sales for remote dealers who meet the "economic nexus" definition

² See Plaintiff's Verified Complaint at ¶48 ("Based on the compliance burden in Louisiana if it approaches the *de minimis* threshold [La. R.S. 47:301(4)(m)(i)], Halstead Bead will stop sales in the state and risks losing revenue as a result").

³ See Plaintiff's Verified Complaint at ¶55.

⁴ See La. Rev. Stat. §47:339, *et seq.*; Act No. 274 of the 2017 Regular Session of the Louisiana Legislature ("Act 274").

provided in La. R.S. 47:301(4)(m)(i).⁵ As a result, the actual filing “burden” for a remote dealer which makes sales into Louisiana is twelve annual returns – one return each month – not 750.⁶

However, there is no need to even address the merits of Plaintiff’s constitutional claims – or more appropriately, the lack thereof – as this Court lacks subject matter jurisdiction to entertain this action and to provide the relief Plaintiff seeks. First, Plaintiff seeks a remedy that this Court does not have Article III jurisdiction to provide under the doctrines of standing, ripeness and mootness. In its Complaint, Plaintiff states that it: (1) is an out-of-state corporation located in Arizona⁷, (2) has no physical nexus with Louisiana⁸, (3) makes sales into Louisiana, which are shipped via common carrier⁹, and (4) engages in fewer than 200 transactions or less than \$100,000 in taxable sales in Louisiana in a single year.¹⁰ Therefore, Plaintiff currently does not meet the definition of a “dealer” under Louisiana sales tax law, and as such, is not required to collect and remit state and local sales and use tax for its sales made into Louisiana.¹¹ As will be addressed below, the entirety of Plaintiff’s claims are hypothetical, not actual. Thus, there is no justiciable case and controversy herein.

Additionally, the Tax Injunction Act acts as a broad restriction on federal suits that seek to impede tax administration such as the instant litigation. Similarly, but independently, the action is barred by the principle of federal comity.

⁵ See La. Rev. Stat. §47:339(A)(2); See also La. Rev. Stat. §47:340(G).

⁶ See Affidavit of Amanda Granier (the “Granier Aff.”) attached hereto as Exhibit “A” at ¶9; Affidavit of Donna Drude (the “Drude Aff.”) attached hereto as Exhibit “B” at ¶9; and Affidavit of Jamie Butts (the “Butts Aff.”) attached hereto as Exhibit “C” at ¶9.

⁷ See Plaintiff’s Verified Complaint at ¶5.

⁸ See Plaintiff’s Verified Complaint at ¶¶21 – 33.

⁹ See Plaintiff’s Verified Complaint at ¶33.

¹⁰ See Plaintiff’s Verified Complaint at ¶46.

¹¹ See ¶¶7 – 9 of the Granier Aff., the Drude Aff., and the Butts Aff.

Furthermore, Plaintiff's complaint should also be dismissed for failure to state a claim under F.R.C.P. Rule 12(b)(6). Finally, and regardless of whether this Honorable Court has subject matter jurisdiction herein, this Court should abstain from exercising federal jurisdiction under the *Burford* abstention doctrine.

WHEREFORE, for these reasons and those more fully explained, *infra*, Defendants, AMANDA GRANIER, in her official capacity as Sales Tax Collector, Lafourche Parish, Louisiana; DONNA DRUDE, in her official capacity as Sales and Use Tax Administration of Tangipahoa Parish, Louisiana, and JAMIE BUTTS, in her official capacity as Sales Tax Auditor, Washington Parish, Louisiana, jointly and respectfully request that this Court dismiss Plaintiff's complaint in its entirety.

BACKGROUND

I. THE WAYFAIR DECISION AND LOUISIANA'S RESPONSE.

A. The Impact of the *Wayfair* Decision.

The question in *Quill Corp. v. North Dakota* 504 U.S. 298 (1992), and revisited and decided in *South Dakota v. Wayfair* 138 S.Ct. 2080 (2018), was whether a State could require an out-of-state seller/dealer to collect the state's sales taxes, and if so under what circumstances. In *Quill*, the U.S. Supreme Court in 1992 determined that the Commerce Clause of the United States Constitution would prohibit a state from imposing the obligation to collect state sales taxes where the seller/dealer had no physical presence (employees, solicitors, offices, business locations, etc.) in the state ("physical nexus"). *Quill*, 504 U.S. at 317. As a result, dealers with physical nexus continued to be required to collect and remit state and local sales and use tax for the sales made in the state. In turn, the state and local collectors were permitted by law to proceed against either the taxpayer or the dealer for collection.

What happened over the decades that followed *Quill* with the advent of eCommerce was an explosion of internet sales delivered into a state from an out-of-state dealer who lacked physical nexus, and as a result, did not charge the destination state's sales tax rates. The *Wayfair* Court, recognizing the disparity created by the 30-year old *Quill* decision that was decided when "remote" sales were via mail order catalogs and not smartphones and touch screens, determined that *Quill* is "flawed on its own terms." *Wayfair*, 138 S.Ct. at 2085. The Court declared that first, the physical presence rule is not a necessary interpretation of the requirement that a state tax must be "applied to an activity with a substantial nexus with the taxing State." *Id.*; *Complete Auto Transit, Inc. v. Brady*, 430 U. S. 274, 279 (1977).¹² Second, *Quill* "creates rather than resolves market distortions." *Wayfair*, 138 S.Ct. at 2085. And finally, *Quill* "imposes the sort of arbitrary, formalistic distinction that the Court's modern Commerce Clause precedents disavow." *Id.*

The Court in *Wayfair* ultimately upheld the South Dakota Act at issue before it, which required out-of-state sellers to collect and remit sales tax "as if the seller had a physical presence in the state." *Id.* at 2089. The Act created what the Supreme Court described as a "safe harbor," applying only to sellers that, on an annual basis, deliver more than \$100,000 of goods or services into South Dakota or engage in 200 or more separate transactions for the delivery of goods or

¹² The Court in *Complete Auto* explained the now-accepted framework for state taxation. 430 U.S. at 274 (1977). The Court held that a State "may tax exclusively interstate commerce so long as the tax does not create any effect forbidden by the Commerce Clause." *Id.* at 285. After all, "interstate commerce may be required to pay its fair share of state taxes." *D. H. Holmes Co. v. McNamara*, 486 U.S. 24, 31 (1988). The Court will sustain a tax so long as it (1) applies to an activity with a substantial nexus with the taxing State, (2) is fairly apportioned, (3) does not discriminate against interstate commerce, and (4) is fairly related to the services the State provides. *See Complete Auto, supra*, at 279. In the absence of *Quill* and *Bellas Hess*, the first prong of the *Complete Auto* test simply asks whether the tax applies to an activity with a substantial nexus with the taxing State. 430 U.S. at 279. "[S]uch a nexus is established when the taxpayer [or collector] 'avails itself of the substantial privilege of carrying on business' in that jurisdiction." *Polar Tankers, Inc. v. City of Valdez*, 557 U.S. 1, 11 (2009).

services into the State. *Id.* The Act also foreclosed the retroactive application of this requirement and provided means for the Act to be appropriately stayed until the constitutionality of the law has been clearly established. *Id.*

B. Louisiana’s Legislative Response to the *Wayfair* Decision.

Prior to *Wayfair*, and perhaps in anticipation of a change in federal Commerce Clause law considering the rapid and enormous growth of eCommerce, the Louisiana Legislature established the Remote Sellers Commission.¹³ It was the Legislature’s intent for the Remote Sellers Commission to serve as the single entity in Louisiana for the collection and administration of state and local sales and use tax on remote sales sourced to Louisiana taxing jurisdictions.¹⁴ At the time of the passage of Act 274, it was unclear if Congress would provide a legislative fix, e.g., through the passage of what was referred to at the time as the proposed *Marketplace Fairness Act*, or through a U.S. Supreme Court decision since *Wayfair* was making its way through the lower courts.

Once *Wayfair* had been decided, the Louisiana Legislature quickly acted, adding the following to Louisiana’s definition of a “dealer” for sales tax purposes, thus expanding the definition to include the class of out-of-state dealers contemplated by *Wayfair*. Act 5 of the 2018 2nd Extra. Session of the Louisiana Legislature (“Act 5”) added La. R.S. 47:301(4)(m), which provides:

(m)(i) Any person who sells for delivery into Louisiana tangible personal sales tax, products transferred electronically, or services, and who does not have a physical presence in Louisiana, if during the previous or current calendar year either of the following criteria was met:

¹³ See Act 274.

¹⁴ See La. Rev. Stat. §47:339(A)(2). See also La. Rev. Stat. §47:340(G).

(aa) The person's *gross revenue* for sales delivered into Louisiana **has exceeded one hundred thousand dollars** from sales of tangible personal sales tax, products transferred electronically, or services.

(bb) The person sold for delivery into Louisiana tangible personal sales tax, products transferred electronically, or services in **two hundred or more separate transactions**.

(ii) A person without a physical presence in Louisiana may voluntarily register for and collect state and local sales and use taxes as a dealer, even if they do not meet the criteria established in Item (i) of this Subparagraph.¹⁵

Conversely, a dealer without physical nexus and who sell less than \$100,000 in sales of tangible personal sales tax and under 200 separate transactions in Louisiana during the previous or current calendar year is not a “dealer” under Louisiana law.¹⁶ A seller, who does not qualify as a “dealer” under Louisiana sales tax law is not required to collect and remit state and local sales and use tax for sales made into Louisiana.¹⁷

Act 5 further added La. R.S. 47:302(W)(6), which provides:

(6) Until the Louisiana Sales and Use Tax Commission for Remote Sellers enforces collection and remittance of state and local sales and use tax based on the applicable state and local rates and bases, dealers as defined in R.S. 47:301(4)(m) shall specifically collect the additional tax authorized by Subsection K of this Section and shall file all applicable sales and use tax returns. Notice of enforcement by the Louisiana Sales and Use Tax Commission for Remote Sellers shall be published in a policy statement as authorized by LAC 61:III.101 no later than thirty days prior to the effective date of the enforcement.

C. The Louisiana Sales and Use Tax Commission for Remote Sellers.

In accordance with La. R.S. 47:302(W)(6), the Remote Sellers Commission issued Remote Sellers Information Bulletin No. 20-002 dated May 7, 2020, which provided a notice of the

¹⁵ La. Rev. Stat. §47:301(4)(m) (emphasis added).

¹⁶ See La. Rev. Stat. §47:301(4); See also ¶9 of the Granier Aff., the Drude Aff., and the Butts Aff.

¹⁷ See La. Rev. Stat. §47:301(4).

effective date, July 1, 2020, and enforcement by the Remote Sellers Commission for the collection of state and local sales and use tax on remote sales.¹⁸ The website for the Remote Sellers Commission went “live” and the Commission commenced receiving filings and returns and collecting taxes from remote sellers on July 1, 2020.¹⁹ Since that time, the Remote Sellers Commission has been the singular collector of sales and use tax on remote sales made into Louisiana by remote dealers for the State and its parishes.²⁰

Prior to its commencement on July 1, 2020, the Remote Sellers Commission executed an agreement entitled “MEMORANDUM OF UNDERSTANDING BETWEEN THE LOUISIANA SALES AND USE TAX COMMISSION FOR REMOTE SELLERS AND LOCAL SALES AND USE TAX COLLECTOR” (the “MOU”) with each of the parish sales and use tax collectors in Louisiana.²¹ The MOU transferred all rights and responsibilities of the Collectors, and their respective taxing agencies, to the Remote Sellers Commission related to remote sales made into the State by remote sellers.²² Specifically, the MOU provides that:

- the Remote Sellers Commission shall serve as the single entity within the state of Louisiana responsible for all state and local sales and use tax administration, return processing and audits for remote sales delivered into Louisiana;²³

¹⁸ See ¶16 of the Granier Aff., the Drude Aff., and the Butts Aff.

¹⁹ See ¶17 of the Granier Aff., the Drude Aff., and the Butts Aff.; The Remote Sellers Commission’s website is located at “remotesellers.louisiana.gov”.

²⁰ See ¶18 of the Granier Aff., the Drude Aff., and the Butts Aff.

²¹ See ¶¶22 and 36 of the Granier Aff., the Drude Aff., and the Butts Aff.; *See also* the MOU executed by each of the Collectors, attached as Exhibit “1” to the Granier Aff., the Drude Aff., and the Butts Aff. (collectively, the “MOUs”).

²² See ¶22 of the Granier Aff., the Drude Aff., and the Butts Aff.

²³ See ¶26 of the Granier Aff., the Drude Aff., and the Butts Aff.; *See also* the MOUs at Section D.5.

- the Remote Sellers Commission serves as the central, single agency to which remote sellers shall make state and local sales and use tax remittances;²⁴
- the Remote Sellers Commission is the single authority to assign and direct audits of remote sellers for both the state and all local taxing authorities;²⁵
- the Remote Sellers Commission has the authority to conduct administrative hearings as requested by aggrieved remote sellers and to make all decisions related to such matters;²⁶
- the Remote Sellers Commission has the authority to issue all notices required by law to enforce collection of local sales and use tax that may be due from remote sellers;²⁷ and
- the Remote Sellers Commission is authorized to require remote sellers to register with the Remote Sellers Commission on behalf of the local taxing jurisdictions.²⁸

Since the commencement of the Remote Sellers Commission on July 1, 2020, at least 4,816 entities have registered as remote dealers with the Remote Sellers Commission and are filing monthly returns and remitting collected sales taxes via electronic fund transfer.²⁹ Additionally, the Remote Sellers Commission averages 232 new, approved registrants per month.³⁰ As of

²⁴ See ¶27 the Granier Aff., the Drude Aff., and the Butts Aff.; *See also* the MOUs at Section D.6.

²⁵ See ¶28 the Granier Aff., the Drude Aff., and the Butts Aff.; *See also* the MOUs at Section D.7.

²⁶ See ¶29 the Granier Aff., the Drude Aff., and the Butts Aff.; *See also* the MOUs at Section D.9.

²⁷ See ¶30 the Granier Aff., the Drude Aff., and the Butts Aff.; *See also* the MOUs at Section D.10.

²⁸ See ¶31 the Granier Aff., the Drude Aff., and the Butts Aff.; *See also* the MOUs at Section D.11.

²⁹ See ¶38 the Granier Aff., the Drude Aff., and the Butts Aff.; *See also* the Remote Sellers Commission Collection and Distribution Report dated December 14, 2021 (the “Report”), attached to each of the Granier Aff., the Drude Aff., and the Butts Aff. as Exhibit “3” (the Report is available to the public at:

<https://revenue.louisiana.gov/Miscellaneous/RSC%20Collection%20and%20Distribution%20Report%2012.14.21.pdf>).

³⁰ *Id.*

December 14, 2021, the Remote Sellers Commission has collected and distributed at least \$454,769,632.49 in sales and use tax to the State and parish sales and use tax collectors.³¹

By registering with the Remote Sellers Commission, a remote dealer files a *single, monthly* sales tax return with the Remote Sellers Commission, which reports all sales made into Louisiana and includes the state and local sales and use taxes related thereto.³² Furthermore, “in order to reduce the administrative burden for Remote Sellers, the Commission has compiled the state and local sales and use tax bases and rates on its website [remotesellers.louisiana.gov]”.³³ In turn, remote sellers “will know the exact rate of state and local sales and use tax to collect as well as if the rate is reduced in part or full because of an exemption or exclusion” using jurisdictional codes established by the Commission.³⁴

Based on the foregoing, at no time since the U.S. Supreme Court’s ruling in *Wayfair* has a remote dealer been required to file multiple returns with different parishes in Louisiana.³⁵ And prior to *Wayfair*, *Quill* would have prohibited attempts by the State or local collectors to require remote sellers to file and remit sales tax returns due to a lack of physical nexus.³⁶

³¹ See ¶39 of the Granier Aff., the Drude Aff., and the Butts Aff.; See also the Report. Since its commencement on July 1, 2020, the Remote Sellers Commission has remitted the following amounts of sales and use tax to the Collectors:

(1) Lafourche Parish - \$4,512,535.50. See ¶19 the Granier Aff.

(2) Tangipahoa Parish - \$5,184,471.00. See ¶19 the Drude Aff.

(3) Washington Parish - \$1,762,651.37. See ¶19 the Butts Aff.

³² See ¶10 of the Granier Aff., the Drude Aff., and the Butts Aff.

³³ See ¶34 of the Granier Aff., the Drude Aff., and the Butts Aff.; See also No. 17 of the Remote Sellers Commission Frequently Asked Questions (the “FAQs”) attached to each of the Granier Aff., the Drude Aff., and the Butts Aff. as Exhibit “2” (the FAQs are available to the public at: <https://revenue.louisiana.gov/Miscellaneous/Remote%20Sellers%20FAQs%2006.24.2020.pdf>).

³⁴ See ¶35 of the Granier Aff., the Drude Aff., and the Butts Aff.; See also No. 17 of the FAQs.

³⁵ See ¶20 of the Granier Aff., the Drude Aff., and the Butts Aff.

³⁶ See ¶21 of the Granier Aff., the Drude Aff., and the Butts Aff.

II. PLAINTIFF’S COMPLAINT.

Plaintiff seeks declaratory and injunctive relief on the grounds that the core sales and use tax powers granted to the Collectors under the Louisiana Constitution and related statutes, which comprise the essential structure and content of Louisiana’s sales state and local sales tax system, unconstitutionally burden interstate commerce in violation of the Commerce Clause and the Due Process Clause of the United States Constitution. Plaintiff’s alleged injury from these provisions of law is that it “risks” losing potential revenue from Louisiana by refusing, on its own volition, to surpass the economic thresholds set forth under La. R.S. 47:301(4)(m)(i).³⁷ However, and as explained below, the majority of the hypothetical burdens contemplated by Plaintiff in the Complaint currently do not, and likely will not, apply to Plaintiff as a remote dealer for Louisiana sales tax purposes. Thus, without an actual injury suffered by Plaintiff – either present or anticipatory – the Complaint is reduced to nothing more than a general grievance of Louisiana’s state and local sales and use tax system.

In the Complaint, Plaintiff states that it: (1) is an out-of-state corporation located in Arizona,³⁸ (2) has no physical nexus with Louisiana,³⁹ (3) makes sales into Louisiana which are shipped via common carrier,⁴⁰ and (4) engages in fewer than 200 transactions or, less than \$100,000 in taxable sales in Louisiana in a single year.⁴¹ Therefore, Plaintiff currently does not qualify as a “dealer” under Louisiana sales tax law and as such, is not required to collect and remit state and local sales and use tax for its sales made into Louisiana.⁴²

³⁷ See Plaintiff’s Verified Complaint at ¶48.

³⁸ See Plaintiff’s Verified Complaint at ¶5.

³⁹ See Plaintiff’s Verified Complaint at ¶¶21 – 33.

⁴⁰ See Plaintiff’s Verified Complaint at ¶33.

⁴¹ See Plaintiff’s Verified Complaint at ¶46.

⁴² See ¶8 of the Granier Aff., the Drude Aff., and the Butts Aff.

However, Plaintiff's Complaint further describes and reflects a fundamentally flawed understanding of Louisiana's current state and local sales and use tax system and how that system would apply to Plaintiff's business. First, Plaintiff fails – either erroneously or intentionally – to mention the availability of the Remote Sellers Commission to remote sellers, such as Plaintiff, that meet the economic thresholds set forth in La. R.S. 47:301(4)(m)(i). Additionally, the following Paragraphs of the Plaintiff's Complaint are plainly false/incorrect:

44. But selling beyond a de minimis number of orders in Louisiana has proven too complex and difficult for Halstead Bead because of the cost of registering and reporting taxes in each parish.

This claim is entirely false as Plaintiff can register once and report once monthly through application with the Remote Sellers Commission by visiting *remotesellers.louisiana.gov*.⁴³

45. On information and belief, Halstead Bead estimates that the costs of Louisiana registration and reporting would be \$11,000 over three years.

There are no fees associated with sales tax registration and Plaintiff's basis for making this claim is unclear.⁴⁴

49. Louisiana Constitution, Article VII, Section 3(B)(1), provides that each Louisiana Parish shall levy and collect its own sales and use taxes. Each parish has a single collector of taxes for its subdivisions, but there is not a statewide collection system. Id."... "53. Because the Louisiana Constitution requires parish-level collection of sales and use taxes, the Louisiana Legislature cannot pass a statute to create a central repository for the collection of sales and use taxes..."

⁴³ See Section I.C. (The Louisiana Sales and Use Tax Commission for Remote Sellers.) *supra*; See also ¶9 of the Granier Aff., the Drude Aff., and the Butts Aff.

⁴⁴ See ¶¶3, 4 of the Granier Aff., the Drude Aff., and the Butts Aff.

As discussed above, pursuant to the MOU, the parishes have given the Remote Sellers Commission the authority to serve as the single entity in Louisiana for the collection and administration of state and local sales and use tax on remote sales sourced to Louisiana taxing jurisdictions.⁴⁵

Moreover, there is no actual injury suffered by Plaintiff under the actual facts and circumstances surrounding Louisiana's current state and local sales and use tax regime. Based on the undisputed facts in the Complaint regarding Plaintiff's operations in Louisiana, Plaintiff either: (1) does not meet the thresholds provided under La. R.S. 47:301(4)(m)(i), nor does it have physical nexus with Louisiana, and in turn, is not required to collect and remit state and local sales and use tax for its sales made into Louisiana; or (2) could make additional, remote sales into Louisiana to meet the economic nexus thresholds provided under La. R.S. 47:301(4)(m)(i), and in turn, will be treated as a remote dealer under La. R.S. 47:301(4)(m). With regard to the latter, Plaintiff would report and remit state and local sales and use tax for its remote sales made into Louisiana solely with the Remote Sellers Commission. Under either scenario, Plaintiff does not, and likely will not, suffer the hypothetical or anticipatory burdens/costs claimed in its Complaint.

Notwithstanding the substantive deficiencies contained in Plaintiff's Complaint, this Honorable Court need not reach the merits of Plaintiff's Complaint as this Court lacks subject matter jurisdiction to entertain this action and to provide the relief Plaintiff seeks. As set forth more fully below, this Court should grant the motion to dismiss on behalf of the Collectors, dismissing all claims under the F.R.C.P. Rule 12.

⁴⁵ See ¶22 of the Granier Aff., the Drude Aff., and the Butts Aff.

STANDARD OF REVIEW

I. Rule 12(b)(1).

“A case is properly dismissed for lack of subject matter jurisdiction when the court lacks statutory or constitutional power to adjudicate the case.” *Home Builders Ass’n of Miss., Inc. v. City of Madison, Miss.*, 143 F.3d 1006, 1010 (5th Cir. 1998) (citation omitted). The party seeking to invoke jurisdiction bears the burden of demonstrating its existence. *See Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001); *Howery v. Allstate Ins. Co.*, 243 F.3d 912, 916 (5th Cir. 2001). “[T]here is a presumption against subject matter jurisdiction that must be rebutted by the party bringing an action to federal court.” *Coury v. Prot*, 85 F.3d 244, 248 (5th Cir. 1996) (citation omitted). An action may be dismissed for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) on any of three separate grounds: (1) the complaint standing alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint, the undisputed facts, and the court’s resolution of disputed facts. *Voluntary Purchasing Groups, Inc. v. Reilly*, 889 F.2d 1380, 1384 (5th Cir. 1989).

II. Rule 12(b)(6).

Federal Rule of Civil Procedure 12(b)(6) permits a court to dismiss a complaint for failure to state a claim upon which relief may be granted. “To survive a Rule 12(b)(6) motion to dismiss, the plaintiff must plead ‘enough facts to state a claim to relief that is plausible on its face.’” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L.Ed.2d 929 (2007). “While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, [] a plaintiff’s obligation to provide the ‘grounds’ for his ‘entitlement to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Id.* at 555. “Determining whether a complaint states a plausible claim for relief will

... be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679, 129 S.Ct. 1937, 1950, 173 L.Ed.2d 868, 884 (2009).

In deciding a motion to dismiss under Rule 12(b)(6), a court generally accepts as true all factual allegations contained within the complaint, but it is not bound to accept “legal conclusions couched as factual allegations.” *Tuchman v. DSC Commc’ns Corp.*, 14 F.3d 1061, 1067 (5th Cir. 1994) (“[A] plaintiff must plead specific facts, not mere conclusory allegations.”).

LAW AND ARGUMENT

I. THE PLAINTIFF’S LAWSUIT SHOULD BE DISMISSED PURSUANT TO RULE 12(B)(1).

A. This Action is not an Article III Case or Controversy.

Plaintiff’s complaint should be dismissed in its entirety pursuant to Rule (12)(b)(1) as Plaintiff’s complaint does not contain a case or controversy under Art. III of the United States Constitution. “A case is properly dismissed for lack of subject matter jurisdiction when the court lacks the statutory or constitutional power to adjudicate the case.” *Home Builders Ass’n of Miss., Inc. v. City of Madison*, 143 F.3d 1006, 1010 (5th Cir. 1998) (quoting *Nowak v. Ironworkers Local 6 Pension Fund*, 81 F.3d 1182, 1187 (2d Cir. 1996)) (internal quotation marks omitted). Article III of the Constitution confines federal courts to the decision of actual “cases” and “controversies.” *Shields v. Norton*, 289 F.3d 832, 834-35 (5th Cir. 2002). In addition to the textual constitutional constraints on the power of the federal courts to decide cases under Article III, the federal judiciary also adhere to a set of prudential limitations. *See Bennett v. Spear*, 520 U.S. 154, 162, 117 S.Ct. 1154, 1161, 137 L.Ed.2d 281, 295 (1997). In addressing whether an Article III case or controversy exists, the courts frequently recognize and apply the doctrines of standing, mootness, and ripeness.

See Allen v. Wright, 468 U.S. 737, 750, 104 S.Ct. 3315, 3324, 82 L.Ed.2d 556, 569 (1984); *Poe v. Ullman*, 367 U.S. 497, 504, 81 S.Ct. 1752, 1756, 6 L.Ed.2d 989, 996 (1961).

As discussed below, Plaintiff's Complaint should be dismissed as: (1) Plaintiff lacks standing, (2) Plaintiff's claims are not ripe, and (3) Plaintiff's claims are moot.

i. There is no Justiciable Case or Controversy Because Plaintiff Lacks Standing.

The doctrine of constitutional standing – an essential aspect of the case-or-controversy requirement of Article III, § 2 – requires a plaintiff have “a personal stake in the outcome of the controversy” [so] as to warrant his invocation of federal-court jurisdiction.” *Warth v. Seldin*, 422 U.S. 490, 498 (1975) (quoting *Baker v. Carr*, 369 U.S. 186 (1962)). At its “irreducible constitutional minimum,” the doctrine of standing requires satisfaction of three elements: (1) a concrete and particularized injury-in-fact, either actual or imminent, (2) a causal connection between the injury and defendant's challenged conduct, and (3) a likelihood that the injury suffered will be redressed by a favorable decision. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 2136 (1992).

A plaintiff must show more than a “possible future injury;” she must show that harm has actually occurred or is “certainly impending.” *See Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990). Neither conjectural future injuries nor alleged fear of such injuries are sufficient to confer standing. *See Clapper v. Amnesty Int'l USA*, 133 S. Ct. 1138, 1147 (2013). The harm must be “distinct and palpable” and “actual or imminent.” *United States v. Holy Land Found. For Relief & Dev.*, 445 F.3d 771, 779 (5th Cir. 2006) (citation omitted). A plaintiff that “alleges only an injury at some indefinite future time” has not shown an injury in fact, particularly where “the acts necessary to make the injury happen are at least partly within the plaintiff's own control.” *Lujan*, 504 U.S. at 564. In these situations, “the injury [must] proceed with a high degree of immediacy,

so as to reduce the possibility of deciding a case in which no injury would have occurred at all.”
Id.

Based on the foregoing, Plaintiff must prove concrete facts to show in a particularized way how the alleged deficiencies in the Louisiana state and local sales and use tax system harms it. *See Warth v. Seldin*, 422 U.S. 490, 508 (1975). However, a review of the Petition and the allegations therein, do not suggest an “actual, concrete, and particularized” injury. *See Lujan*, 504 U.S. at 560-561. Rather, Plaintiff merely alleges it “risks” losing potential revenue from Louisiana because it refuses to surpass the *de minimis* thresholds set forth in La. R.S. 47:301(4)(m)(i), which would subject it to the asserted conjectural burdens of Louisiana’s sales tax system. Moreover, the availability of the Remote Sellers Commission to the Plaintiff further calls into question the actual injury or burdens that could be suffered by Plaintiff, if any. The U.S. Supreme Court has previously held that such speculative injuries are categorically insufficient to support standing. *See, e.g., DaimlerChrysler Corp. v. Cuno*, 247 U.S. 332 (2006).⁴⁶ Therefore, Plaintiff has no “actual, concrete and particularized” injury, and in turn, lacks standing.

Moreover, Plaintiff cannot satisfy the requirement that its claimed injury be caused by the Defendant-Collectors. As stated above, Plaintiff’s purported injury is a “risk” of loss of additional revenue from Louisiana due to Plaintiff’s decision to abstain from Louisiana’s sales and use tax

⁴⁶ In *DaimlerChrysler Corp. v. Cuno*, the U.S. Supreme Court considered whether plaintiff taxpayers had standing to challenge an Ohio tax incentive program, which gave tax breaks to DaimlerChrysler to establish an assembly plant in Ohio. Plaintiffs claimed that they were injured by state tax incentives granted to DaimlerChrysler because the tax breaks “diminished the funds available to the city and State, imposing a ‘disproportionate burden’ on plaintiffs.” *Cuno*, 547 U.S. at 340. The Court dismissed the case for lack of standing, emphasizing that the alleged injury was “conjectural or hypothetical” rather than “concrete and particularized” as required by Article III. *Id.* at 344. In so holding, the Court noted that establishing the alleged injury depended upon “how legislators respond to a reduction in revenue” and required “speculating that elected officials will increase a taxpayer-plaintiff’s tax bill to make up a deficit.” *Id.*

system. However, the Collectors have nothing to do with the business decisions of Plaintiff. The Collectors cannot control where the Plaintiff chooses to operate, nor can they control the amount of business conducted by Plaintiff in any particular jurisdiction. Rather, the decision of whether to operate in a jurisdiction by weighing the costs and gains associated with such operation is Plaintiff's alone.

The Second Circuit has recognized a break in the “chain of causation” where the plaintiff's injury is so completely due to plaintiff's own fault as to break the causal chain between defendants and the alleged injury. *See, e.g., St. Pierre v. Dyer*, 208 F.3d 394, 402-03 (2d Cir. 2000); *see also Union Cosmetic Castle, Inc. v. Amorepacific Cosmetics USA, Inc.*, 454 F. Supp. 2d 62, 71 (E.D.N.Y. 2006) (recognizing that “[a] plaintiff cannot establish Article III standing to pursue a cause of action where the plaintiff is the primary cause of its own alleged injury” and holding plaintiffs lacked standing because “the injury of which the plaintiffs complain appears to be largely the result of their own [] decisions”). Similarly, in the instant matter, the Collectors cannot be held responsible for the business decisions of Plaintiff. This absence of “causation” also warrants dismissal for lack of standing.

Based on the foregoing, this Court does not have jurisdiction due to lack of standing and this action must be dismissed for lack of subject matter jurisdiction.

ii. There is no Justiciable Case or Controversy Because Plaintiff's Claims are not Ripe.

“The ripeness doctrine is drawn both from Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction.” *Nat'l Park Hospitality Ass'n v. Dep't of the Interior*, 538 U.S. 803, 808 (2003) (quotation omitted). It “prevent[s] the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies.” *Id.* at 807. A case ripe for judicial review cannot be

“nebulous or contingent but must have taken on fixed and final shape so that a court can see what legal issues it is deciding, what effect its decision will have on the adversaries, and some useful purpose to be achieved in deciding them.” *Pub. Serv. Comm’n v. Wycoff Co.*, 344 U.S. 237, 244 (1952). Thus, “[a] claim is not ripe for adjudication if it rests upon ‘contingent future events that may not occur as anticipated, or indeed may not occur at all.’” *Texas v. United States*, 523 U.S. 296, 300 (1998) (citation omitted).

As the Second Circuit has explained, “when a court declares that a case is not prudentially ripe, it means that the case will be *better* decided later . . . [not] that the case is not a real or concrete dispute affecting cognizable current concerns of the parties.” *Connecticut v. Duncan*, 612 F.3d 107, 113-14 (2d Cir. 2010) (internal quotation marks and citations omitted) (emphasis in original). “Prudential ripeness is, then, a tool that courts may use to enhance the accuracy of their decisions and to avoid becoming embroiled in adjudications that may later turn out to be unnecessary or may require premature examination of, especially, constitutional issues that time may make easier or less controversial.” *Id.* at 114 (internal quotation marks and citation omitted). Additionally, the Second Circuit has held “[w]here the challenged procedures have not been applied to the claimant, or where, after their application, the agency has not rendered a final determination adverse to the claimant, the Article III requirements . . . have not been met.” *Coffran v. Bd. Of Tr. NYC Pension Fund*, 46 F.3d 3, 4 (2d Cir. 1994).

Applying the foregoing, Plaintiff’s claim challenging the constitutionality of Louisiana’s sales tax system, based on alleged burdens it has yet to incur and the mere conjecture of potential loss of revenue, is both constitutionally and prudentially unripe. Plaintiff has not registered with any of the Collectors, nor has there been any attempt by the Collectors to force the Plaintiff to

register or attempt to assess/collect sales and use taxes from Plaintiff.⁴⁷ It is an undisputed fact that Plaintiff has not met any of thresholds set forth under La. R.S. 47:301(4)(m)(i) and has no physical nexus with Louisiana, and in turn, is not required to collect and remit state and local sales and use tax for its sales made into Louisiana. Whether Plaintiff will suffer any of the hypothetical burdens claimed by Plaintiff as a result of surpassing the thresholds in La. R.S. 47:301(4)(m)(i) is yet to be determined. Moreover, Plaintiff has not acknowledged the availability of the Remote Sellers Commission. As described above, Plaintiff’s registration with the Remote Sellers Commission may remove most of the burdens and injuries Plaintiff claims it would suffer. At this point, the entirety of Plaintiff’s claims are dependent upon future uncertainties or intervening, contingent future events that may not occur as anticipated, or indeed may not occur at all. *See Texas*, 523 U.S. at 300. Therefore, the case is not ripe since the issues are not fit for judicial decision and Plaintiff will suffer no cognizable hardship if this Court denies review.

iii. There is no Justiciable Case or Controversy Because Plaintiff’s Claims are Moot.

Under Article III of the United States Constitution, federal courts may adjudicate only “actual, ongoing controversies between litigants.” *Deakins v. Monaghan*, 484 U.S. 193, 199 (1988); *Alwan v. Ashcroft*, 388 F.3d 507, 511 (5th Cir. 2004). “[A]n actual controversy must be extant at all stages of review, not merely at the time the complaint is filed.” *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67 (1997) (citations omitted). “If a dispute has been resolved or if it has evanesced because of changed circumstances . . . it is considered moot.” *Am. Med. Ass’n v. Bowen*, 857 F.2d 267, 270 (5th Cir. 1988); *see also Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) (“No matter how vehemently the parties continue to dispute the lawfulness of the conduct that precipitated the lawsuit, the case is moot if the dispute is no longer embedded in any actual

⁴⁷ *See, e.g.*, ¶¶5 – 7 of the Granier Aff., the Drude Aff., and the Butts Aff.

controversy about the plaintiffs’ particular legal rights.”). Where the question of mootness arises, the Court must resolve it before it can assume jurisdiction. *North Carolina v. Rice*, 404 U.S. 244, 246 (1971). If a controversy is moot, the trial court lacks subject matter jurisdiction over it. *Carr v. Saucier*, 582 F.2d 14, 15–16 (5th Cir. 1978). A federal court lacks authority “to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.” *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992).

Applying these standards to the case at hand, the bulk of Plaintiff’s claims are moot as there is no existing controversy before this Court. As set forth above, the Remote Sellers Commission currently serves as the single entity in Louisiana for the collection and administration of state and local sales and use tax on remote sales sourced to Louisiana taxing jurisdictions. Upon which time Plaintiff makes the requisite additional sales into Louisiana, it will be considered a “remote dealer” and will complete a single registration with the Remote Sellers Commission.⁴⁸ Plaintiff would thereafter file a single, monthly sales tax return with the Remote Sellers Commission.⁴⁹ Therefore, the majority of the hypothetical burdens anticipated by Plaintiff, even if accepted as true, would not be applicable to Plaintiff. Moreover, it is an undisputed fact that Plaintiff currently does not meet of thresholds set forth under La. R.S. 47:301(4)(m)(i) and lacks physical presence with Louisiana, and in turn, is not required to collect and remit state and local sales and use tax for its sales made into Louisiana.⁵⁰ As a result, no actual case or controversy exists in this matter. Thus, if this Court granted the extreme relief requested in the Complaint, it would be providing opinions upon moot questions or abstract propositions, or to declare principles

⁴⁸ See ¶9 of the Granier Aff., the Drude Aff., and the Butts Aff.

⁴⁹ *Id.*

⁵⁰ See ¶8 of the Granier Aff., the Drude Aff., and the Butts Aff.

or rules of law that do not affect the specific matter (and particular plaintiff) in the case before it. See *Church of Scientology of Cal.*, 506 U.S. at 12. Accordingly, the Plaintiff's claims are moot and the Court therefore lacks jurisdiction over this case.

B. The Tax Injunction Act Preempts Jurisdiction Over Plaintiff's Complaint.

The Tax Injunction Act (the "TIA") is a "broad restriction on federal jurisdiction in suits that impede state tax administration" that separately bars this Court from entertaining Plaintiff's claims as the federal litigation "would be impermissibly disruptive of [Louisiana's] tax system". *United Gas Pipeline Co. v. Whitman*, 595 F.2d 323, 326, 329 (5th Cir. 1979). Specifically, the TIA provides: "The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State." 28 U.S.C. § 1341. The primary purpose of the TIA was "to limit drastically federal district court jurisdiction to interfere with so important a local concern as the collection of taxes." *California v. Grace Brethren Church*, 457 U.S. 408-09 (1982) (internal quotation omitted). The TIA prohibits claims for declaratory as well as injunctive relief. *Id.* at 411. The Supreme Court has declared that the TIA "has its roots in equity practice, in principles of federalism, and in recognition of the imperative need of a state to administer its own fiscal operations." *Tully v. Griffin*, 429 U.S. 68, 73 (1976).⁵¹

"The Tax Injunction Act imposes an equitable duty on federal district courts to refrain from exercising jurisdiction over claims arising from state revenue collection except when state remedies could prevent a taxpayer from asserting a federal right." *Smith v. Travis County Educ.*

⁵¹ The power to tax is basic to the ability of the State to exist. *M'Culloch v. Maryland*, 17 U.S. (4 Wheat) 316, 339 (1819) (Marshall, J.); see also *Arkansas v. Farm Credit Servs. of Cent. Arkansas*, 520 U.S. 821, 826 (1997) ("The States' interest in the integrity of their own processes is of particular moment respecting questions of state taxation").

Dist., 968 F.2d 453, 455 (5th Cir. 1992) (quoting *McQueen v. Bullock*, 907 F.2d 1544, 1547 (5th Cir. 1990)). “This restraint emerges from ‘the scrupulous regard [of the federal courts] for the rightful independence of state governments . . . and a proper reluctance to interfere by injunction with their fiscal operations.’” *Id.* (quoting *Matthews v. Rodgers*, 284 U.S. 521, 525 (1932)).

As originally enacted, the TIA provided that “no district court shall have jurisdiction of any suit to enjoin, suspend, or restrain . . . [.]” Act of Aug. 21, 1937, 50 Stat. 738, codified at 28 U.S.C. § 41(1) (1940 ed.). Although the explicit reference to jurisdiction was removed in the 1948 United States Code revisions, the U.S. Supreme Court has continued to refer to the TIA as limiting subject matter jurisdiction. *See Direct Marketing Ass’n v. Brohl*, 135 S.Ct. 1124, 1133–34 (2015); *Levin v. Commerce Energy, Inc.*, 560 U.S. 413, 429 n.10 & 433 (2010) (Thomas, J., concurring); *Farm Credit Servs. of Central Ark.*, 520 U.S. at 825–26.

An example of the TIA’s broad-sweeping jurisdictional limitations was confirmed in the U.S. Supreme Court’s refusal to hear a case involving an Eighth Circuit decision that the TIA and principles of comity deprived the federal court of jurisdiction in a commercial activity tax (“CAT”) challenge. *See Diversified Ingredients, Inc. v. Testa*, 137 S.Ct. 2247, 198 L.Ed.2d 679 (2017). In *Diversified Ingredients Inc. v. Testa*, the Eighth Circuit upheld a federal district court’s decision to dismiss an out-of-state company’s claim that an Ohio CAT assessment was prohibited by the federal Interstate Income Act. 846 F.3d 994 (8th Cir. 2017), cert. denied 137 S.Ct. 2247 (2017). The U.S. Supreme Court’s denial of certiorari meant the challenge to the Ohio CAT under a federal law (P.L. 86-272) had to be pursued through Ohio’s appeals process instead. *Id.* at 997.

Additionally, a plain, speedy and efficient remedy exists where a state provides a procedural vehicle that affords taxpayers the opportunity to raise their federal constitutional claims. *See Smith*, 968 F.2d at 456 (citing *Rosewell v. LaSalle Nat’l Bank*, 450 U.S. 503, 512–

13). “The touchstone for whether a taxpayer has a ‘plain, speedy, and efficient’ remedy is whether she is entitled to a ‘full hearing and judicial determination at which she may raise any and all constitutional objections to the tax.’” *Amos v. Glynn Cty. Bd. of Tax Assessors*, 347 F.3d 1249, 1255 (11th Cir. 2003) abrogated on other grounds by *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 280, 125 S. Ct. 1517, 1518, 161 L. Ed. 2d 454 (2005) (internal citations omitted). A state provides a plain, speedy and efficient remedy when it provides taxpayers “with a ‘full hearing and judicial determination,’” with ultimate review available in the United States Supreme Court pursuant to 28 U.S.C. § 1257. *Rosewell*, 450 U.S. at 514 (quoting S. Rep. No. 701, 72d Cong., 1st Sess., 1–2 (1932)) (citation omitted). Accordingly, the taxpayer has the burden of establishing facts sufficient to overcome the jurisdictional bar of the TIA. *Amos*, 347 F.3d at 1256.

Considering the foregoing, Louisiana law clearly provides a “plain, speedy, and efficient” remedy as taxpayers have an avenue to adjudicate their claims before the Louisiana Board of Tax Appeals or State district court, which will “hear and decide” a claim that a state tax has been invalidly assessed or collected. *See Rosewell*, 450 U.S. at 517; *see* La. R.S. 47:1565, La. R.S. 47:337.51, La. R.S. 47:1407, and La. R.S. 47:1431 *et seq.* Moreover, the Louisiana Legislature has recently amended and enacted La. R.S. 47:1407(7) to grant the Louisiana Board of Tax Appeals the explicit jurisdiction to hear actions related to the constitutionality of a Louisiana sales and use tax law. *See* Act No. 365 of the 2019 Regular Session of the Louisiana Legislature. An appeal of such a judicial determination proceeds through the Louisiana appellate courts, the Louisiana Supreme Court, and then is appealable to the United States Supreme Court. *See* La. Rev. Stat. § 47:1434-1435. Thus, Louisiana’s statutory scheme meets the requirements of the TIA to preclude federal jurisdiction over claims such as those raised by the Plaintiff. No federal forum in this state tax dispute is required or appropriate.

Even with the remedies afforded under Louisiana law through its state court system, Plaintiff here asks the federal courts for declaratory and injunctive relief regarding Louisiana's Constitution and related taxing statutes on the grounds that such provisions of law violate the Commerce Clause and the Due Process Clause of the United States Constitution. In doing so, Plaintiff seeks to invalidate by declaratory judgment, and further enjoin, the core sales and use tax powers granted to the Collectors under the Louisiana Constitution and related statutes, which comprise the essential structure and content of Louisiana's sales state and local sales tax system.

Accordingly, it is clear that granting the extreme relief requested by Plaintiff would enjoin, suspend, or restrain the assessment, levy, or collection of taxes by the State and parishes, which includes the Collectors in this action. Moreover, the exercise of federal jurisdiction herein would go against one of the legislative purposes in enacting the TIA: "the elimination of disruption in state and local financing by out-of-state corporations bringing suit in federal court". *United Gas Pipeline Co.*, 595 F.2d at 329. Based on the foregoing, Plaintiff's suit is the exact type of action Congress sought to prevent in the enactment of the TIA. Thus, Plaintiff's suit must be dismissed as this Court is without jurisdiction to consider Plaintiff's claims under the TIA.

C. This Action is Independently Barred by the Principle of Federal Comity.

Completely independent of the TIA, Plaintiff's claims are barred by the broader principle of federal comity. The TIA is only "a partial codification of the federal reluctance to interfere with state taxation." *National Private Council, Inc. v. Oklahoma Tax Comm'n*, 515 U.S. 582, 590 (1995). Even though the TIA acts as a broad jurisdictional barrier, as described above, its precursor, the comity doctrine, is "more embracive." *Levin v. Commerce Energy, Inc.*, 560 U.S. 413, 417, 424 (2010). The comity doctrine reflects:

a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments,

and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in separate ways.

Id. at 421 (quoting *Fair Assessment in Real Estate Ass'n v. McNary*, 454 U.S. 100, 112 (1981)). “Comity’s constraint has particular force when lower federal courts are asked to pass on the constitutionality of state taxation of commercial activity.” *Id.* Thus, even where the TIA does not preclude jurisdiction, “principles of federalism and comity generally counsel that courts should adopt a hands-off approach with respect to state tax administration.” *National Private Council*, 515 U.S. at 586.

Under these principles, if the Court has reservations about whether the TIA bars this action, or if the Court simply prefers to avoid resolving that issue, then the comity doctrine still calls for the case to be dismissed. *See Levin*, 560 U.S. at 432. Pursuant to the comity doctrine, “federal courts refrain from ‘interfer[ing]...with the fiscal operations of the state governments...in all cases where the Federal rights of persons could otherwise be preserved unimpaired’” through remedies available under state law. *Direct Mktg. Ass’n v. Brohl*, 814 F.3d 1129, 1134 n.7 (10th Cir. 2016) (quoting *Levin*, 560 U.S. at 422). There is no doubt that Plaintiff’s Complaint “in every practical sense operate[s] to suspend collection of the state taxes until the litigation [is] ended”. *Fair Assessment in Real Estate Ass’n v. McNary*, 454 U.S. 100, 112 (1981).

Based on the foregoing, the relief Plaintiff seeks would directly interfere with the ongoing fiscal operations of Louisiana and its parishes, which implicates an important state/sovereign interest. In addition, Plaintiff can receive proper adjudication of its federal constitutional arguments through Louisiana’s court system. Under these circumstances, dismissal of Plaintiff’s Complaint pursuant to the comity doctrine is warranted.

II. THE PLAINTIFF’S LAWSUIT SHOULD BE DISMISSED PURSUANT TO RULE 12(B)(6).

Even if jurisdiction were found to exist, the Collectors alternatively argue that the Plaintiff has failed to state a claim for relief. *See* F.R.C.P. 12(b)(6). In deciding a Rule 12(b)(6) motion to dismiss, the court evaluates the sufficiency of the complaint by accepting “all well-pleaded facts as true and viewing those facts in the light most favorable to [the plaintiff].” *Campbell v. City of San Antonio*, 43 F.3d 973, 975 (5th Cir. 1995). To survive a Rule 12(b)(6) motion, the plaintiff must plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

However, it is insufficient for the complaint’s factual allegations to “merely create[] a suspicion that the pleader might have a right of action.” *Campbell*, 43 F.3d at 975; *see also Twombly*, 550 U.S. at 555 (holding that the Rule 8 pleading standard demands more than a formulaic the-defendant-unlawfully-harmed-me accusation). Instead, to survive a motion to dismiss, a complaint requires more than a “sheer possibility that a defendant has acted unlawfully,” or “naked assertions devoid of further factual enhancement.” *Iqbal*, 556 U.S. at 678 (citations omitted).

Although the Court need not reach this issue, Petitioner has failed to state a claim for relief, which requires dismissal under Rule 12(b)(6). As stated above, Plaintiff has not registered with any of the Collectors, nor has there been any attempt by the Collectors to force the Plaintiff to register or attempt to assess/collect sales and use taxes from Plaintiff.⁵² Further, it is an undisputed

⁵² *See* ¶¶5 – 7 of the Granier Aff., the Drude Aff., and the Butts Aff.

fact that Plaintiff has not met any of thresholds set forth under La. R.S. 47:301(4)(m)(i) and lacks physical nexus with Louisiana, and in turn, is not required to collect and remit state and local sales and use tax for its sales made into Louisiana. Plaintiff's only claim for relief is an alleged injury that Plaintiff "risks" losing potential revenue from Louisiana by refusing – on its own volition – to surpass the economic thresholds set forth under La. R.S. 47:301(4)(m)(i).⁵³

And as noted above, for whatever reason, either due to ignorance of the availability of the Remote Sellers Commission to Plaintiff or intentionally omitting the availability of the Remote Sellers Commission, the pleadings are just plain false with regard to the hypothetical burdens/costs contemplated to be suffered by Plaintiff. Certainly, this Court can take judicial notice of the factual existence of the Remote Sellers Commission as the single collector for remote dealers as defined by La. R.S. 47:301(4)(m)(i).⁵⁴ Such a speculative request for relief based on hypothetical injuries that only creates a suspicion that Plaintiff may have a right of action, is the type of mere conclusory allegations Rule 12(b)(6) seeks to avoid. Thus, based on the Complaint before this Court, Plaintiff has failed state a proper claim for relief and the Complaint should be dismissed under Rule 12(b)(6).

III. EVEN IF SUBJECT MATTER JURISDICTION IS PRESENT, THIS COURT SHOULD ABSTAIN FROM EXERCISING JURISDICTION HEREIN.

In the event this Court should find it has subject matter jurisdiction (which the Collectors deny exists for the above reasons), it should decline to exercise jurisdiction under the abstention doctrines espoused in *Burford v. Sun Oil Co.*, 319 U.S. 315, 63 S.Ct. 1098, 87 L.Ed. 1424 (1943) and its progeny. The *Burford* abstention doctrine requires federal courts to "decline to interfere

⁵³ See Plaintiff's Verified Complaint at ¶48.

⁵⁴ See ¶18 of Granier, Drude, and Butts Affidavits attached hereto as Exhibits "A", "B" and "C", respectively. See also La. Rev. Stat. §§47:339(A)(2) and §47:340(G).

with complex state regulatory schemes in cases involving (1) difficult state law questions bearing on policy problems of substantial public import, or (2) efforts to establish a coherent state policy regarding a matter of substantial public concern.” *New Orleans Public Serv., Inc. v. Council of City of New Orleans*, 491 U.S. 350, 361, 109 S.Ct. 2506, 2514-15, 105 L.Ed.2d 298 (1989). Federal courts should abstain from exercising federal jurisdiction under the *Burford* doctrine when the state interests at stake are “paramount”; such as “when a state administrative scheme guards an ‘over-all plan of regulation...of vital interest to the general public’ from federal interference.” *Grace Ranch, L.L.C. v. BP Am. Prod. Co.*, 989 F.3d 301, 316 (5th Cir. 2021).

Although a federal equity court does have jurisdiction of a particular proceeding, it may, in its sound discretion, whether its jurisdiction is invoked on the ground of diversity of citizenship or otherwise, “refuse to enforce or protect legal rights, the exercise of which may be prejudicial to the public interest”; as it “is in the public interest that federal courts of equity should exercise their discretionary power with proper regard for the rightful independence of state governments in carrying out their domestic policy.” *Burford*, 319 U.S. at 318 (1943) (citations omitted). The *Burford* abstention doctrine is applicable when the plaintiff’s claim may be “in any way entangled in a skein of state law that must be untangled before the federal case can proceed.” *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 727, 116 S.Ct. 1712, 1726, 135 L.Ed.2d 1 (1996) (quoting *McNeese v. Board of Ed. for Community Unit Sch. Dist.*, 373 U.S. 668, 674, 83 S.Ct. 1433, 1437, 10 L.Ed.2d 622 (1963)). The Supreme Court has described *Burford* abstention as applicable “[w]here timely and adequate state-court review is available.” *New Orleans Public Serv., Inc.*, 491 U.S. at 361.

In *Burford*, plaintiff, Sun Oil, brought a federal suit challenging a Texas Railroad Commission order granting a drilling permit to defendant, Burford. Sun Oil claimed the permit

violated its due process rights. The Supreme Court found that under Texas law, “the Texas courts are working partners with the Railroad Commission in the business of creating a regulatory system for the oil industry.” *Burford*, 319 U.S. at 326 (emphasis added). The Court held that the federal district court should have abstained, noting the comprehensive nature of the state regulatory scheme, the large interest of the state in regulating and conserving its oil and gas resources, and the need for a unified approach to granting permits by a single adjudicatory body.

Likewise, in the instant matter, the State and local governments are working partners for the purposes of taxation as evidenced by the statutory and regulatory scheme adopted by them in “Title 47. Revenue and Taxation” in of the Louisiana Revised Statutes, specifically those provisions establishing the Remote Sellers Commission contained in Act 274. Federal Courts are required to abstain under *Burford* when the State's interests in “maintaining ‘uniformity in the treatment of an ‘essentially local problem’ and retaining local control over ‘difficult questions of state law bearing on policy problems of substantial public import’” outweigh “the strong federal interest in having certain classes of cases, and certain federal rights, adjudicated in federal court.” *Quackenbush*, 517 U.S. at 728. Louisiana's interest in maintaining uniformity in the application of its tax laws is reflected in the structure of the statute and the regulations, and indeed, in the Constitution of the State of Louisiana itself. Similar to the statutory permitting scheme in *Burford*, the Louisiana Constitution and Title 47 of the Louisiana Revised Statutes provides Louisiana a unified scheme for sales and use taxes assessed and collected throughout the State. The application of *Burford* abstention requires that this Honorable Court abstain from exercising its federal jurisdiction herein.

As the United States Court of Appeals, Fifth Circuit observed in *Webb v. B.C. Rogers Poultry, Inc.*, 174 F.3d 697 (5th Cir. 1999), the *Burford* doctrine requires the court to “weigh the

federal interests in retaining jurisdiction over the dispute against the state's interests in independent action to uniformly address a matter of state concern, and to abstain when the balance tips in favor of the latter.” *Webb*, 174 F.3d 700-01. The *Burford* abstention has been routinely applied in situations involving comprehensive state administrative and regulatory schemes and where issues concerning state public policy override. *See, e.g., Sierra Club v. City of San Antonio*, 112 F.3d 789 (5th Cir. 1997); *Metro Riverboat Associates, Inc. v. Bally's Louisiana, Inc.*, 142 F.Supp.2d 765 (E.D. La. 2001).

The relief requested by Plaintiff herein – an injunction prohibiting the Collectors from enforcing the tax regulatory scheme as mandated by the Louisiana Constitution and promulgated by the laws created by the Legislature for the State of Louisiana – would improvidently interfere with multiple issues of Louisiana public policy and Louisiana administrative and regulatory schemes. *See, e.g., Fair Assessment in Real State Assn v. McNary*, 454 U.S. 100 (1981). As such, even if this Honorable Court determines that it has jurisdiction over the instant matter, it should abstain from exercising said jurisdiction to prevent interference with Louisiana’s administrative and regulatory tax schemes.

IV. PLAINTIFF’S HYPOTHETICAL COMMERCE CLAUSE CLAIM.

Assuming *arguendo*, that Plaintiff was actually a remote dealer meeting the La. R.S. 47:301(4)(m)(i) threshold, Plaintiff’s Commerce Clause claim would fail. Considering the standards enunciated by the U.S. Supreme Court in *Wayfair* to the *actual* facts herein, the requirement for “dealers” defined under La. R.S. 47:301(m) to file and remit taxes to the Remote Sellers Commission is neither discriminatory nor unduly burdensome.⁵⁵

⁵⁵ As the *Wayfair* Court noted, “This Court's [Commerce Clause] doctrine has developed further with time. Modern precedents rest upon two primary principles that mark the boundaries of a State's authority to regulate interstate commerce. First, state regulations may not discriminate

The U.S. Supreme Court in *Wayfair*, *in dicta*, stated that:

“South Dakota's tax system includes several features that appear designed to prevent discrimination against or undue burdens upon interstate commerce. First, the [South Dakota] Act applies a safe harbor to those who transact only limited business in South Dakota. Second, the Act ensures that no obligation to remit the sales tax may be applied retroactively. [] Third, South Dakota is one of more than 20 States that have adopted the Streamlined Sales and Use Tax Agreement. [] This system standardizes taxes to reduce administrative and compliance costs: It requires a single, state level tax administration, uniform definitions of products and services, simplified tax rate structures, and other uniform rules...”.

Wayfair, 138 S.Ct. at 2099-2100.

Louisiana’s response to *Wayfair* was to create a framework to provide a “safe harbor” for “those who transact only limited business,” as did South Dakota, by adopting the identical \$100,000 annual sales or 200 transaction threshold limits in its passage of Act 5. The obligations to commence collection and reporting was not applied retroactively and began in 2018, following the passing of Act 5, *supra*. While Louisiana is not a party to the Streamlined Sales and Use Tax

against interstate commerce; and second, States may not impose undue burdens on interstate commerce. State laws that discriminate against interstate commerce face ‘a virtually per se rule of invalidity.’ [] State laws that ‘regulat[e] even-handedly to effectuate a legitimate local public interest ... will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits.’ [] Although subject to exceptions and variations, [] these two principles guide the courts in adjudicating cases challenging state laws under the Commerce Clause.” *South Dakota v. Wayfair, Inc.*, 138 S.Ct. 2080, 2090-91, 201 L.Ed.2d 403, 416 (2018) (internal citations omitted). The *Wayfair* Court further stated that, “[t]hese principles also animate the Court's Commerce Clause precedents addressing the validity of state taxes. The Court explained the now-accepted framework for state taxation in *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 97 S.Ct. 1076, 51 L.Ed.2d 326 (1977). The Court held that a State ‘may tax exclusively interstate commerce so long as the tax does not create any effect forbidden by the Commerce Clause.’ [] After all, ‘interstate commerce may be required to pay its fair share of state taxes.’ [] The Court will sustain a tax so long as it (1) applies to an activity with a substantial nexus with the taxing State, (2) is fairly apportioned, (3) does not discriminate against interstate commerce, and (4) is fairly related to the services the State provides.” *Wayfair*, 138 S.Ct. at 2091 (internal citations omitted).

Agreement, the Louisiana Legislature created the Remote Sellers Commission – the single, state level administrator for registration, reporting and collections of remote sales. All sales and use tax “definitions”, by law are uniformly applied to both state and local jurisdictions. *See* La. Rev. Stat. § 47:301 and La. Rev. Stat. § 47:337.6(B). Collection of delinquent taxes is centralized with the Remote Sellers Commission and the enabling statute requires the Remote Sellers Commission to follow collection remedies currently utilized by the State of Louisiana in tax related matters under Chapter 18 of Title 47. *See* La. Rev. Stat. § 47:340(F). The Remote Sellers Commission is further vested with the power to make rules specifically to its duties and responsibilities. *See* La. Rev. Stat. § 47:340(F).

Quite simply, the facts in this matter reveal the numerous, and erroneous, “factual” allegations contained in Plaintiff’s Complaint:

- Paragraph 78 (Louisiana requires parish-by-parish registration and reporting);
- Paragraph 79 (each taxing jurisdiction may create its own definitions);
- Paragraph 80 (no single point of contact for out-of-state sellers required to collect Louisiana taxes);
- Paragraph 81 (no software much less state supplied software for registering and reporting); and
- Paragraph 82 (no safe harbor as a result of no state-approved software).

As shown herein, these allegations contained in Plaintiff’s Complaint, which serve as the basis and fabric of Plaintiff’s claims of undue burden, are absolutely and patently false statements.

While Louisiana does not pretend to have a simplified tax rate structure, the filing and reporting is made simple by virtue of the creation online portal by the Remote Sellers Commission. Proof of its usefulness and ease of use is evident by the number of current users: “4,816 entities

have registered as remote dealers with the Remote Sellers Commission and are filing monthly returns and remitting collected sales tax via electronic fund transfer,” with an average of 232 new, approved registrants per month.⁵⁶ Therefore, Plaintiff’s claims under the Commerce Clause are patently moot and premature as it has no obligations to register, file and remit taxes in Louisiana based upon the facts plead in its Petition.

V. PLAINTIFF’S HYPOTHETICAL DUE PROCESS CLAIM.

The Due Process Clause provides that “[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, § 1. The Due Process Clause “centrally concerns the fundamental fairness of governmental activity.” *Quill Corp. v. North Dakota*, 504 U.S. 298, 312 (1992), overruled on other grounds, *Wayfair, Inc.*, 138 S.Ct. 2080.

In the context of state taxation, the Due Process Clause limits states to imposing only taxes that “bea[r] fiscal relation to protection, opportunities and benefits given by the state.” *Wisconsin v. J. C. Penney Co.*, 311 U.S. 435, 444 (1940). The power to tax is, of course, “essential to the very existence of government,” *McCulloch v. Maryland*, 4 Wheat. 316, 428 (1819), but the legitimacy of that power requires drawing a line between taxation and mere unjustified “confiscation.” *Miller Brothers Co. v. Maryland*, 347 U.S. 340, 342 (1954). That boundary turns on the “[t]he simple but controlling question . . . whether the state has given anything for which it can ask return.” *Wisconsin*, 311 U.S. at 444.

The Court applies a two-step analysis to decide if a state tax abides by the Due Process Clause. *See Quill* 504 U.S. at 306. First, and most relevant here, there must be “some definite link, some minimum connection, between a state and the person, property or transaction it seeks to tax.”

⁵⁶ *See* ¶38 the Granier Aff., the Drude Aff., and the Butts Aff.; *See also* the Report.

Id. Second, “the income attributed to the State for tax purposes must be rationally related to values connected with the taxing State.” *Id.* (internal quotations omitted).

To determine whether a State has the requisite “minimum connection” with the object of its tax, this Court borrows from the familiar test of *International Shoe Co. v. Washington*, 326 U.S. 310 (1945). *See Quill*, 504 U.S. at 307. A State has the power to impose a tax only when the taxed entity has “certain minimum contacts” with the State such that the tax “does not offend ‘traditional notions of fair play and substantial justice.’” *International Shoe Co.*, 326 U.S. at 316; *see also Quill*, 504 U.S. at 308. The “minimum contacts” inquiry is “flexible” and focuses on the reasonableness of the government’s action. *Quill*, 504 U. S. at 307. Ultimately, only those who derive “benefits and protection” from associating with a State should have obligations to the State in question. *International Shoe*, 326 U. S. at 319.

As of this filing, Plaintiff admittedly does not have minimum contacts with Louisiana.⁵⁷ Its sales into Louisiana are considered *de minimus* and below the threshold standard set by Louisiana law in accordance with the *Wayfair* ruling. Louisiana and its parishes have taken nothing nor demanded anything of Plaintiff. The laws of Louisiana make no demands on Plaintiff and impose no duty on Plaintiff. On the other hand, should Plaintiff one day meet the definitional standard found in La. R.S. 47:301(4)(m)(i), these threshold standards would satisfy the minimum connection or contacts threshold as found in *Wayfair*. But as Plaintiff’s Complaint currently exists before this Court, these Due Process claims are clearly moot and premature.

⁵⁷ *See* Plaintiff’s Verified Complaint at ¶¶5, 21 – 33, and 46.

VI. THE 1983 CLAIMS FAIL ON THE MERITS.

Plaintiff cites to 42 U.S.C. §1983 in its request for attorney's fees and costs. However, Plaintiff fails to make an actual 1983 claim, as it cites neither facts nor law that support that position. Although Plaintiff has failed to make a valid 1983 claim, if such a claim was properly made herein, the Collectors are entitled to dismissal of those claims.

A. Claims against the Individual Defendants in Their Official Capacity.

In addition to naming the Collectors individually, as defendants, Plaintiff has also named as defendants, but not yet served the Parishes of Lafourche, Washington, and Tangipahoa. An official capacity suit is the equivalent of a suit against the entity of which the officer is an agent. *See, e.g., Kentucky v. Graham*, 473 U.S. 159, 165-166 (1985); *Brandon v. Holt*, 469 U.S. 464, 471-472 (1985); *Hafer v. Melo*, 112 S.Ct. 358, 361 (1991); *McMillian v. Monroe County, Ala.*, 520 U.S. 781, 784-85, 117 S.Ct. 1734, 138 L.Ed.2d 1 (1997). In this case, Plaintiff has named Lafourche Parish, Washington Parish, and Tangipahoa Parishes as defendants. Due to the redundant nature of the claims, the Collectors respectfully request dismissal of the claims against them in their official capacities.

When as in this case, “the government entity itself is a defendant in the litigation, claims against specific individuals in their official capacities are redundant, and for that reason, courts in this circuit have found it is appropriate to dismiss them.” *Marceaux v. Lafayette City-Parish Consol. Govt.*, 921 F.Supp.2d 605, 623 (W.D. La. 2013) (citing *Castro Romero v. Becken*, 256 F.3d 349, 355 (5th Cir. 2001) (“The district court was also correct in dismissing the allegations against all of the municipal officers and two of the employees of the Corps of Engineers in their official capacities, as these allegations duplicate claims against the respective governmental entities themselves”) and *Flores v. Cameron County, Tex.*, 92 F.3d 258, 261 (5th Cir. 1996)).

Accordingly, Plaintiff's claims against the Collectors, individually, in their official capacities should be dismissed.⁵⁸

B. The Collectors are Entitled to Qualified Immunity.

Notwithstanding the foregoing, the Collectors are shielded from liability in the instant matter based on qualified immunity. As such, the burden shifts to Plaintiff to establish that a "reasonable" collector would have known that his conduct violated a clearly established right. Plaintiff has failed to make this showing. As such, the Collectors are entitled to qualified immunity from Plaintiff's claims.

Government officials performing discretionary functions⁵⁹ are "generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 102 S.Ct. 2727, 2738 (1982). The protection afforded by the defense is an "immunity from suit, not simply immunity from liability". *Babb v. Dorman*, 33 F.3d 472, 477 (5th Cir. 1994). Consequently, the immunity issue must be resolved at the earliest possible stage of the litigation since it entails an entitlement to *immunity from suit* and not merely a defense to liability. See *Hunter v. Bryant*,

⁵⁸ As a result, once served, the Parishes will be entitled to dismissal of the 1983 claims as well. When there is no underlying individual constitutional violation for which the municipal defendant can be held derivatively liable, there can be no liability against the municipality or its employees in their official capacities and thus, Plaintiff will be determined to have failed to state a claim upon which relief can be granted. *Olabisiomotosho v. City of Houston*, 185 F.3d 521, 528-529 (5th Cir. 1999); *Tejada v. Knee*, 228 F.3d 409, 2000 WL 1056124, *2 (5th Cir. 2000) (unpublished); *Breaux v. Brown*, 2006 WL 3760242, *2 (W.D. La. 2006); *Patin v. Richard*, 2011 WL 9118, *8 (W.D. La. 2011) citing *Ashford v. City of Lafayette*, 2008 WL 5157900, *11 (W.D. La. 2008).

⁵⁹ The term "discretionary" has been interpreted to include actions that do not necessarily involve an element of choice. Rather, qualified immunity has been extended to officials who actions may be considered "ministerial" so long as the actions "(1) were 'undertaken pursuant to the performance of his duties' and (2) were 'within the scope of his authority'". See *McCoy v. Webster*, 47 F.3d 404, 407 (11th Cir. 1995).

112 S.Ct. 534, 536 (1991). Qualified immunity allows officials the freedom to exercise fair judgment, protecting “all but the plainly incompetent or those who knowingly violate the law.” *Malley v. Briggs*, 106 S.Ct. 1092, 1096 (1986). A defendant is immune if reasonable public officials could differ on the lawfulness of the actions. See *Hassan v. Lubbock Independent School District*, 55 F.3d 1075, 1079 (5th Cir. 1995). Officials are not expected to determine the manner in which the law's gray areas might be clarified or defined. See *Davis v. Scherer*, 104 S.Ct. 3012, 3019-20 (1984).

A bifurcated test is applied when analyzing whether a government official is entitled to qualified immunity: (1) whether the plaintiff has alleged a violation of a clearly established constitutional right; and (2) if so, whether the defendant's conduct was objectively unreasonable in the light of the clearly established law at the time of the incident. *Jacobs v. W. Feliciana Sheriff's Dep't*, 228 F.3d 388, 393 (5th Cir. 2000).

The first inquiry, whether the plaintiff has alleged a violation of a clearly established constitutional right is a “purely legal question” to be determined by the Court. See *Siegert v. Gilley*, 111 S.Ct. 1789, 1793 (1991). In making this determination, the court uses “currently applicable constitutional standards.” *Jacobs*, 228 F.3d at 393. The plaintiff bears the burden of pleading such a violation of clearly established law. See *Mitchell v. Forsyth*, 105 S.Ct. 2806, 2815 (1985); *Foster v. City of Lake Jackson*, 28 F.3d 425, 428 (5th Cir. 1994).

Next, the court must determine whether an alleged right was established with sufficient particularity that a reasonable official could anticipate his actions would violate that right, *i.e.*, whether the official's conduct was “unreasonable”. *Anderson v. Creighton*, 107 S.Ct. 3034, 3039 (1987); *Davis v. Scherer*, 104 S.Ct. 3012, 3019-20 (1984).

Objective reasonableness is a question of law for the court. *Jacobs*, 228 F.3d at 394. The reasonableness of the official's conduct must be assessed in light of the law as it existed at the time of the conduct in question. *Harper v. Harris*, 21 F.3d 597, 601 (5th Cir. 1994). As to a determination of whether a right is "clearly established", the Fifth Circuit has stated:

[F]or qualified immunity to be surrendered, pre-existing law must dictate, that is, truly compel (not just suggest or allow or raise a question about), the conclusion for every like-situated, reasonable government agent that what defendant is doing violates federal law *in the circumstances*.

Sorenson v. Ferric, 134 F.3d 325, 330 (5th Cir. 1998) (internal citations omitted) (emphasis in original).

Plaintiff has failed to show that there was a violation of a "clearly established constitutional right." This conclusion is supported by the fact that, prior to the *Wayfair* decision, the Louisiana legislature established the Louisiana Sales and Use Tax Commission for Remote Sellers⁶⁰, which was intended to serve as the single entity in Louisiana for the collection and administration of state and local sales and use tax on remote sales sourced to Louisiana taxing jurisdictions.⁶¹ Furthermore, following the *Wayfair* decision, the Louisiana legislature included in the definition of "dealers" for sales tax purposes a "safe harbor" virtually identical to that which was found to be constitutional by the Supreme Court in *Wayfair*. Finally, as there are no allegations regarding specific actions of the Collectors and based on the fact that since July 1, 2020, the Remote Sellers Commission has been the singular collector of sales and use tax on remote sales for the State and

⁶⁰ See Act 274.

⁶¹ See ¶18 of the Granier Aff., the Drude Aff., and the Butts Aff.; See also La. Rev. Stat. §§47:339(A)(2) and §47:340(G).

its parishes,⁶² the Collectors submit that their actions are reasonable. Accordingly, the individual Collectors enjoy qualified immunity from Plaintiff's claims herein.

CONCLUSION

For the foregoing reasons, Plaintiff's claim against the Collectors should be dismissed for lack of jurisdiction or, alternatively, because Plaintiff has failed to state a claim upon which relief may be granted. Further, the Collectors respectfully request that the Court grant such other and further relief as it deems just and equitable.

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⁶² *Id.*

RESPECTFULLY SUBMITTED,

s/ Patrick M. Amedee

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Counsel for Donna Drude, in her official

*capacity as Sales and Use Tax Administrator,
Tangipahoa, Louisiana*

CERTIFICATE OF SERVICE

On December 22nd, 2021, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Eastern District of Louisiana, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

s/ Patrick M. Amedee

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA**

HALSTEAD BEAD, INC., an Arizona
corporation,

Plaintiff,

v.

KIMBERLY LEWIS, in her official capacity
as Louisiana Secretary of Revenue, and

AMANDA GRANIER, in her official
capacity as Sales and Use Tax Administrator
of Lafourche Parish, Louisiana, and

DONNA DRUDE, in her official capacity as
Sales and Use Tax Administrator of
Tangipahoa Parish, Louisiana, and

JAMIE BUTTS, in her official capacity as
Sales Tax Auditor, Washington Parish,
Louisiana, and

LAFOURCHE PARISH, LOUISIANA, a
Home Rule Chartered Parish, and

TANGIPAHOA PARISH, LOUISIANA, a
Home Rule Chartered Parish, and

CIVIL ACTION NO. 2:21-cv-02106

JUDGE: JANE TRICHE MILAZZO

MAGISTRATE: KAREN WELLS ROBY

WASHINGTON PARISH, LOUISIANA, a
Home Rule Chartered Parish,

Defendants.

ORDER

Considering the foregoing Motion for Dismiss pursuant to Rule 12 of the Federal Rules of Civil Procedure filed by AMANDA GRANIER, in her official capacity as Sales Tax Collector, Lafourche Parish, Louisiana; DONNA DRUDE, in her official capacity as Sales and Use Tax Administration of Tangipahoa Parish, Louisiana, and JAMIE BUTTS, in her official capacity as Sales Tax Auditor, Washington Parish, Louisiana, Defendants,

IT IS HEREBY ORDERED that the motion is **GRANTED**, dismissing Petitioner, Halstead Bead, Inc.'s claims against Movers AMANDA GRANIER, in her official capacity as Sales Tax Collector, Lafourche Parish, Louisiana; DONNA DRUDE, in her official capacity as Sales and Use Tax Administration of Tangipahoa Parish, Louisiana, and JAMIE BUTTS, in her official capacity as Sales Tax Auditor, Washington Parish, Louisiana;

New Orleans, Louisiana, this ____ day of _____, 20____.

U. S. DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA**

HALSTEAD BEAD, INC., an Arizona
corporation,

Plaintiff,

v.

KIMBERLY LEWIS, in her official capacity
as Louisiana Secretary of Revenue, and

AMANDA GRANIER, in her official
capacity as Sales and Use Tax Administrator
of Lafourche Parish, Louisiana, and

DONNA DRUDE, in her official capacity as
Sales and Use Tax Administrator of
Tangipahoa Parish, Louisiana, and

JAMIE BUTTS, in her official capacity as
Sales Tax Auditor, Washington Parish,
Louisiana, and

LAFOURCHE PARISH, LOUISIANA, a
Home Rule Chartered Parish, and

TANGIPAHOA PARISH, LOUISIANA, a
Home Rule Chartered Parish, and

WASHINGTON PARISH, LOUISIANA, a
Home Rule Chartered Parish,

Defendants.

CIVIL ACTION NO. 2:21-cv-02106

JUDGE: JANE TRICHE MILAZZO

MAGISTRATE: KAREN WELLS ROBY

NOTICE OF SUBMISSION

PLEASE TAKE NOTICE that Defendants, AMANDA GRANIER, in her official capacity as Sales Tax Collector, Lafourche Parish, Louisiana; DONNA DRUDE, in her official capacity as Sales and Use Tax Administration of Tangipahoa Parish, Louisiana, and JAMIE BUTTS, in her official capacity as Sales Tax Auditor, Washington Parish, Louisiana, has filed a Motion to Dismiss Plaintiff's Complaint Pursuant to Rule 12, which is set for submission before the

Honorable Jane Triche Milazzo, United States District Court, Eastern District of Louisiana, 500 Poydras Street, Courtroom __, New Orleans, LA, 70130, on the ____ day of _____, 2022 at ____ a.m.

SIGNATURE BLOCKS CONTAINED ON THE FOLLOWING PAGE

RESPECTFULLY SUBMITTED,

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*Counsel for Donna Drude, in her official
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Tangipahoa, Louisiana*

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of December 2021, I electronically filed the foregoing pleading with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to attorneys of record.

Patrick M. Amedee

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

HALSTEAD BEAD, INC., an Arizona
corporation,

Plaintiff,

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KIMBERLY LEWIS, in her official capacity
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AMANDA GRANIER, in her official
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of Lafourche Parish, Louisiana, and

DONNA DRUDE, in her official capacity as
Sales and Use Tax Administrator of
Tangipahoa Parish, Louisiana, and

JAMIE BUTTS, in her official capacity as
Sales Tax Auditor, Washington Parish,
Louisiana, and

LAFOURCHE PARISH, LOUISIANA, a
Home Rule Chartered Parish, and

TANGIPAHOA PARISH, LOUISIANA, a
Home Rule Chartered Parish, and

WASHINGTON PARISH, LOUISIANA, a
Home Rule Chartered Parish,

Defendants.

CIVIL ACTION NO. 2:21-cv-02106

JUDGE: JANE TRICHE MILAZZO

MAGISTRATE: KAREN WELLS ROBY

AFFIDAVIT

STATE OF LOUISIANA

PARISH OF LAFOURCHE

BEFORE ME, the undersigned Notary Public, personally came and appeared AMANDA

H. GRANIER (“Affiant”), who after being duly sworn, did depose and say:



1. That Affiant is the Sales Tax Collector/Administrator for the Lafourche Parish School Board Sales and Use Tax Department, which is the *Ex Officio* sales and use tax collector for the Parish of Lafourche (the “Collector”), and has so served at all pertinent times herein;
2. That Collector is the single collector for all jurisdictions levying sales and use taxes in the Parish of Lafourche;
3. That the Collector does not impose any registration fees/costs on dealers applying to be registered with the Collector;
4. That there are no filing fees/costs imposed by the Collector on sales and use tax returns filed by registered dealers;
5. That as of the date of execution of this Affidavit, Halstead Bead, Inc. (“Halstead”) has never registered as a dealer with the Collector;
6. That as of the date of execution of this Affidavit, Halstead has never collected and remitted local sales and/or use tax as a dealer on behalf of the Collector;
7. That as of the date of execution of this Affidavit, the Collector has not taken any action to pursue the registration of Halstead for sales/use tax purposes, nor has the Collector sought to impose any other sales and use tax collection and remittance obligations on Halstead;
8. That based upon the allegations of the Complaint filed by Halstead, Halstead has no physical presence in the State of Louisiana, nor does it satisfy “economic nexus” as defined by La. R.S. 47:301(4)(m)(i) to be considered a “dealer” under Louisiana law;
9. That entities with no physical presence in Louisiana but that do meet the “economic nexus” threshold established by La. R.S. 47:301(4)(m)(i) are *not* required to register with the Collector, but are required to register online with the Louisiana Sales and Use Tax Commission for Remote Sellers (the “Remote Sellers Commission”) at

remotesellers.louisiana.gov, and thereafter file monthly returns with the Remote Sellers Commission;

10. That the single, monthly return filed by an entity with the Remote Sellers Commission includes any sales which may have occurred in Lafourche Parish, along with all other sales made into the other jurisdictions within Louisiana;
11. That following collection of the taxes, the Remote Sellers Commission disburses the monthly taxes collected on behalf of Lafourche Parish and remits said taxes to the Collector;
12. That Affiant is aware that in 2017, the Louisiana's Legislature established the Remote Sellers Commission under La. R.S. 47:339, *et seq.*;
13. That Affiant is aware that following the *Wayfair* decision, the Louisiana Legislature expanded the definition of a "dealer" under Louisiana law, thus expanding the definition to include the class of remote dealers with "economic nexus" as contemplated by *Wayfair*. *See Act 5* of the 2018 2nd Extra. Session ("Act 5"), adding La. R.S. 47:301(4)(m);
14. That Affiant is aware that Act 5 further provided that until the Remote Sellers Commission commenced its collection and remittance of state and local sales and use tax at the applicable state and local rates and bases, dealers as defined in R.S. 47:301(4)(m) were required to collect only the additional tax authorized by La. R.S. 47:302(K) and were required to file and remit a single return for sales in Louisiana with the State;
15. That Affiant is aware that Act 5 further provided that notice of the commencement of collection and enforcement by the Remote Sellers Commission would thereafter be published in a policy statement as authorized by LAC 61:III.101 no later than thirty days

prior to the effective date of the commencement of collection and enforcement by the Remote Sellers Commission;

16. That Affiant is aware that the Remote Sellers Commission issued Remote Sellers Information Bulletin No. 20-002 dated May 7, 2020, which provided a notice of the effective date (July 1, 2020) and enforcement by the Remote Sellers Commission for the collection of state and local sales and use tax on remote sales;
17. That Affiant is aware that the Remote Sellers Commission officially commenced its registration and collection duties under La. R.S. 47:339 *et seq.* and the website and registration and remittance portal went “live” on July 1, 2020, and thereafter the Remote Sellers Commission commenced receiving applications, returns and collecting taxes from remote dealers;
18. That Affiant is aware that since July 1, 2020, the Remote Sellers Commission has been the single collector for all parishes and the State with regard to remote sales made into Louisiana by remote dealers;
19. That as of the date of execution of this Affidavit, the Remote Sellers Commission has collected and remitted at least \$ 4,512,535.50 in local sales and use tax to the Collector for the filing periods of July 2020 through October 2021;
20. That upon Affiant’s information and belief, at no time since the Supreme Court’s ruling in *Wayfair* has a remote dealer been required to file multiple returns with different parishes in Louisiana and no such returns have been filed with the Collector;
21. That prior to the *Wayfair* decision, the U.S. Supreme Court’s “physical nexus” requirements pursuant to the Commerce Clause as decided in *Quill Corp. v. North Dakota*

504 U.S. 298 (1992), prohibited attempts by the Collector to require remote sellers to file and remit returns;

22. That on April 30, 2020, and on behalf of all taxing authorities of the Parish of Lafourche, that Collector did sign a document entitled “MEMORANDUM OF UNDERSTANDING BETWEEN THE LOUISIANA SALES AND USE TAX COMMISSION FOR REMOTE SELLERS AND LOCAL SALES AND USE TAX COLLECTOR” (the “MOU”) which transfers all rights of registration of dealers, collection of taxes, enforcement of delinquencies, and other responsibilities related to remote sales from dealers to the Remote Sellers Commission;
23. That Affiant signed the MOU as the authorized representative of the Collector;
24. That attached hereto as Exhibit “1” is a true and correct copy of the MOU between the Remote Sellers Commission and the Collector;
25. That Exhibit 1 was kept in the normal course of the regularly conducted business activity of the Collector;
26. That the MOU specifically provides that the Remote Sellers Commission shall serve as the single entity within the state of Louisiana responsible for all state and local sales and use tax administration, return processing and audits for remote sales deliver into Louisiana (Section D.5.);
27. That the MOU further provides that the Remote Sellers Commission serves as the central, single agency to which remote sellers shall make state and local sales and use tax remittances (Section D.6.);

28. That the MOU further provides that the Remote Sellers Commission is the single authority to assign and direct audits of remote sellers for both the state and all local taxing authorities (Section D.7.);
29. That the MOU further provides that the Remote Sellers Commission has the authority to conduct administrative hearings as requested by aggrieved remote sellers and to make all decisions related to such matters (Section D. 9.);
30. That the MOU authorizes the Remote Sellers Commission to issue all notices required by law to enforce collection of local sales and use tax that may be due from remote sellers (Section D.10.);
31. That the MOU further authorizes the Remote Sellers Commission to require remote sellers to register with the Remote Sellers Commission on behalf of the local taxing jurisdictions (Section D.11.);
32. That the MOU is effective for all relevant time herein, effective July 1, 2020, and ending on June 30, 2023, and automatically renews for an additional 3-year period, except as would be provided under Section G;
33. That beginning on July 1, 2020, the Remote Sellers Commission will enforce the requirement to register with the Remote Sellers Commission in accordance with the Remote Sellers Information Bulletin 20-002;¹
34. That in order to reduce the administrative burden for Remote Sellers, the Commission has compiled the state and local sales and use tax bases and rates on its website;²

¹ See Sales and Use Tax Commission for Remote Sellers, Louisiana Sales and Use Tax on Remote Sales Frequently Asked Questions available at <http://revenue.louisiana.gov/Miscellaneous/Remote%20Sellers%20FAQs%2006.24.2020.pdf> at FAQ No. 9, attached hereto as Exhibit “2”.


² See *Id.*, FAQ No. 17.

35. That “[u]sing jurisdictional codes established by the Commission, Remote Sellers will know the exact rate of state and local sales and use tax to collect as well as if the rate is reduced in part or full because of an exemption or exclusion”;³
36. That upon information and belief, all sales and use tax collectors in the State of Louisiana have signed identical agreements with the Remote Sellers Commission;
37. That the Louisiana Sales and Use Tax Commission for Remote Sellers has made its “Collection and Distribution” Report publicly available on the Louisiana Department of Revenue website;⁴
38. That pursuant to the Collection and Distribution Report dated December 14, 2021, and as of the date of execution of this Affidavit: (a) 4,816 entities have registered as remote dealers with the Remote Sellers Commission and are filing monthly returns and remitting collected sales taxes via electronic fund transfer, and (b) the Remote Sellers Commission currently averages 232 new, approved registrants per month;
39. That pursuant to the Collection and Distribution Report dated December 14, 2021, and as of the date of execution of this Affidavit, the Remote Sellers Commission has collected and remitted at least \$454,769,632.49 in local sales and use tax to the State and parish sales and use tax collectors;⁵ and
40. Further affiant sayeth not.

³ See *Id.*, FAQ No. 17.

⁴ See Louisiana Sales and Use Tax Commission for Remote Sellers has made its “Collection and Distribution” Report available at <https://revenue.louisiana.gov/Miscellaneous/RSC%20Collection%20and%20Distribution%20Report%2012.14.21.pdf> attached hereto as Exhibit “3”.

⁵ See *Id.*

BY: 
AMANDA GRANIER, SALES TAX COLLECTOR
LAFOURCHE PARISH SCHOOL BOARD

Sworn to and subscribed before me this
21st day of December, 2021.



NOTARY PUBLIC

**MEMORANDUM OF UNDERSTANDING BETWEEN THE
LOUISIANA SALES AND USE TAX COMMISSION FOR REMOTE SELLERS AND
LOCAL SALES AND USE TAX COLLECTOR**

A. PARTIES: The parties to this Memorandum of Understanding ("MOU") are the:

1. Louisiana Sales and Use Tax Commission For Remote Sellers (the "Commission"), an entity established within the Louisiana Department of Revenue ("LDR") as set forth under La. R.S. 47:339 *et seq.* and herein represented by Kressynda Krennerich in her official capacity as Chairman of the Commission; and,

2. Lafourche Parish School Board, Sales & Use Tax Dept.
Insert Name of Local Sales and Use Tax Collector's Office

(the "Parish"), designated pursuant to La. Const. Art. VII, §3(B) as the single sales and use tax collector or central collection authority for all sales and use taxes levied by the Parish of Lafourche and/or its said political subdivisions, as well as any and all of its successors, heirs and assigns, and appearing on behalf of the governing bodies of all political subdivisions within the Parish of Lafourche, State of Louisiana, herein represented by:

Amanda H. Granier, Collector
Insert Name and Title of Local Sales and Use Tax Collector

in his/her official capacity as the single sales and use tax collector Lafourche Parish.

B. RECITALS:

WHEREAS, both the Commission and the Parish (hereinafter referred to collectively as the "Parties"), through their duly authorized representatives are entering into this MOU (or "Agreement") pursuant to the laws of the State of Louisiana, as of the effective date set forth by this Agreement;

WHEREAS, the Parties understand and acknowledge that La. R.S. 47:339 *et seq.* established the Commission;

WHEREAS, the Parish believes the Commission provides beneficial assistance, and the Commission's powers and duties are necessary for the proper and efficient collection, administration and enforcement of sales and use taxes collected by remote sellers or their designated agents sourced to the Parish;

WHEREAS, the Parties, after conferring with each other, determined certain specific concerns, not addressed in statute, should be set forth in this MOU to preserve the Parties' efforts to administer the tax laws, collect the tax dollars owed, and to comply with the wishes of the Legislature as shown through its established statutes;



NOW THEREFORE, with the paragraphs above collectively describing the public purpose of this MOU, in consideration of the mutual covenants herein contained, the Parties hereto agree as follows:

C. IMPACT OF COMMISSION & MOU ON PARISH TAXING AUTHORITY

1. The Parties hereby agree and acknowledge nothing in this MOU or Agreement shall impair or nullify the Parish's status, power or authority, as the constitutionally-designated single sales and use tax collector of its parish, to collect, administer and enforce any and all parish sales and/or use taxes levied and imposed by the taxing authorities in the parish, excluding any and all transactions defined to be remote sales by remote sellers or their designated agents sourced to the parish are to be collected, administered and enforced by the Commission.
2. The Parish also hereby acknowledges and agrees that the Commission is vested with certain powers and duties as set forth in La. R.S. 47:339 *et seq.* and that during the entire period for which this Agreement remains in effect, the Parish and the political subdivisions for which it collects taxes shall forebear and refrain from raising or asserting any constitutional challenge in a state or federal court of law or in the Louisiana Board of Tax Appeals that the Commission is unlawfully acting as a "collector" under La. Const. art. VII, §3.

D. ACKNOWLEDGMENT OF COMMISSION POWERS, DUTIES & AUTHORITIES

The Parties understand and acknowledge the Commission, under La. R.S. 47:339 *et seq.*, is statutorily vested with the power, duty and authority to:

1. Remit monies, less any refunds and amounts retained for expenses, to the appropriate state or local collector by electronic funds to the designated bank account of that state or local collector on or before the tenth business day of the month following the month of collection;
2. Fund its operations by an amount equal to actual expenses incurred, which amount shall not exceed one percent (1%) of the total amount of state and local sales and use tax collected on remote sales by the Commission;
3. Retain its funding on a monthly basis from current collections of state and local sales and use tax on remote sales as collected by the Commission prior to monthly distribution to the state and local collectors, subject to a federal law authorizing states to require remote sellers and their agents to collect state and local sales and use taxes on their sales in each state is enacted and becomes effective or a decision by the United States Supreme Court overrules the physical presence requirement for a remote seller to collect and remit state and local sales and use tax on remote sales for delivery into the state;
4. Provide taxpayer information and associated taxpayer history to the state or local collector upon the request, in accordance with La. R.S. 47:1508;

5. Serve as the single entity within the state of Louisiana responsible for all state and local sales and use tax administration, return processing, and audits for remote sales delivered into Louisiana;
 - a. As defined by La. R.S. 47:3398(B)(8), "sales and use taxes" mean the sales and use taxes levied by the state of Louisiana under the provisions of Title 47 of the Louisiana Revised Statutes of 1950, and the sales and use taxes levied by local taxing authorities in Louisiana under the provisions of the Constitution of Louisiana, statutory laws authorizing the imposition of such taxes, and local sales and use tax ordinances. It is the understanding of the Parties that the Commission shall collect sales and use taxes at the actual state and actual local rates at their respective bases.
6. Serve as the central, single agency to which remote sellers shall make state and local sales and use tax remittances;
7. Assign and direct a single audit of remote sellers for the state and all local taxing authorities;
8. Serve as the single state of Louisiana agency to represent both state and local taxing authorities in taking appropriate action to enable Louisiana to participate in programs designed to allow Louisiana to more efficiently enforce and collect state and local sales and use taxes on sales made by remote sellers;
9. Conduct administrative hearings as requested by aggrieved remote sellers, administer oaths, and make adjustments to assessments when justified by the facts and the law, and render decisions following such hearing;
10. With consent of the affected local taxing authority, such consent hereby granted and evidenced by this Agreement, to issue notices of intent to assess, notices of assessments, enforce collection of local sales and use tax taxes by distraint and sale, and institute summary proceedings or ordinary proceedings for collection of local taxes;
11. Require remote sellers to register with the Commission;
12. Provide the Parish an annual report of revenues collected and distributed for each calendar year, which report shall be provided on or before June first of each year; and,
13. Perform any and all other duties as set forth by and/or required by La. R.S. 47:339 *et seq.*

E. DETAILED FUNDING RESPONSIBILITIES

1. The Parish acknowledges and agrees that:
 - a. The Commission shall be compensated based on the amounts set forth in La. R.S. 47:340(E)(3).

- b. The Commission shall withhold compensation from its current collection of Parish sales and/or use taxes from the sale or use by remote sellers and their designated agents, as defined by the Commission, on remote sales sourced to the Parish.
- c. The Commission's funding amounts set forth in La. R.S. 47:340(E)(3) are reasonable sums paid to the Commission in exchange for the Commission's exercise of its powers and duties for assistance in the collection and administration of Parish sales and/or use taxes on remote sales by remote sellers or their designated agents sourced to the Parish.

2. The Commission acknowledges and agrees that:

- a. In consideration for the collection services it statutorily provides, the Commission may withhold actual expenses incurred, which amount shall not exceed one percent (1%) of the total amount of state and local sales and use tax collected on remote sales by the Commission.
- b. Actual expenses shall include, but are not limited to, amounts expended by LDR on behalf of the Commission, that are attributable to start up and initial Commission costs, such as procurement and development of software expenses, filing costs for Commission regulations, personnel expenses, information technology expenses, rental expenses, and any other expenses incurred on behalf of the Commission.
- c. The Commission will withhold one percent (1%) of the collections for the Parish. Records of gross collections, refunds, and amounts retained for expenses shall be made accessible to the respective Parish on a monthly basis.
- d. In the event the reconciliation reveals the actual expenses incurred are less than the one percent (1%) withheld, the Commission shall disburse any excess monies due to the Parish no later than sixty (60) days after the conclusion of the reconciliation.

F. TERM, EFFECTIVE DATE & RENEWAL PROVISIONS OF AGREEMENT

- 1. Term of Agreement: The initial mandatory minimum term of this Agreement shall be a three (3) fiscal year period beginning on July 1, 2020 and ending on June 30, 2023.
- 2. Effective Date of Agreement: The effective date of the Agreement shall be the date shown on the signature pages by the last signing party of the Agreement.
- 3. Renewal Provisions: Unless and until terminated in accordance with Section G of this Agreement, this Agreement shall be automatically renewed in three (3) fiscal year period increments.

4. Modifications: Modifications and/or changes to this Agreement may be made at any time as long as any and all agreed modifications or changes are evidenced in writing and signed by the Parties.
5. Prior to the end date of the initial mandatory minimum term of this Agreement or termination in accordance with Section F of this Agreement, the Parties may enter into negotiations for new conditions and terms.

G. TERMINATION PROVISIONS

1. Once the initial mandatory minimum term of the Agreement has expired, the Agreement may be terminated by either Party upon written notice to the other Party at least ninety (90) days in advance of the end of the fiscal year period.
 - a. The effective termination date shall be the last day of the month in which the 90th day occurs, but in no event later than June 30 of the respective fiscal year period.
2. Termination of this Agreement does not impact, change or modify the Commission's power, duty, authorization or responsibility to collect the sales and use tax due by a remote seller or its designated agent sourced to the Parish.
3. Notwithstanding the above, this Agreement shall be automatically terminated upon any legislative repeal of the statutes creating and/or setting forth the duties of the Commission.
 - a. However, the enactment of new statutes or the amendment to existing statutes shall not be grounds for automatic termination of this Agreement.
 - b. Also, in the event that the political subdivisions in the Parish select an alternative political subdivision within the Parish to be the single sales and use tax collector for the Parish; that the political subdivisions in the Parish create and appoint a commission to be the single sales and use tax collector for the Parish; or if the political subdivisions in the Parish decide to consolidate, combine, or appoint another political subdivision or commission from outside the Parish to be the single sales and use tax collector for the Parish, this Agreement shall be binding and remain in full force and effect and govern the Parish's successor, successors, heirs, assigns, appointees, or designees.

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SIGNATURES ON THE FOLLOWING PAGE

THUS DONE AND SIGNED in Thibodaux, Louisiana on the 30th day of

April, 2020 in the presence of the witnesses who have affixed their names below.
Month

WITNESSES:

Lafourche Parish School Board
Sales - Use Tax Dept.
Insert Name of Local Sales and Use Tax Collector's Office

Judy LeRay
Name: Judy LeRay

Amanda H. Granier
Signature

Amanda H. Granier, Collector
Insert Name and Title of Local Sales and Use Tax Collector

Christy Hume
Name: Christy Hume

Lafourche Parish

THUS DONE AND SIGNED in Baton Rouge, Louisiana on the 11th day of May, 2020 in the presence of the witnesses who have affixed their names below.

WITNESSES:

**Louisiana Sales and Use Tax
Commission for Remote Sellers**

Cailey Moore
Name: Cailey Moore

Kressynda Krennerich
Kressynda Krennerich
Chairman
Louisiana Sales and Use Tax
Commission for Remote Sellers

Karli Collier
Name: Karli Collier



SALES AND USE TAX COMMISSION
FOR REMOTE SELLERS

**Louisiana Sales and Use Tax on Remote Sales
Frequently Asked Questions**

1. What is a Remote Seller?

A Remote Seller is 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.

For more information, refer to *Remote Sellers Information Bulletin 18-002: Definition of Remote Seller and Further Guidance to Remote Sellers.*

2. What if a seller has 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(4) and subject to state and local collection and remittance requirements.

3. What is physical presence?

Physical presence includes, but is not limited to, the following activities in Louisiana, whether done permanently or temporarily, directly or indirectly or through an agent or subsidiary:

- owning or operating retail spaces;
- owning, leasing, maintaining, occupying, or using, an office, place of distribution, sales or sample room, warehouse or storage place or other place of business;
- having an employee, representative, agent, salesman, canvasser or solicitor operating in Louisiana under the authority of the retailer or subsidiary; and
- storage of property in third party facility.

If the seller has physical presence in Louisiana, the seller is considered a Dealer as defined by LA R.S. 47:301(4), rather than a Remote Seller, and is subject to state and local sales tax collection and remittance requirements.

4. Is there a minimum threshold for physical presence?

No.



5. What is nexus (for sales tax purposes)?

Nexus can be established by either physical presence or economic nexus. A seller having physical presence is a Dealer and subject to regular state and local sales tax collection and remittance requirements. A seller without physical presence but having economic nexus is a Remote Seller. Presently, Direct Marketers voluntarily register, collect and remit sales and use tax through the Louisiana Department of Revenue ("LDR") using the Direct Marketer application and reporting forms (i.e., Form R-1031A, *Application to File Direct Marketer Sales Tax Return*, and Form R-1031, *Direct Marketer Sales Tax Returns*).

6. What is the difference between a Remote Retailer, Direct Marketer, and Remote Seller?

While the terms appear synonymous, each has a separate legal meaning in Louisiana.

Remote Retailers

Remote Retailers are out of state sellers with cumulative annual gross receipts in excess of \$50,000, including those gross receipts of its affiliates, for sales delivered into Louisiana per calendar year and must comply with the dual reporting requirements of LA R.S. 47:309.1. For purposes of calculating annual gross receipts, the Remote Retailer 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.

A Remote Retailer is relieved from the reporting requirements of LA R.S. 47:309.1 if the Remote Retailer voluntarily registers, collects, and remits on its sales for delivery into Louisiana. This relief commences on the date of collection. The portion of the calendar year preceding the date of collection remains subject to the reporting requirements of LA R.S. 47:309.1.

Direct Marketers

Direct Marketers are sellers without physical presence in Louisiana who may voluntarily collect sales tax at the 8.45% rate pursuant to the LA R.S. 47:302(K).

If a Direct Marketer does not meet the economic nexus thresholds (as set forth in the *Remote Sellers* section below), the Direct Marketer may continue to voluntarily collect at the 8.45% after July 1, 2020, and remit to the LDR. If the Direct Marketer later establishes physical presence in Louisiana, the Direct Marketer is deemed a Dealer (See Question No. 2).

Remote Sellers

Remote Sellers are required to collect and remit use tax if during the previous or current calendar year they have gross revenue in excess of \$100,000 from sales of tangible personal property delivered into Louisiana or 200 or more separate transactions for delivery into Louisiana.

7. When are Remote Sellers required to register and start collecting Louisiana sales and use tax?

Pursuant to LA R.S. 47:302 (W)(6) and LA R.S. 47:340(G)(6)(b), the Louisiana Sales and Use Tax Commission for Remote Sellers (“Commission”) is required to enforce collections, no later than July 1, 2020. The Commission is also required to provide notice of enforcement no later than 30 days prior to enforcement. On and after this date, Remote Sellers satisfying the economic thresholds set forth in LA R.S. 47:301(4)(m) will be required to register with the Commission and collect and remit state and local sales and use tax based upon actual applicable bases and rates.

The Commission provided the required notice of “*Effective Date for Remote Seller Registration and Collection of State and Local Sales and Use Tax at Actual Rates*” by Remote Sellers Information Bulletin 20-002 issued on May 7, 2020. The date of mandatory registration with the Commission is July 1, 2020.

8. I am currently a Direct Marketer who meets the economic nexus threshold and currently registered and filing the Direct Marketers’ Sales Tax Return with LDR. Will I have to re-register with the Louisiana Sales and Use Tax Commission for Remote Sellers?

No, not if your Direct Marketer sales reported for calendar 2019 or year-to-date through April 2020 met the \$100,000 threshold. Such taxpayers will receive notification from LDR and the Commission providing them guidance on how to complete their registration with the Commission. LDR will provide the underlying taxpayer account information to the Commission. However, it may be necessary for the taxpayer to verify or provide additional information to complete the conversion of such accounts.

9. What rate of sales and use tax do Remote Sellers collect on remote sales for delivery into Louisiana?

Prior to July 1, 2020, Remote Sellers may collect and remit sales and use tax at the combined 8.45% rate in accordance with LA R.S. 47:302(K), as provided by Remote Sellers Information Bulletin 18-002 and LA R.S. 47:302(W)(6). Tax collected prior to July 1, 2020, is remitted to LDR for distribution to the state and local tax collectors.

Beginning July 1, 2020, the Commission will enforce the requirement to register with the Commission in accordance with Remote Sellers Information Bulletin 20-002. See FAQ No. 15 below for more information on the 30 and 60 day timelines that commence on July 1, 2020 for Direct Marketers and Remote Sellers who have met the economic nexus thresholds. Direct Marketers may continue to collect and remit sales and use tax at the combined 8.45% rate between July 1, 2020 and August 31, 2020, but are encouraged to begin collecting and remitting state and local sales and use tax based upon actual applicable bases and rates as soon as possible during this window.

No later than 60 days after July 1, 2020 (September 1, 2020), Remote Sellers are required to collect and remit state and local sales and use tax based upon actual applicable bases and rates. At this time, Remote Sellers will remit tax collected to the Commission instead of LDR.

10. When is the Remote Sellers Tax Return due?

The Remote Sellers Tax Return and tax payments for state and local sales tax on remote sales are due on or before the 20th of the month following the close of the calendar month of the reporting period. The first Remote Sellers Tax Return will be for the July 2020 sales tax period and will be due on August 20, 2020.

11. How will the Commission calculate interest and penalties on delinquent tax payments?

The Commission shall collect and remit the actual interest and penalties due to each taxing jurisdiction based on the applicable taxing jurisdiction's statutory interest and penalty rates. Just as the tax, the actual interest and penalties due to each taxing jurisdiction will be distributed directly to the taxing jurisdiction upon collection by the Commission.

12. Will Remote Sellers receive a deduction for vendor's compensation?

Yes. Vendor's compensation shall be allowed as a deduction against tax due. However, vendor's compensation is only allowed when (1) the Remote Sellers Tax Return is filed timely on or before the 20th of the month following the month of collection and (2) all tax shown due on the Remote Sellers Tax Return is remitted on or before the 20th of the month following the month of collection.

13. How will the Commission distribute partial tax collections when a Remote Sellers does not remit the entire tax balance due?

In the event a Remote Seller remits less than the full amount of sales and use tax shown due on a return, the amount of tax actually collected will be distributed to each applicable taxing jurisdiction on whose behalf the tax is collected. The distribution will be on a pro-rata basis on the total amount of tax due to each jurisdiction.

Example

Remote Seller sells for delivery into Louisiana. Remote Seller collects \$200 of tax from Louisiana purchasers due to the following taxing jurisdictions:

1. State of Louisiana - \$100
2. Taxing Jurisdiction within Parish A - \$70
3. Taxing Jurisdiction with Parish B - \$30

Although the Remote Sellers Tax Return reflects \$200 of state and local sales and use tax due, Remote Seller only remits \$50. While the outstanding \$150 of tax is subject to collection by the Commission, the Commission must distribute the \$50 remitted in accordance with LA R.S. 47:340(E)(2). The \$50 shall be remitted by the Commission to the taxing jurisdictions on a pro-rata basis, as follows:

1. State of Louisiana - \$25 ($\$100/\$200 \times \50)
2. Taxing Jurisdiction within Parish A - \$17.50 ($\$70/\$200 \times \50)
3. Taxing Jurisdiction within Parish B - \$7.50 ($\$30/\$200 \times \50)

When the remote seller remits the remaining \$150, it will be distributed based on the same pro-rata distribution to the taxing jurisdictions. Interest and penalties shall accrue on the outstanding \$150 balance until remitted in full.

14. For purposes of calculating the economic nexus thresholds, does a remote seller include both direct sales for delivery into Louisiana and sales made through a marketplace?

The remote seller should only consider direct sales for delivery into Louisiana to calculate whether the economic nexus thresholds have been met. The sales made through a marketplace may be excluded because those sales determine whether the marketplace itself meets the economic nexus thresholds.

Example

Remote Seller sells \$75,000 of tangible personal property for delivery into Louisiana during the calendar year. These remote sales are sold directly by the Remote Seller. Remote Seller also sells \$35,000 of tangible personal property for delivery into Louisiana during the calendar year through a marketplace.

Under these facts, the Remote Seller has not met the economic nexus threshold provisions because the Remote Seller may exclude the remote sales made over the marketplace. This example does not consider the transaction based economic nexus threshold.

15. What are the registration and collection timeline requirements for Remote Sellers?

Beginning on July 1, 2020, the following registration and collection timelines will apply to Remote Sellers:

July 1, 2020

First date of mandatory registration. Remote Sellers must review their Louisiana sourced sales transactions to determine whether the economic nexus provisions have been met. See FAQ No. 6.

If on July 1, 2020, the economic nexus provisions are met for either the 2019 calendar year (January 1, 2019 – December 31, 2019) or 2020 calendar year to date (January 1, 2020 – June 30, 2020), then the Remote Seller must submit an application to the Commission within 30 days of July 1, 2020 and must begin collecting state and local sales and use tax based upon actual applicable bases and rates on sales for delivery into Louisiana within 60 days of July 1, 2020.

July 31, 2020

Deadline to submit application to Commission if the Remote Seller met the economic nexus thresholds by July 1, 2020. In general, most applications will be approved automatically within 24-48 hours. Remote Seller may begin collecting sales and use tax based upon actual applicable bases and rates immediately following notice of an approved application.

September 1, 2020

Deadline to begin collecting state and local sales and use tax based upon actual applicable bases and rates on sales for delivery into Louisiana. Tax collected during the month must be remitted on or before the 20th of the following month.

Note that while the 60 day window officially ends on August 30, the Commission has deemed that September 1, 2020 will serve as the deadline to align with the beginning of the closest sales tax period.

If a Remote Seller has not met the economic nexus thresholds on the July 1, 2020 date, then the applicable registration and collection timelines follow the 30 and 60 day provisions.

16. May a Remote Seller request an exception or extensions to the 30 and 60 day provisions following July 1, 2020?

No. Louisiana law does not allow the Commission to grant an exception or extension.

17. What does “state and local sales and use tax based upon actual applicable bases and rates” mean?

Louisiana’s sales tax system is unique in that state and local governments each collect their own sales tax and provide for their own exclusions, exemptions, and deductions. To reduce administrative burdens for Remote Sellers, the Commission has compiled the state and local sales and use tax bases and rates and will provide this information on its website.

State and local sales and use tax based upon actual applicable bases and rates mean the actual rate of tax on a taxable item delivered into Louisiana. Using jurisdictional codes

established by the Commission, Remote Sellers will know the exact rate of state and local sales and use tax to collect as well as if the rate is reduced in part or full because of an exemption or exclusion.

18. Do Remote Sellers have to register with the state and each parish?

No. The Commission serves as the single entity in Louisiana to require Remote Sellers to collect from customers and remit to the Commission. Remote Sellers do not have to register with the state and each parish unless the Remote Seller has physical presence in Louisiana (which, by definition, means the seller is not a Remote Seller.)

19. If a Remote Seller is registered with the state and parishes as a regular dealer, can the Remote Seller switch to the Commission?

Yes. If the Remote Seller meets the economic nexus thresholds and does not have physical presence in Louisiana, the Remote Seller is required to register with the Commission unless the Remote Seller is registered directly with the state and parishes. The Remote Seller may switch to the Commission by (1) filing an application with the Commission; (2) upon receipt of an approved application, filing a final sales tax return with the state and parishes; and (3) attaching a copy of the approved application form to the final sales tax returns.

The Remote Seller must remit any tax collected directly to the state and parishes while registered with the state and parishes. Only following the receipt of an approved application may a Remote Seller remit tax collected to the Commission.

20. I'm a Direct Marketer and do not meet the economic nexus thresholds. Can I switch my registration to the Commission and become a Remote Seller voluntarily?

Yes. Follow the same steps outlined in FAQ No. 19.

21. I received a letter dated May 28, 2020, or an email dated June 09, 2020 notifying me that my Direct Marketer Sales Tax Account will be converted to a Remote Seller Account with the Commission. Why?

Based on your previous Direct Marketer Sales Tax Return, it appears that you have met the economic nexus thresholds for the 2019 calendar year or first quarter of 2020. Your account will be converted from the Department of Revenue's LaTAP system to the Commission's filing system. While this conversion is automatic, you will need to create an account (username and password) with the Commission's filing system.

As used in these FAQs, “conversion” simply means that the Direct Marketer Sales Account has been transferred to the Commission’s filing system. “Conversion” does not mean that the Direct Marketer must switch at the time, but that the account is available for set up (finalizing the account by selecting a username and password) through the Commission’s filing system.

Direct Marketers may continue to collect and remit sales and use tax at the combined 8.45% rate between July 1, 2020 and August 31, 2020, but are encouraged to begin collecting and remitting state and local sales and use tax based upon actual applicable bases and rates as soon as possible during this window. See FAQ Nos. 9 and 15 for more details. In no event will a Direct Marketer that met the economic nexus thresholds by July 1, 2020, file a Direct Marketer Sales Tax Return for the September 2020 or later periods.

22. I am a Direct Marketer, but did not meet the economic nexus thresholds on July 1, 2020. Will LDR or the Commission notify me when I’ve met the economic nexus thresholds?

No. The conversion process was a one-time process for existing Direct Marketers. Going forward, Direct Marketers (and any other Remote Sellers that have not previously registered) must monitor their transactions for delivery into Louisiana to determine when the economic nexus thresholds have been met. Once met, the 30 and 60 day timeline start. See FAQ No. 15 for the timelines to register and begin collection.

Louisiana Sales and Use Tax Commission for Remote Sellers Collection and Distribution Report										
Period	Collection Month	Distribution Date	Total Collected	1% Commission Fee	Total Distributed	State Portion (Distributed)	Local Portion (Distributed)	Total Returns	Total Returns > 0	Total Open Accounts
Jul-20	Aug-20	9/11/2020	\$ 20,653,150.26	\$ 206,531.45	\$ 20,446,618.81	\$ 9,834,491.56	\$ 10,612,127.25	580	433	1331
Aug-20	Sep-20	10/9/2020	\$ 20,253,297.24	\$ 202,532.93	\$ 20,050,764.31	\$ 9,708,297.61	\$ 10,342,466.70	787	654	1570
Sep-20	Oct-20	11/10/2020	\$ 22,375,834.89	\$ 223,758.66	\$ 22,152,076.23	\$ 10,575,259.83	\$ 11,576,816.40	1080	925	1757
Oct-20	Nov-20	12/9/2020	\$ 24,151,167.24	\$ 241,512.05	\$ 23,909,655.19	\$ 11,479,794.59	\$ 12,429,860.60	1249	1069	2030
Nov-20	Dec-20	1/11/2021	\$ 27,761,459.91	\$ 277,614.48	\$ 27,483,845.43	\$ 13,355,017.16	\$ 14,128,828.27	1395	1170	2216
Dec-20	Jan-21	2/9/2021	\$ 35,222,240.58	\$ 352,222.29	\$ 34,870,018.29	\$ 16,726,031.04	\$ 18,143,987.25	1534	1308	2539
Jan-21	Feb-21	3/9/2021	\$ 27,950,194.50	\$ 279,501.96	\$ 27,670,692.54	\$ 13,248,401.71	\$ 14,422,290.83	1794	1538	2762
Feb-21	Mar-21	4/9/2021	\$ 24,262,499.34	\$ 242,625.13	\$ 24,019,874.21	\$ 11,444,817.30	\$ 12,575,056.91	1957	1649	3009
Mar-21	Apr-21	5/7/2021	\$ 35,346,757.19	\$ 353,467.97	\$ 34,993,289.22	\$ 16,759,134.28	\$ 18,234,154.94	2117	1806	3210
Apr-21	May-21	6/8/2021	\$ 28,646,775.91	\$ 286,467.91	\$ 28,360,308.00	\$ 13,612,746.93	\$ 14,747,561.07	2278	1904	3402
May-21	Jun-21	7/8/2021	\$ 33,927,808.61	\$ 339,278.55	\$ 33,588,530.06	\$ 15,987,845.25	\$ 17,600,684.81	2433	2052	3606
Jun-21	Jul-21	8/6/2021	\$ 32,361,722.76	\$ 323,617.83	\$ 32,038,104.93	\$ 15,240,951.51	\$ 16,797,153.42	2598	2163	3855
Jul-21	Aug-21	9/9/2021	\$ 30,097,561.37	\$ 300,976.03	\$ 29,796,585.34	\$ 14,273,170.26	\$ 15,523,415.08	2766	2286	4030
Aug-21	Sep-21	10/6/2021	\$ 30,602,109.60	\$ 306,022.13	\$ 30,296,087.47	\$ 14,451,708.36	\$ 15,844,379.11	2912	2418	4242
Sep-21	Oct-21	11/5/2021	\$ 29,506,754.24	\$ 295,067.91	\$ 29,211,686.33	\$ 13,958,825.22	\$ 15,252,861.11	3136	2557	4523
Oct-21	Nov-21	12/8/2021	\$ 31,650,298.85	\$ 316,503.12	\$ 31,333,795.73	\$ 14,980,213.08	\$ 16,353,582.65	3312	2745	4816
TOTAL TO DATE			\$ 454,769,632.49	\$ 4,547,700.40	\$ 450,221,932.09	\$ 215,636,705.69	\$ 234,585,226.40			



12/14/2021

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA**

HALSTEAD BEAD, INC., an Arizona
corporation,

Plaintiff,

v.

KIMBERLY LEWIS, in her official capacity
as Louisiana Secretary of Revenue, and

AMANDA GRANIER, in her official
capacity as Sales and Use Tax Administrator
of Lafourche Parish, Louisiana, and

DONNA DRUDE, in her official capacity as
Sales and Use Tax Administrator of
Tangipahoa Parish, Louisiana, and

JAMIE BUTTS, in her official capacity as
Sales Tax Auditor, Washington Parish,
Louisiana, and

LAFOURCHE PARISH, LOUISIANA, a
Home Rule Chartered Parish, and

TANGIPAHOA PARISH, LOUISIANA, a
Home Rule Chartered Parish, and

WASHINGTON PARISH, LOUISIANA, a
Home Rule Chartered Parish,

Defendants.

CIVIL ACTION NO. 2:21-cv-02106

JUDGE: JANE TRICHE MILAZZO

MAGISTRATE: KAREN WELLS ROBY

AFFIDAVIT

STATE OF LOUISIANA

PARISH OF TANGIPAHOA

BEFORE ME, the undersigned Notary Public, personally came and appeared **DONNA DRUDE** ("Affiant"), who after being duly sworn, did depose and say:



1. That Affiant is the Sales and Use Tax Administrator for the Tangipahoa Parish School System, Through Its Sales & Use Tax Division, which is the single sales and use tax collector for the Parish of Tangipahoa (the “Collector”), and has so served at all pertinent times herein;
2. That Collector is the single collector for all jurisdictions levying sales and use taxes in the Parish of Tangipahoa;
3. That the Collector does not impose any registration fees/costs on dealers applying to be registered with the Collector;
4. That there are no filing fees/costs imposed by the Collector on sales and use tax returns filed by registered dealers;
5. That as of the date of execution of this Affidavit, the Petitioner, Halstead Bead, Inc. (“Halstead”) has never registered as a dealer with the Collector;
6. That as of the date of execution of this Affidavit, Halstead has never collected and remitted Tangipahoa Parish sales and/or use tax as a dealer on behalf of the Collector;
7. That as of the date of execution of this Affidavit, the Collector has not taken any action to pursue the registration of Halstead for sales/use tax purposes, nor has the Collector sought to impose any other Tangipahoa Parish sales and use tax collection and remittance obligations on Halstead;
8. That based upon the allegations of the Complaint filed by Halstead, Halstead has no physical presence in the State of Louisiana, nor does it satisfy “economic nexus” as defined by La. R.S. 47:301(4)(m)(i) to be considered a “dealer” under Louisiana law;
9. That entities with no physical presence in Louisiana but that do meet the “economic nexus” threshold established by La. R.S. 47:301(4)(m)(i) *are not* required to register with the

Collector, but are required to register online with the Louisiana Sales and Use Tax Commission for Remote Sellers (the “Remote Sellers Commission”) at *remotesellers.louisiana.gov*, and thereafter file monthly returns with the Remote Sellers Commission;

10. That the monthly single return filed by an entity with the Remote Sellers Commission includes any sales which may have occurred in Tangipahoa Parish, along with all other sales made into the other jurisdictions within Louisiana;
11. That following collection of the taxes, the Remote Sellers Commission disburses the monthly taxes collected on behalf of Tangipahoa Parish and remits said taxes to the Collector for disbursement by the Collector to the relevant taxing authorities in Tangipahoa Parish;
12. That Affiant is aware that in 2017, the Louisiana’s Legislature established the Remote Sellers Commission under La. R.S. 47:339, *et seq.*;
13. That Affiant is aware that following the *Wayfair* decision, the Louisiana Legislature expanded the definition of a “dealer” under Louisiana law, thus expanding the definition to include the class of remote dealers with “economic nexus” as contemplated by *Wayfair*. *See Act 5* of the 2018 2nd Extra. Session (“Act 5”), adding La. R.S. 47:301(4)(m);
14. That Affiant is aware that Act 5 further provided that until the Remote Sellers Commission commenced its collection and remittance of state and local sales and use tax at the applicable state and local rates and bases, dealers as defined in R.S. 47:301(4)(m) were required to collect only the additional tax authorized by La. R.S. 47:302(K) and were required to file and remit a single return for sales in Louisiana with the State;

15. That Affiant is aware that Act 5 further provided that notice of the commencement of collection and enforcement by the Remote Sellers Commission would thereafter be published in a policy statement as authorized by LAC 61:III.101 no later than thirty days prior to the effective date of the commencement of collection and enforcement by the Remote Sellers Commission;
16. That Affiant is aware that the Remote Sellers Commission issued Remote Sellers Information Bulletin No. 20-002 dated May 7, 2020, which provided a notice of the effective date, July 1, 2020, and enforcement by the Remote Sellers Commission for the collection of state and local sales and use tax on remote sales;
17. That Affiant is aware that the Remote Sellers Commission officially commenced its registration and collection duties under La. R.S. 47:339 *et seq.* and the website and registration and remittance portal went “live” on July 1, 2020, and thereafter the Remote Sellers Commission commenced receiving filings and returns and collecting taxes on remote sales from remote dealers;
18. That Affiant is aware that since July 1, 2020, the Remote Sellers Commission has been the single collector for all parishes and the State with regard to remote sales made into Louisiana by remote dealers;
19. That as of the date of execution of this Affidavit, the Remote Sellers Commission has collected and remitted at least \$5,184,471.00 in local sales and use tax to the Collector;
20. That upon Affiant’s information and belief at no time since the Supreme Court’s ruling in *Wayfair* has a remote dealer been required to file multiple returns with different parishes in Louisiana and no such returns have been filed with the Collector;

21. That prior to the *Wayfair* decision, the U.S. Supreme Court's "physical nexus" requirements pursuant to the Commerce Clause as decided in *Quill Corp. v. North Dakota* 504 U.S. 298 (1992), prohibited attempts by the Collector to require remote sellers to file and remit returns;
22. That on June 9, 2020, and on behalf of all taxing authorities of the Parish of Tangipahoa, that the Tangipahoa Parish School System, Through Its Sales & Use Tax Division, as the local sales and use tax collector for Tangipahoa Parish, did sign a document entitled "MEMORANDUM OF UNDERSTANDING BETWEEN THE LOUISIANA SALES AND USE TAX COMMISSION FOR REMOTE SELLERS AND LOCAL SALES AND USE TAX COLLECTOR" (the "MOU") which transfers all rights of registration of dealers, collection of taxes, enforcement of delinquencies, and other responsibilities related to remote sales from dealers to the Remote Sellers Commission;
23. That Affiant signed the MOU as a witness thereto;
24. That attached hereto as Exhibit "1" is a true and correct copy of the MOU between the Remote Sellers Commission and the Collector;
25. That Exhibit 1 was kept in the normal course of the regularly conducted business activity of the Collector;
26. That the MOU specifically provides that the Remote Sellers Commission shall serve as the single entity within the state of Louisiana responsible for all state and local sales and use tax administration, return processing and audits for remote sales delivered into Louisiana (Section D.5.);

27. That the MOU further provides that the Remote Sellers Commission serves as the central, single agency to which remote sellers shall make state and local sales and use tax remittances (Section D.6.);
28. That the MOU further provides that the Remote Sellers Commission is the single authority to assign and direct audits of remote sellers for both the state and all local taxing authorities (Section D.7.);
29. That the MOU further provides that the Remote Sellers Commission has the authority to conduct administrative hearings as requested by aggrieved remote sellers and to make all decisions related to such matters (Section D. 9.);
30. That the MOU authorizes the Remote Sellers Commission to issue all notices required by law to enforce collection of local sales and use tax that may be due from remote sellers (Section D.10.);
31. That the MOU further authorizes the Remote Sellers Commission to require remote sellers to register with the Remote Sellers Commission on behalf of the local taxing jurisdictions (Section D.11.);
32. That the MOU is effective for all relevant time herein, effective July 1, 2020 and ending on June 30, 2023 and automatically renews for an additional 3-year period except as would be provided under Section G;
33. That beginning on July 1, 2020, the Commission will enforce the requirement to register with the Commission in accordance with the Remote Sellers Information Bulletin 20-002;¹

¹ See Sales and Use Tax Commission for Remote Sellers, Louisiana Sales and Use Tax on Remote Sales Frequently Asked Questions available at <http://revenue.louisiana.gov/Miscellaneous/Remote%20Sellers%20FAQs%2006.24.2020.pdf> at FAQ No. 9, attached hereto as Exhibit "2".

34. That in order to reduce the administrative burden for Remote Sellers, the Commission has compiled the state and local sales and use tax bases and rates on its website;²
35. That “[u]sing jurisdictional codes established by the Commission, Remote Sellers will know the exact rate of state and local sales and use tax to collect as well as if the rate is reduced in part or full because of an exemption or exclusion”.³
36. That upon information and belief, all sales and use tax collectors in the State of Louisiana have signed identical agreements with the Remote Sellers Commission;
37. That the Louisiana Sales and Use Tax Commission for Remote Sellers has made its “Collection and Distribution” Report publicly available on the Louisiana Department of Revenue website;⁴
38. That pursuant to the Collection and Distribution Report dated December 14, 2021, and as of the date of execution of this Affidavit: (a) 4,816 entities have registered as remote dealers with the Remote Sellers Commission and are filing monthly returns and remitting collected sales taxes via electronic fund transfer and (b) the Remote Sellers Commission currently averages 232 new, approved registrants per month;
39. That pursuant to the Collection and Distribution Report, and as of the date of execution of this Affidavit, the Remote Sellers Commission has collected and remitted at least \$454,769,632.49 in local sales and use tax to the State and parish sales and use tax collectors;⁵ and

² See *Id.* at FAQ No. 17.

³ See *Id.* at FAQ No. 17.

⁴ See Louisiana Sales and Use Tax Commission for Remote Sellers has made its “Collection and Distribution” Report available at <https://revenue.louisiana.gov/Miscellaneous/RSC%20Collection%20and%20Distribution%20Report%2012.14.21.pdf> attached hereto as Exhibit “3”.

⁵ See *Id.*

40. Further affiant sayeth not.

BY: Donna Drude
DONNA DRUDE
SALES & USE TAX ADMINISTRATOR
TANGIPAOHA PARISH SCHOOL SYSTEM,
THROUGH ITS SALES AND USE TAX DIVISION

Sworn to a subscribed before me this
21st day of December, 2021.

[Signature]
NOTARY PUBLIC



MEMORANDUM OF UNDERSTANDING BETWEEN THE
LOUISIANA SALES AND USE TAX COMMISSION FOR REMOTE SELLERS AND
LOCAL SALES AND USE TAX COLLECTOR

A. **PARTIES:** The parties to this Memorandum of Understanding ("MOU") are the:

1. Louisiana Sales and Use Tax Commission For Remote Sellers (the "Commission"), an entity established within the Louisiana Department of Revenue ("LDR") as set forth under La. R.S. 47:339 *et seq.* and herein represented by Kressynda Krennerich in her official capacity as Chairman of the Commission; and,

2. Tangipahoa Parish Sales and Use Tax Division
Insert Name of Local Sales and Use Tax Collector's Office

(the "Parish"), designated pursuant to La. Const. Art. VII, §3(B) as the single sales and use tax collector or central collection authority for all sales and use taxes levied by the Parish of Tangipahoa and/or its said political subdivisions, as well as any and all of its successors, heirs and assigns, and appearing on behalf of the governing bodies of all political subdivisions within the Parish of Tangipahoa, State of Louisiana, herein represented by:

Donna Drude
Insert Name and Title of Local Sales and Use Tax Collector

in his/her official capacity as the single sales and use tax collector Tangipahoa Parish.

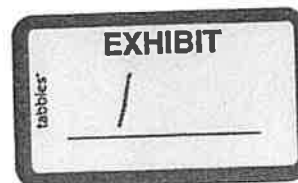
B. **RECITALS:**

WHEREAS, both the Commission and the Parish (hereinafter referred to collectively as the "Parties"), through their duly authorized representatives are entering into this MOU (or "Agreement") pursuant to the laws of the State of Louisiana, as of the effective date set forth by this Agreement;

WHEREAS, the Parties understand and acknowledge that La. R.S. 47:339 *et seq.* established the Commission;

WHEREAS, the Parish believes the Commission provides beneficial assistance, and the Commission's powers and duties are necessary for the proper and efficient collection, administration and enforcement of sales and use taxes collected by remote sellers or their designated agents sourced to the Parish;

WHEREAS, the Parties, after conferring with each other, determined certain specific concerns, not addressed in statute, should be set forth in this MOU to preserve the Parties' efforts to administer the tax laws, collect the tax dollars owed, and to comply with the wishes of the Legislature as shown through its established statutes;



NOW THEREFORE, with the paragraphs above collectively describing the public purpose of this MOU, in consideration of the mutual covenants herein contained, the Parties hereto agree as follows:

C. IMPACT OF COMMISSION & MOU ON PARISH TAXING AUTHORITY

1. The Parties hereby agree and acknowledge nothing in this MOU or Agreement shall impair or nullify the Parish's status, power or authority, as the constitutionally-designated single sales and use tax collector of its parish, to collect, administer and enforce any and all parish sales and/or use taxes levied and imposed by the taxing authorities in the parish, excluding any and all transactions defined to be remote sales by remote sellers or their designated agents sourced to the parish are to be collected, administered and enforced by the Commission.
2. The Parish also hereby acknowledges and agrees that the Commission is vested with certain powers and duties as set forth in La. R.S. 47:339 *et seq.* and that during the entire period for which this Agreement remains in effect, the Parish and the political subdivisions for which it collects taxes shall forebear and refrain from raising or asserting any constitutional challenge in a state or federal court of law or in the Louisiana Board of Tax Appeals that the Commission is unlawfully acting as a "collector" under La. Const. art. VII, §3.

D. ACKNOWLEDGMENT OF COMMISSION POWERS, DUTIES & AUTHORITIES

The Parties understand and acknowledge the Commission, under La. R.S. 47:339 *et seq.*, is statutorily vested with the power, duty and authority to:

1. Remit monies, less any refunds and amounts retained for expenses, to the appropriate state or local collector by electronic funds to the designated bank account of that state or local collector on or before the tenth business day of the month following the month of collection;
2. Fund its operations by an amount equal to actual expenses incurred, which amount shall not exceed one percent (1%) of the total amount of state and local sales and use tax collected on remote sales by the Commission;
3. Retain its funding on a monthly basis from current collections of state and local sales and use tax on remote sales as collected by the Commission prior to monthly distribution to the state and local collectors, subject to a federal law authorizing states to require remote sellers and their agents to collect state and local sales and use taxes on their sales in each state is enacted and becomes effective or a decision by the United States Supreme Court overrules the physical presence requirement for a remote seller to collect and remit state and local sales and use tax on remote sales for delivery into the state;
4. Provide taxpayer information and associated taxpayer history to the state or local collector upon the request, in accordance with La. R.S. 47:1508;

5. Serve as the single entity within the state of Louisiana responsible for all state and local sales and use tax administration, return processing, and audits for remote sales delivered into Louisiana;
 - a. As defined by La. R.S. 47:3398(B)(8), "sales and use taxes" mean the sales and use taxes levied by the state of Louisiana under the provisions of Title 47 of the Louisiana Revised Statutes of 1950, and the sales and use taxes levied by local taxing authorities in Louisiana under the provisions of the Constitution of Louisiana, statutory laws authorizing the imposition of such taxes, and local sales and use tax ordinances. It is the understanding of the Parties that the Commission shall collect sales and use taxes at the actual state and actual local rates at their respective bases.
6. Serve as the central, single agency to which remote sellers shall make state and local sales and use tax remittances;
7. Assign and direct a single audit of remote sellers for the state and all local taxing authorities;
8. Serve as the single state of Louisiana agency to represent both state and local taxing authorities in taking appropriate action to enable Louisiana to participate in programs designed to allow Louisiana to more efficiently enforce and collect state and local sales and use taxes on sales made by remote sellers;
9. Conduct administrative hearings as requested by aggrieved remote sellers, administer oaths, and make adjustments to assessments when justified by the facts and the law, and render decisions following such hearing;
10. With consent of the affected local taxing authority, such consent hereby granted and evidenced by this Agreement, to issue notices of intent to assess, notices of assessments, enforce collection of local sales and use tax taxes by distraint and sale, and institute summary proceedings or ordinary proceedings for collection of local taxes;
11. Require remote sellers to register with the Commission;
12. Provide the Parish an annual report of revenues collected and distributed for each calendar year, which report shall be provided on or before June first of each year; and,
13. Perform any and all other duties as set forth by and/or required by La. R.S. 47:339 *et seq.*

E. DETAILED FUNDING RESPONSIBILITIES

1. The Parish acknowledges and agrees that:
 - a. The Commission shall be compensated based on the amounts set forth in La. R.S. 47:340(E)(3).

- b. The Commission shall withhold compensation from its current collection of Parish sales and/or use taxes from the sale or use by remote sellers and their designated agents, as defined by the Commission, on remote sales sourced to the Parish.
 - c. The Commission's funding amounts set forth in La. R.S. 47:340(E)(3) are reasonable sums paid to the Commission in exchange for the Commission's exercise of its powers and duties for assistance in the collection and administration of Parish sales and/or use taxes on remote sales by remote sellers or their designated agents sourced to the Parish.
2. The Commission acknowledges and agrees that:
- a. In consideration for the collection services it statutorily provides, the Commission may withhold actual expenses incurred, which amount shall not exceed one percent (1%) of the total amount of state and local sales and use tax collected on remote sales by the Commission.
 - b. Actual expenses shall include, but are not limited to, amounts expended by LDR on behalf of the Commission, that are attributable to start up and initial Commission costs, such as procurement and development of software expenses, filing costs for Commission regulations, personnel expenses, information technology expenses, rental expenses, and any other expenses incurred on behalf of the Commission.
 - c. The Commission will withhold one percent (1%) of the collections for the Parish. Records of gross collections, refunds, and amounts retained for expenses shall be made accessible to the respective Parish on a monthly basis.
 - d. In the event the reconciliation reveals the actual expenses incurred are less than the one percent (1%) withheld, the Commission shall disburse any excess monies due to the Parish no later than sixty (60) days after the conclusion of the reconciliation.

F. TERM, EFFECTIVE DATE & RENEWAL PROVISIONS OF AGREEMENT

1. **Term of Agreement:** The initial mandatory minimum term of this Agreement shall be a three (3) fiscal year period beginning on July 1, 2020 and ending on June 30, 2023.
2. **Effective Date of Agreement:** The effective date of the Agreement shall be the date shown on the signature pages by the last signing party of the Agreement.
3. **Renewal Provisions:** Unless and until terminated in accordance with Section G of this Agreement, this Agreement shall be automatically renewed in three (3) fiscal year period increments.

4. **Modifications:** Modifications and/or changes to this Agreement may be made at any time as long as any and all agreed modifications or changes are evidenced in writing and signed by the Parties.
5. Prior to the end date of the initial mandatory minimum term of this Agreement or termination in accordance with Section F of this Agreement, the Parties may enter into negotiations for new conditions and terms.

G. TERMINATION PROVISIONS

1. Once the initial mandatory minimum term of the Agreement has expired, the Agreement may be terminated by either Party upon written notice to the other Party at least ninety (90) days in advance of the end of the fiscal year period.
 - a. The effective termination date shall be the last day of the month in which the 90th day occurs, but in no event later than June 30 of the respective fiscal year period.
2. Termination of this Agreement does not impact, change or modify the Commission's power, duty, authorization or responsibility to collect the sales and use tax due by a remote seller or its designated agent sourced to the Parish.
3. Notwithstanding the above, this Agreement shall be automatically terminated upon any legislative repeal of the statutes creating and/or setting forth the duties of the Commission.
 - a. However, the enactment of new statutes or the amendment to existing statutes shall not be grounds for automatic termination of this Agreement.
 - b. Also, in the event that the political subdivisions in the Parish select an alternative political subdivision within the Parish to be the single sales and use tax collector for the Parish; that the political subdivisions in the Parish create and appoint a commission to be the single sales and use tax collector for the Parish; or if the political subdivisions in the Parish decide to consolidate, combine, or appoint another political subdivision or commission from outside the Parish to be the single sales and use tax collector for the Parish, this Agreement shall be binding and remain in full force and effect and govern the Parish's successor, successors, heirs, assigns, appointees, or designees.

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SIGNATURES ON THE FOLLOWING PAGE

THUS DONE AND SIGNED in Amite, Louisiana on the 9 day of June, 2020 in the presence of the witnesses who have affixed their names below.
City where MOU is signed Day
Month

WITNESSES:

[Signature]
Name: Debra Brister

[Signature]
Name: Stormy McCoy

Tangipahoa Parish Sales Tax Division
Insert Name of Local Sales and Use Tax Collector's Office

[Signature]
Signature

Donna Drude, Sales Tax Administrator
Insert Name and Title of Local Sales and Use Tax Collector

Tangipahoa Parish

THUS DONE AND SIGNED in Baton Rouge, Louisiana on the ___ day of _____, 2020 in the presence of the witnesses who have affixed their names below.

WITNESSES:

**Louisiana Sales and Use Tax
Commission for Remote Sellers**

Name: _____

Kressynda Krennerich
Chairman
Louisiana Sales and Use Tax
Commission for Remote Sellers

Name: _____



SALES AND USE TAX COMMISSION
FOR REMOTE SELLERS

P.O. Box 2068
Baton Rouge, LA 70821

6/17/2020

MS. DONNA DRUDE
TANGIPAHOA PARISH SCHOOL BOARD
PO BOX 159
AMITE, LA 70422-0159

Dear MS. DRUDE:

Please find the enclosed executed signature page from the Memorandum of Understanding between TANGIPAHOA PARISH SCHOOL BOARD and the Louisiana Sales and Use Tax Commission for Remote Sellers (the "Commission"). An original signature page will also be retained by the Commission. Thank you for responding in a timely manner.

If you have any questions about the Commission, please do not hesitate to contact me at (225) 621-2635 or kressy@ascensiontax.com.

Sincerely,

A handwritten signature in cursive script that reads "Kressynda Krennerich".

Kressynda Krennerich

Chairman

Louisiana Sales and Use Tax Commission for Remote Sellers

Enclosure

MOU

THUS DONE AND SIGNED in Amite, Louisiana on the 9 day of

June, 2020 in the presence of the witnesses who have affixed their names below.
Month

WITNESSES:

[Signature]
Name: Debra Brister

[Signature]
Name: Stormy McCoy

Tangipahoa Parish Sales Tax Division
Insert Name of Local Sales and Use Tax Collector's Office

[Signature]
Signature

Donna Drude, Sales Tax Administrator
Insert Name and Title of Local Sales and Use Tax Collector

Tangipahoa Parish

THUS DONE AND SIGNED in Baton Rouge, Louisiana on the 15 day of June, 2020 in the presence of the witnesses who have affixed their names below.

WITNESSES:

[Signature]
Name: Shelli Gautreaux

[Signature]
Name: Cailey Moore

**Louisiana Sales and Use Tax
Commission for Remote Sellers**

[Signature]
Kressynda Krennerich
Chairman

**Louisiana Sales and Use Tax
Commission for Remote Sellers**



SALES AND USE TAX COMMISSION
FOR REMOTE SELLERS

**Louisiana Sales and Use Tax on Remote Sales
Frequently Asked Questions**

1. What is a Remote Seller?

A Remote Seller is 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.

For more information, refer to *Remote Sellers Information Bulletin 18-002: Definition of Remote Seller and Further Guidance to Remote Sellers.*

2. What if a seller has 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(4) and subject to state and local collection and remittance requirements.

3. What is physical presence?

Physical presence includes, but is not limited to, the following activities in Louisiana, whether done permanently or temporarily, directly or indirectly or through an agent or subsidiary:

- owning or operating retail spaces;
- owning, leasing, maintaining, occupying, or using, an office, place of distribution, sales or sample room, warehouse or storage place or other place of business;
- having an employee, representative, agent, salesman, canvasser or solicitor operating in Louisiana under the authority of the retailer or subsidiary; and
- storage of property in third party facility.

If the seller has physical presence in Louisiana, the seller is considered a Dealer as defined by LA R.S. 47:301(4), rather than a Remote Seller, and is subject to state and local sales tax collection and remittance requirements.

4. Is there a minimum threshold for physical presence?

No.



5. What is nexus (for sales tax purposes)?

Nexus can be established by either physical presence or economic nexus. A seller having physical presence is a Dealer and subject to regular state and local sales tax collection and remittance requirements. A seller without physical presence but having economic nexus is a Remote Seller. Presently, Direct Marketers voluntarily register, collect and remit sales and use tax through the Louisiana Department of Revenue ("LDR") using the Direct Marketer application and reporting forms (i.e., Form R-1031A, *Application to File Direct Marketer Sales Tax Return*, and Form R-1031, *Direct Marketer Sales Tax Returns*).

6. What is the difference between a Remote Retailer, Direct Marketer, and Remote Seller?

While the terms appear synonymous, each has a separate legal meaning in Louisiana.

Remote Retailers

Remote Retailers are out of state sellers with cumulative annual gross receipts in excess of \$50,000, including those gross receipts of its affiliates, for sales delivered into Louisiana per calendar year and must comply with the dual reporting requirements of LA R.S. 47:309.1. For purposes of calculating annual gross receipts, the Remote Retailer 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.

A Remote Retailer is relieved from the reporting requirements of LA R.S. 47:309.1 if the Remote Retailer voluntarily registers, collects, and remits on its sales for delivery into Louisiana. This relief commences on the date of collection. The portion of the calendar year preceding the date of collection remains subject to the reporting requirements of LA R.S. 47:309.1.

Direct Marketers

Direct Marketers are sellers without physical presence in Louisiana who may voluntarily collect sales tax at the 8.45% rate pursuant to the LA R.S. 47:302(K).

If a Direct Marketer does not meet the economic nexus thresholds (as set forth in the *Remote Sellers* section below), the Direct Marketer may continue to voluntarily collect at the 8.45% after July 1, 2020, and remit to the LDR. If the Direct Marketer later establishes physical presence in Louisiana, the Direct Marketer is deemed a Dealer (See Question No. 2).

Remote Sellers

Remote Sellers are required to collect and remit use tax if during the previous or current calendar year they have gross revenue in excess of \$100,000 from sales of tangible personal property delivered into Louisiana or 200 or more separate transactions for delivery into Louisiana.

7. When are Remote Sellers required to register and start collecting Louisiana sales and use tax?

Pursuant to LA R.S. 47:302 (W)(6) and LA R.S. 47:340(G)(6)(b), the Louisiana Sales and Use Tax Commission for Remote Sellers (“Commission”) is required to enforce collections, no later than July 1, 2020. The Commission is also required to provide notice of enforcement no later than 30 days prior to enforcement. On and after this date, Remote Sellers satisfying the economic thresholds set forth in LA R.S. 47:301(4)(m) will be required to register with the Commission and collect and remit state and local sales and use tax based upon actual applicable bases and rates.

The Commission provided the required notice of “*Effective Date for Remote Seller Registration and Collection of State and Local Sales and Use Tax at Actual Rates*” by Remote Sellers Information Bulletin 20-002 issued on May 7, 2020. The date of mandatory registration with the Commission is July 1, 2020.

8. I am currently a Direct Marketer who meets the economic nexus threshold and currently registered and filing the Direct Marketers’ Sales Tax Return with LDR. Will I have to re-register with the Louisiana Sales and Use Tax Commission for Remote Sellers?

No, not if your Direct Marketer sales reported for calendar 2019 or year-to-date through April 2020 met the \$100,000 threshold. Such taxpayers will receive notification from LDR and the Commission providing them guidance on how to complete their registration with the Commission. LDR will provide the underlying taxpayer account information to the Commission. However, it may be necessary for the taxpayer to verify or provide additional information to complete the conversion of such accounts.

9. What rate of sales and use tax do Remote Sellers collect on remote sales for delivery into Louisiana?

Prior to July 1, 2020, Remote Sellers may collect and remit sales and use tax at the combined 8.45% rate in accordance with LA R.S. 47:302(K), as provided by Remote Sellers Information Bulletin 18-002 and LA R.S. 47:302(W)(6). Tax collected prior to July 1, 2020, is remitted to LDR for distribution to the state and local tax collectors.

Beginning July 1, 2020, the Commission will enforce the requirement to register with the Commission in accordance with [Remote Sellers Information Bulletin 20-002](#). See FAQ No. 15 below for more information on the 30 and 60 day timelines that commence on July 1, 2020 for Direct Marketers and Remote Sellers who have met the economic nexus thresholds. Direct Marketers may continue to collect and remit sales and use tax at the combined 8.45% rate between July 1, 2020 and August 31, 2020, but are encouraged to begin collecting and remitting state and local sales and use tax based upon actual applicable bases and rates as soon as possible during this window.

No later than 60 days after July 1, 2020 (September 1, 2020), Remote Sellers are required to collect and remit state and local sales and use tax based upon actual applicable bases and rates. At this time, Remote Sellers will remit tax collected to the Commission instead of LDR.

10. When is the Remote Sellers Tax Return due?

The Remote Sellers Tax Return and tax payments for state and local sales tax on remote sales are due on or before the 20th of the month following the close of the calendar month of the reporting period. The first Remote Sellers Tax Return will be for the July 2020 sales tax period and will be due on August 20, 2020.

11. How will the Commission calculate interest and penalties on delinquent tax payments?

The Commission shall collect and remit the actual interest and penalties due to each taxing jurisdiction based on the applicable taxing jurisdiction's statutory interest and penalty rates. Just as the tax, the actual interest and penalties due to each taxing jurisdiction will be distributed directly to the taxing jurisdiction upon collection by the Commission.

12. Will Remote Sellers receive a deduction for vendor's compensation?

Yes. Vendor's compensation shall be allowed as a deduction against tax due. However, vendor's compensation is only allowed when (1) the Remote Sellers Tax Return is filed timely on or before the 20th of the month following the month of collection and (2) all tax shown due on the Remote Sellers Tax Return is remitted on or before the 20th of the month following the month of collection.

13. How will the Commission distribute partial tax collections when a Remote Sellers does not remit the entire tax balance due?

In the event a Remote Seller remits less than the full amount of sales and use tax shown due on a return, the amount of tax actually collected will be distributed to each applicable taxing jurisdiction on whose behalf the tax is collected. The distribution will be on a pro-rata basis on the total amount of tax due to each jurisdiction.

Example

Remote Seller sells for delivery into Louisiana. Remote Seller collects \$200 of tax from Louisiana purchasers due to the following taxing jurisdictions:

1. State of Louisiana - \$100
2. Taxing Jurisdiction within Parish A - \$70
3. Taxing Jurisdiction with Parish B - \$30

Although the Remote Sellers Tax Return reflects \$200 of state and local sales and use tax due, Remote Seller only remits \$50. While the outstanding \$150 of tax is subject to collection by the Commission, the Commission must distribute the \$50 remitted in accordance with LA R.S. 47:340(E)(2). The \$50 shall be remitted by the Commission to the taxing jurisdictions on a pro-rata basis, as follows:

1. State of Louisiana - \$25 ($\$100/\$200 \times \50)
2. Taxing Jurisdiction within Parish A - \$17.50 ($\$70/\$200 \times \50)
3. Taxing Jurisdiction within Parish B - \$7.50 ($\$30/\$200 \times \50)

When the remote seller remits the remaining \$150, it will be distributed based on the same pro-rata distribution to the taxing jurisdictions. Interest and penalties shall accrue on the outstanding \$150 balance until remitted in full.

14. For purposes of calculating the economic nexus thresholds, does a remote seller include both direct sales for delivery into Louisiana and sales made through a marketplace?

The remote seller should only consider direct sales for delivery into Louisiana to calculate whether the economic nexus thresholds have been met. The sales made through a marketplace may be excluded because those sales determine whether the marketplace itself meets the economic nexus thresholds.

Example

Remote Seller sells \$75,000 of tangible personal property for delivery into Louisiana during the calendar year. These remote sales are sold directly by the Remote Seller. Remote Seller also sells \$35,000 of tangible personal property for delivery into Louisiana during the calendar year through a marketplace.

Under these facts, the Remote Seller has not met the economic nexus threshold provisions because the Remote Seller may exclude the remote sales made over the marketplace. This example does not consider the transaction based economic nexus threshold.

15. What are the registration and collection timeline requirements for Remote Sellers?

Beginning on July 1, 2020, the following registration and collection timelines will apply to Remote Sellers:

July 1, 2020

First date of mandatory registration. Remote Sellers must review their Louisiana sourced sales transactions to determine whether the economic nexus provisions have been met. See FAQ No. 6.

If on July 1, 2020, the economic nexus provisions are met for either the 2019 calendar year (January 1, 2019 – December 31, 2019) or 2020 calendar year to date (January 1, 2020 – June 30, 2020), then the Remote Seller must submit an application to the Commission within 30 days of July 1, 2020 and must begin collecting state and local sales and use tax based upon actual applicable bases and rates on sales for delivery into Louisiana within 60 days of July 1, 2020.

July 31, 2020

Deadline to submit application to Commission if the Remote Seller met the economic nexus thresholds by July 1, 2020. In general, most applications will be approved automatically within 24-48 hours. Remote Seller may begin collecting sales and use tax based upon actual applicable bases and rates immediately following notice of an approved application.

September 1, 2020

Deadline to begin collecting state and local sales and use tax based upon actual applicable bases and rates on sales for delivery into Louisiana. Tax collected during the month must be remitted on or before the 20th of the following month.

Note that while the 60 day window officially ends on August 30, the Commission has deemed that September 1, 2020 will serve as the deadline to align with the beginning of the closest sales tax period.

If a Remote Seller has not met the economic nexus thresholds on the July 1, 2020 date, then the applicable registration and collection timelines follow the 30 and 60 day provisions.

16. May a Remote Seller request an exception or extensions to the 30 and 60 day provisions following July 1, 2020?

No. Louisiana law does not allow the Commission to grant an exception or extension.

17. What does “state and local sales and use tax based upon actual applicable bases and rates” mean?

Louisiana’s sales tax system is unique in that state and local governments each collect their own sales tax and provide for their own exclusions, exemptions, and deductions. To reduce administrative burdens for Remote Sellers, the Commission has compiled the state and local sales and use tax bases and rates and will provide this information on its website.

State and local sales and use tax based upon actual applicable bases and rates mean the actual rate of tax on a taxable item delivered into Louisiana. Using jurisdictional codes

established by the Commission, Remote Sellers will know the exact rate of state and local sales and use tax to collect as well as if the rate is reduced in part or full because of an exemption or exclusion.

18. Do Remote Sellers have to register with the state and each parish?

No. The Commission serves as the single entity in Louisiana to require Remote Sellers to collect from customers and remit to the Commission. Remote Sellers do not have to register with the state and each parish unless the Remote Seller has physical presence in Louisiana (which, by definition, means the seller is not a Remote Seller.)

19. If a Remote Seller is registered with the state and parishes as a regular dealer, can the Remote Seller switch to the Commission?

Yes. If the Remote Seller meets the economic nexus thresholds and does not have physical presence in Louisiana, the Remote Seller is required to register with the Commission unless the Remote Seller is registered directly with the state and parishes. The Remote Seller may switch to the Commission by (1) filing an application with the Commission; (2) upon receipt of an approved application, filing a final sales tax return with the state and parishes; and (3) attaching a copy of the approved application form to the final sales tax returns.

The Remote Seller must remit any tax collected directly to the state and parishes while registered with the state and parishes. Only following the receipt of an approved application may a Remote Seller remit tax collected to the Commission.

20. I'm a Direct Marketer and do not meet the economic nexus thresholds. Can I switch my registration to the Commission and become a Remote Seller voluntarily?

Yes. Follow the same steps outlined in FAQ No. 19.

21. I received a letter dated May 28, 2020, or an email dated June 09, 2020 notifying me that my Direct Marketer Sales Tax Account will be converted to a Remote Seller Account with the Commission. Why?

Based on your previous Direct Marketer Sales Tax Return, it appears that you have met the economic nexus thresholds for the 2019 calendar year or first quarter of 2020. Your account will be converted from the Department of Revenue's LaTAP system to the Commission's filing system. While this conversion is automatic, you will need to create an account (username and password) with the Commission's filing system.

As used in these FAQs, “conversion” simply means that the Direct Marketer Sales Account has been transferred to the Commission’s filing system. “Conversion” does not mean that the Direct Marketer must switch at the time, but that the account is available for set up (finalizing the account by selecting a username and password) through the Commission’s filing system.

Direct Marketers may continue to collect and remit sales and use tax at the combined 8.45% rate between July 1, 2020 and August 31, 2020, but are encouraged to begin collecting and remitting state and local sales and use tax based upon actual applicable bases and rates as soon as possible during this window. See FAQ Nos. 9 and 15 for more details. In no event will a Direct Marketer that met the economic nexus thresholds by July 1, 2020, file a Direct Marketer Sales Tax Return for the September 2020 or later periods.

22. I am a Direct Marketer, but did not meet the economic nexus thresholds on July 1, 2020. Will LDR or the Commission notify me when I’ve met the economic nexus thresholds?

No. The conversion process was a one-time process for existing Direct Marketers. Going forward, Direct Marketers (and any other Remote Sellers that have not previously registered) must monitor their transactions for delivery into Louisiana to determine when the economic nexus thresholds have been met. Once met, the 30 and 60 day timeline start. See FAQ No. 15 for the timelines to register and begin collection.

Louisiana Sales and Use Tax Commission for Remote Sellers Collection and Distribution Report										
Period	Collection Month	Distribution Date	Total Collected	1% Commission Fee	Total Distributed	State Portion (Distributed)	Local Portion (Distributed)	Total Returns	Total Returns > 0	Total Open Accounts
Jul-20	Aug-20	9/11/2020	\$ 20,653,150.26	\$ 206,531.45	\$ 20,446,618.81	\$ 9,834,491.56	\$ 10,612,127.25	580	433	1331
Aug-20	Sep-20	10/9/2020	\$ 20,253,297.24	\$ 202,532.93	\$ 20,050,764.31	\$ 9,708,297.61	\$ 10,342,466.70	787	654	1570
Sep-20	Oct-20	11/10/2020	\$ 22,375,834.89	\$ 223,758.66	\$ 22,152,076.23	\$ 10,575,259.83	\$ 11,576,816.40	1080	925	1757
Oct-20	Nov-20	12/9/2020	\$ 24,151,167.24	\$ 241,512.05	\$ 23,909,655.19	\$ 11,479,794.59	\$ 12,429,860.60	1249	1069	2030
Nov-20	Dec-20	1/11/2021	\$ 27,761,459.91	\$ 277,614.48	\$ 27,483,845.43	\$ 13,355,017.16	\$ 14,128,828.27	1395	1170	2216
Dec-20	Jan-21	2/9/2021	\$ 35,222,240.58	\$ 352,222.29	\$ 34,870,018.29	\$ 16,726,031.04	\$ 18,143,987.25	1534	1308	2539
Jan-21	Feb-21	3/9/2021	\$ 27,950,194.50	\$ 279,501.96	\$ 27,670,692.54	\$ 13,248,401.71	\$ 14,422,290.83	1794	1538	2762
Feb-21	Mar-21	4/9/2021	\$ 24,262,499.34	\$ 242,625.13	\$ 24,019,874.21	\$ 11,444,817.30	\$ 12,575,056.91	1957	1649	3009
Mar-21	Apr-21	5/7/2021	\$ 35,346,757.19	\$ 353,467.97	\$ 34,993,289.22	\$ 16,759,134.28	\$ 18,234,154.94	2117	1806	3210
Apr-21	May-21	6/8/2021	\$ 28,646,775.91	\$ 286,467.91	\$ 28,360,308.00	\$ 13,612,746.93	\$ 14,747,561.07	2278	1904	3402
May-21	Jun-21	7/8/2021	\$ 33,927,808.61	\$ 339,278.55	\$ 33,588,530.06	\$ 15,987,845.25	\$ 17,600,684.81	2433	2052	3606
Jun-21	Jul-21	8/6/2021	\$ 32,361,722.76	\$ 323,617.83	\$ 32,038,104.93	\$ 15,240,951.51	\$ 16,797,153.42	2598	2163	3855
Jul-21	Aug-21	9/9/2021	\$ 30,097,561.37	\$ 300,976.03	\$ 29,796,585.34	\$ 14,273,170.26	\$ 15,523,415.08	2766	2286	4030
Aug-21	Sep-21	10/6/2021	\$ 30,602,109.60	\$ 306,022.13	\$ 30,296,087.47	\$ 14,451,708.36	\$ 15,844,379.11	2912	2418	4242
Sep-21	Oct-21	11/5/2021	\$ 29,506,754.24	\$ 295,067.91	\$ 29,211,686.33	\$ 13,958,825.22	\$ 15,252,861.11	3136	2557	4523
Oct-21	Nov-21	12/8/2021	\$ 31,650,298.85	\$ 316,503.12	\$ 31,333,795.73	\$ 14,980,213.08	\$ 16,353,582.65	3312	2745	4816
TOTAL TO DATE			\$ 454,769,632.49	\$ 4,547,700.40	\$ 450,221,932.09	\$ 215,636,705.69	\$ 234,585,226.40			



12/14/2021

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA**

HALSTEAD BEAD, INC., an Arizona corporation,

Plaintiff,

v.

KIMBERLY LEWIS, in her official capacity as Louisiana Secretary of Revenue, and

AMANDA GRANIER, in her official capacity as Sales and Use Tax Administrator of Lafourche Parish, Louisiana, and

DONNA DRUDE, in her official capacity as Sales and Use Tax Administrator of Tangipahoa Parish, Louisiana, and

JAMIE BUTTS, in her official capacity as Sales Tax Auditor, Washington Parish, Louisiana, and

LAFOURCHE PARISH, LOUISIANA, a Home Rule Chartered Parish, and

TANGIPAHOA PARISH, LOUISIANA, a Home Rule Chartered Parish, and

WASHINGTON PARISH, LOUISIANA, a Home Rule Chartered Parish,

Defendants.

CIVIL ACTION NO. 2:21-cv-02106

JUDGE: JANE TRICHE MILAZZO

MAGISTRATE: KAREN WELLS ROBY

AFFIDAVIT

STATE OF LOUISIANA

PARISH OF WASHINGTON

BEFORE ME, the undersigned Notary Public, personally came and appeared **JAMIE BUTTS** ("Affiant"), who after being duly sworn, did depose and say:



1. That Affiant is the Sales Tax Auditor for the Washington Parish Sheriff's Office Sales and Use Tax Department, which is the *Ex Officio* sales and use tax collector for the Parish of Washington (the "Collector"), and has so served at all pertinent times herein;
2. That Collector is the single collector for all jurisdictions levying sales and use taxes in the Parish of Washington;
3. That the Collector does not impose any registration fees/costs on dealers applying to be registered with the Collector;
4. That there are no filing fees/costs imposed by the Collector on sales and use tax returns filed by registered dealers;
5. That as of the date of execution of this Affidavit, the Petitioner, Halstead Bead, Inc. ("Halstead") has never registered as a dealer with the Collector;
6. That as of the date of execution of this Affidavit, Halstead has never collected and remitted local sales and/or use tax as a dealer on behalf of the Collector;
7. That as of the date of execution of this Affidavit, the Collector has not taken any action to pursue the registration of Halstead for sales/use tax purposes, nor has the Collector sought to impose any other sales and use tax collection and remittance obligations on Halstead;
8. That based upon the allegations of the Complaint filed by Halstead, Halstead has no physical presence in the State of Louisiana, nor does it satisfy "economic nexus" as defined by La. R.S. 47:301(4)(m)(i) to be considered a "dealer" under Louisiana law;
9. That entities with no physical presence in Louisiana but that do meet the "economic nexus" threshold established by La. R.S. 47:301(4)(m)(i) *are not* required to register with the Collector, but are required to register online with the Louisiana Sales and Use Tax

Commission for Remote Sellers (the “Remote Sellers Commission”) at *remotesellers.louisiana.gov*, and thereafter file monthly returns with the Remote Sellers Commission;

10. That the monthly single return filed by an entity with the Remote Sellers Commission includes any sales which may have occurred in Washington Parish, along with all other sales made into the other jurisdictions within Louisiana;
11. That following collection of the taxes, the Remote Sellers Commission disburses the monthly taxes collected on behalf of Washington Parish and remits said taxes to the Collector;
12. That Affiant is aware that in 2017, the Louisiana’s Legislature established the Remote Sellers Commission under La. R.S. 47:339, *et seq.*;
13. That Affiant is aware that following the *Wayfair* decision, the Louisiana Legislature expanded the definition of a “dealer” under Louisiana law, thus expanding the definition to include the class of remote dealers with “economic nexus” as contemplated by *Wayfair*. See Act 5 of the 2018 2nd Extra. Session (“Act 5”), adding La. R.S. 47:301(4)(m);
14. That Affiant is aware that Act 5 further provided that until the Remote Sellers Commission commenced its collection and remittance of state and local sales and use tax at the applicable state and local rates and bases, dealers as defined in R.S. 47:301(4)(m) were required to collect only the additional tax authorized by La. R.S. 47:302(K) and were required to file and remit a single return for sales in Louisiana with the State;
15. That Affiant is aware that Act 5 further provided that notice of the commencement of collection and enforcement by the Remote Sellers Commission would thereafter be

published in a policy statement as authorized by LAC 61:III.101 no later than thirty days prior to the effective date of the commencement of collection and enforcement by the Remote Sellers Commission;

16. That Affiant is aware that the Remote Sellers Commission issued Remote Sellers Information Bulletin No. 20-002 dated May 7, 2020, which provided a notice of the effective date, July 1, 2020, and enforcement by the Remote Sellers Commission for the collection of state and local sales and use tax on remote sales;

17. That Affiant is aware that the Remote Sellers Commission officially commenced its registration and collection duties under La. R.S. 47:339 *et seq.* and the website and registration and remittance portal went “live” on July 1, 2020, and thereafter the Remote Sellers Commission commenced receiving filings and returns and collecting taxes from remote dealers;

18. That Affiant is aware that since July 1, 2020, the Remote Sellers Commission has been the single collector for all parishes and the State with regard to remote sales made into Louisiana by remote dealers;

19. That as of the date of execution of this Affidavit, the Remote Sellers Commission has collected and remitted at least \$1,762,651.37 in local sales and use tax to the Collector;

20. That upon Affiant’s information and belief at no time since the Supreme Court’s ruling in *Wayfair* has a remote dealer been required to file multiple returns with different parishes in Louisiana and no such returns have been filed with the Collector;

21. That prior to the *Wayfair* decision, the U.S. Supreme Court’s “physical nexus” requirements pursuant to the Commerce Clause as decided in *Quill Corp. v. North*

Dakota 504 U.S. 298 (1992), prohibited attempts by the Collector to require remote sellers to file and remit returns;

22. That on June 10, 2020, and on behalf of all taxing authorities of the Parish of Washington, that the Washington Parish Sheriff's Office, as the local sales and use tax collector for Washington Parish, did sign a document entitled "MEMORANDUM OF UNDERSTANDING BETWEEN THE LOUISIANA SALES AND USE TAX COMMISSION FOR REMOTE SELLERS AND LOCAL SALES AND USE TAX COLLECTOR" (the "MOU") which transfers all rights of registration of dealers, collection of taxes, enforcement of delinquencies, and other responsibilities related to remote sales from dealers to the Remote Sellers Commission;
23. That Affiant signed the MOU as a witness thereto;
24. That attached hereto as Exhibit "1" is a true and correct copy of the MOU between the Remote Sellers Commission and the Collector;
25. That Exhibit 1 was kept in the normal course of the regularly conducted business activity of the Collector;
26. That the MOU specifically provides that the Remote Sellers Commission shall serve as the single entity within the state of Louisiana responsible for all state and local sales and use tax administration, return processing and audits for remote sales deliver into Louisiana (Section D.5.);
27. That the MOU further provides that the Remote Sellers Commission serves as the central, single agency to which remote sellers shall make state and local sales and use tax remittances (Section D.6.);

28. That the MOU further provides that the Remote Sellers Commission is the single authority to assign and direct audits of remote sellers for both the state and all local taxing authorities (Section D.7.);
29. That the MOU further provides that the Remote Sellers Commission has the authority to conduct administrative hearings as requested by aggrieved remote sellers and to make all decisions related to such matters (Section D. 9.);
30. That the MOU authorizes the Remote Sellers Commission to issue all notices required by law to enforce collection of local sales and use tax that may be due from remote sellers (Section D.10.);
31. That the MOU further authorizes the Remote Sellers Commission to require remote sellers to register with the Remote Sellers Commission on behalf of the local taxing jurisdictions (Section D.11.);
32. That the MOU is effective for all relevant time herein, effective July 1, 2020 and ending on June 30, 2023 and automatically renews for an additional 3-year period except as would be provided under Section G;
33. That beginning on July 1, 2020, the Commission will enforce the requirement to register with the Commission in accordance with the Remote Sellers Information Bulletin 20-002;¹
34. That the Remote Seller's Commission's website and the filing software provided thereon is a user-friendly tool that allows a remote dealer to enter its monthly sales data either

¹ See Sales and Use Tax Commission for Remote Sellers, Louisiana Sales and Use Tax on Remote Sales Frequently Asked Questions available at <http://revenue.louisiana.gov/Miscellaneous/Remote%20Sellers%20FAQs%2006.24.2020.pdf> at FAQ No. 9, attached hereto as Exhibit "2".

35. That in order to reduce the administrative burden for Remote Sellers, the Commission has compiled the state and local sales and use tax bases and rates on its website;²
36. That “[u]sing jurisdictional codes established by the Commission, Remote Sellers will know the exact rate of state and local sales and use tax to collect as well as if the rate is reduced in part or full because of an exemption or exclusion”.³
37. That upon information and belief, all sales and use tax collectors in the State of Louisiana have signed identical agreements with the Remote Sellers Commission;
38. That the Louisiana Sales and Use Tax Commission for Remote Sellers has made its “Collection and Distribution” Report publicly available on the Louisiana Department of Revenue website;⁴
39. That pursuant to the Collection and Distribution Report dated December 14, 2021, and as of the date of execution of this Affidavit: (a) 4,816 entities have registered as remote dealers with the Remote Sellers Commission and are filing monthly returns and remitting collected sales taxes via electronic fund transfer and (b) the Remote Sellers Commission currently averages 232 new, approved registrants per month;
40. That pursuant to the Collection and Distribution Report, and as of the date of execution of this Affidavit, the Remote Sellers Commission has collected and remitted at least \$454,769,632.49 in local sales and use tax to the State and parish sales and use tax collectors;⁵ and

² See *Id.* at FAQ No. 17.

³ See *Id.* at FAQ No. 17.

⁴ See Louisiana Sales and Use Tax Commission for Remote Sellers has made its “Collection and Distribution” Report available at <https://revenue.louisiana.gov/Miscellaneous/RSC%20Collection%20and%20Distribution%20Report%2012.14.21.pdf> attached hereto as Exhibit “3”.

⁵ See *Id.*

41. Further affiant sayeth not.

BY: Jamie Butts
JAMIE BUTTS
SALES TAX AUDITOR
WASHINGTON PARISH SHERIFF'S OFFICE

Sworn to a subscribed before me this
22 day of December, 2021.

[Signature]
NOTARY PUBLIC



**MEMORANDUM OF UNDERSTANDING BETWEEN THE
LOUISIANA SALES AND USE TAX COMMISSION FOR REMOTE SELLERS AND
LOCAL SALES AND USE TAX COLLECTOR**

A. PARTIES: The parties to this Memorandum of Understanding ("MOU") are the:

1. Louisiana Sales and Use Tax Commission For Remote Sellers (the "Commission"), an entity established within the Louisiana Department of Revenue ("LDR") as set forth under La. R.S. 47:339 *et seq.* and herein represented by Kressynda Krennerich in her official capacity as Chairman of the Commission; and,

2. Washington Parish Sheriff's Office
Insert Name of Local Sales and Use Tax Collector's Office

(the "Parish"), designated pursuant to La. Const. Art. VII, §3(B) as the single sales and use tax collector or central collection authority for all sales and use taxes levied by the Parish of Washington and/or its said political subdivisions, as well as any and all of its successors, heirs and assigns, and appearing on behalf of the governing bodies of all political subdivisions within the Parish of Washington, State of Louisiana, herein represented by:

Randy "Country" Seal, Sheriff
Insert Name and Title of Local Sales and Use Tax Collector

in his/her official capacity as the single sales and use tax collector Washington Parish.

B. RECITALS:

WHEREAS, both the Commission and the Parish (hereinafter referred to collectively as the "Parties"), through their duly authorized representatives are entering into this MOU (or "Agreement") pursuant to the laws of the State of Louisiana, as of the effective date set forth by this Agreement;

WHEREAS, the Parties understand and acknowledge that La. R.S. 47:339 *et seq.* established the Commission;

WHEREAS, the Parish believes the Commission provides beneficial assistance, and the Commission's powers and duties are necessary for the proper and efficient collection, administration and enforcement of sales and use taxes collected by remote sellers or their designated agents sourced to the Parish;

WHEREAS, the Parties, after conferring with each other, determined certain specific concerns, not addressed in statute, should be set forth in this MOU to preserve the Parties' efforts to administer the tax laws, collect the tax dollars owed, and to comply with the wishes of the Legislature as shown through its established statutes;



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NOW THEREFORE, with the paragraphs above collectively describing the public purpose of this MOU, in consideration of the mutual covenants herein contained, the Parties hereto agree as follows:

C. IMPACT OF COMMISSION & MOU ON PARISH TAXING AUTHORITY

1. The Parties hereby agree and acknowledge nothing in this MOU or Agreement shall impair or nullify the Parish's status, power or authority, as the constitutionally-designated single sales and use tax collector of its parish, to collect, administer and enforce any and all parish sales and/or use taxes levied and imposed by the taxing authorities in the parish, excluding any and all transactions defined to be remote sales by remote sellers or their designated agents sourced to the parish are to be collected, administered and enforced by the Commission.
2. The Parish also hereby acknowledges and agrees that the Commission is vested with certain powers and duties as set forth in La. R.S. 47:339 *et seq.* and that during the entire period for which this Agreement remains in effect, the Parish and the political subdivisions for which it collects taxes shall forebear and refrain from raising or asserting any constitutional challenge in a state or federal court of law or in the Louisiana Board of Tax Appeals that the Commission is unlawfully acting as a "collector" under La. Const. art. VII, §3.

D. ACKNOWLEDGMENT OF COMMISSION POWERS, DUTIES & AUTHORITIES

The Parties understand and acknowledge the Commission, under La. R.S. 47:339 *et seq.*, is statutorily vested with the power, duty and authority to:

1. Remit monies, less any refunds and amounts retained for expenses, to the appropriate state or local collector by electronic funds to the designated bank account of that state or local collector on or before the tenth business day of the month following the month of collection;
2. Fund its operations by an amount equal to actual expenses incurred, which amount shall not exceed one percent (1%) of the total amount of state and local sales and use tax collected on remote sales by the Commission;
3. Retain its funding on a monthly basis from current collections of state and local sales and use tax on remote sales as collected by the Commission prior to monthly distribution to the state and local collectors, subject to a federal law authorizing states to require remote sellers and their agents to collect state and local sales and use taxes on their sales in each state is enacted and becomes effective or a decision by the United States Supreme Court overrules the physical presence requirement for a remote seller to collect and remit state and local sales and use tax on remote sales for delivery into the state;
4. Provide taxpayer information and associated taxpayer history to the state or local collector upon the request, in accordance with La. R.S. 47:1508;

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5. Serve as the single entity within the state of Louisiana responsible for all state and local sales and use tax administration, return processing, and audits for remote sales delivered into Louisiana;
 - a. As defined by La. R.S. 47:3398(B)(8), "sales and use taxes" mean the sales and use taxes levied by the state of Louisiana under the provisions of Title 47 of the Louisiana Revised Statutes of 1950, and the sales and use taxes levied by local taxing authorities in Louisiana under the provisions of the Constitution of Louisiana, statutory laws authorizing the imposition of such taxes, and local sales and use tax ordinances. It is the understanding of the Parties that the Commission shall collect sales and use taxes at the actual state and actual local rates at their respective bases.
6. Serve as the central, single agency to which remote sellers shall make state and local sales and use tax remittances;
7. Assign and direct a single audit of remote sellers for the state and all local taxing authorities;
8. Serve as the single state of Louisiana agency to represent both state and local taxing authorities in taking appropriate action to enable Louisiana to participate in programs designed to allow Louisiana to more efficiently enforce and collect state and local sales and use taxes on sales made by remote sellers;
9. Conduct administrative hearings as requested by aggrieved remote sellers, administer oaths, and make adjustments to assessments when justified by the facts and the law, and render decisions following such hearing;
10. With consent of the affected local taxing authority, such consent hereby granted and evidenced by this Agreement, to issue notices of intent to assess, notices of assessments, enforce collection of local sales and use tax taxes by distraint and sale, and institute summary proceedings or ordinary proceedings for collection of local taxes RS
for remote sellers;
11. Require remote sellers to register with the Commission;
12. Provide the Parish an annual report of revenues collected and distributed for each calendar year, which report shall be provided on or before June first of each year; and,
13. Perform any and all other duties as set forth by and/or required by La. R.S. 47:339 *et seq.*

E. DETAILED FUNDING RESPONSIBILITIES

1. The Parish acknowledges and agrees that:
 - a. The Commission shall be compensated based on the amounts set forth in La. R.S. 47:340(E)(3).

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- b. The Commission shall withhold compensation from its current collection of Parish sales and/or use taxes from the sale or use by remote sellers and their designated agents, as defined by the Commission, on remote sales sourced to the Parish.
 - c. The Commission's funding amounts set forth in La. R.S. 47:340(E)(3) are reasonable sums paid to the Commission in exchange for the Commission's exercise of its powers and duties for assistance in the collection and administration of Parish sales and/or use taxes on remote sales by remote sellers or their designated agents sourced to the Parish.
2. The Commission acknowledges and agrees that:
- a. In consideration for the collection services it statutorily provides, the Commission may withhold actual expenses incurred, which amount shall not exceed one percent (1%) of the total amount of state and local sales and use tax collected on remote sales by the Commission.
 - b. Actual expenses shall include, but are not limited to, amounts expended by LDR on behalf of the Commission, that are attributable to start up and initial Commission costs, such as procurement and development of software expenses, filing costs for Commission regulations, personnel expenses, information technology expenses, rental expenses, and any other expenses incurred on behalf of the Commission.
 - c. The Commission will withhold one percent (1%) of the collections for the Parish. Records of gross collections, refunds, and amounts retained for expenses shall be made accessible to the respective Parish on a monthly basis.
 - d. In the event the reconciliation reveals the actual expenses incurred are less than the one percent (1%) withheld, the Commission shall disburse any excess monies due to the Parish no later than sixty (60) days after the conclusion of the reconciliation.

F. TERM, EFFECTIVE DATE & RENEWAL PROVISIONS OF AGREEMENT

1. Term of Agreement: The initial mandatory minimum term of this Agreement shall be a three (3) fiscal year period beginning on July 1, 2020 and ending on June 30, 2023.
2. Effective Date of Agreement: The effective date of the Agreement shall be the date shown on the signature pages by the last signing party of the Agreement.
3. Renewal Provisions: Unless and until terminated in accordance with Section G of this Agreement, this Agreement shall be automatically renewed in three (3) fiscal year period increments.

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4. Modifications: Modifications and/or changes to this Agreement may be made at any time as long as any and all agreed modifications or changes are evidenced in writing and signed by the Parties.
5. Prior to the end date of the initial mandatory minimum term of this Agreement or termination in accordance with Section F of this Agreement, the Parties may enter into negotiations for new conditions and terms.

G. TERMINATION PROVISIONS

1. Once the initial mandatory minimum term of the Agreement has expired, the Agreement may be terminated by either Party upon written notice to the other Party at least ninety (90) days in advance of the end of the fiscal year period.
 - a. The effective termination date shall be the last day of the month in which the 90th day occurs, but in no event later than June 30 of the respective fiscal year period.
2. Termination of this Agreement does not impact, change or modify the Commission's power, duty, authorization or responsibility to collect the sales and use tax due by a remote seller or its designated agent sourced to the Parish.
3. Notwithstanding the above, this Agreement shall be automatically terminated upon any legislative repeal of the statutes creating and/or setting forth the duties of the Commission.
 - a. However, the enactment of new statutes or the amendment to existing statutes shall not be grounds for automatic termination of this Agreement.
 - b. Also, in the event that the political subdivisions in the Parish select an alternative political subdivision within the Parish to be the single sales and use tax collector for the Parish; that the political subdivisions in the Parish create and appoint a commission to be the single sales and use tax collector for the Parish; or if the political subdivisions in the Parish decide to consolidate, combine, or appoint another political subdivision or commission from outside the Parish to be the single sales and use tax collector for the Parish, this Agreement shall be binding and remain in full force and effect and govern the Parish's successor, successors, heirs, assigns, appointees, or designees.

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SIGNATURES ON THE FOLLOWING PAGE



THUS DONE AND SIGNED in Franklinton, Louisiana on the 10th day of

June, 2020 in the presence of the witnesses who have affixed their names below.
Month

WITNESSES:

Brent Jones
Name: Brent Jones

Jamie M. Butts
Name: JAMIE Butts

Washington Parish Sheriff's Office
Insert Name of Local Sales and Use Tax Collector's Office

Randy Seal
Signature

RANDY "Country" Seal Sheriff
Insert Name and Title of Local Sales and Use Tax Collector

Washington Parish

THUS DONE AND SIGNED in Baton Rouge, Louisiana on the ___ day of _____, 2020 in the presence of the witnesses who have affixed their names below.

WITNESSES:

**Louisiana Sales and Use Tax
Commission for Remote Sellers**

Name: _____

Kressynda Krennerich
Chairman
Louisiana Sales and Use Tax
Commission for Remote Sellers

Name: _____

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SALES AND USE TAX COMMISSION
FOR REMOTE SELLERS

**Louisiana Sales and Use Tax on Remote Sales
Frequently Asked Questions**

1. What is a Remote Seller?

A Remote Seller is 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.

For more information, refer to *Remote Sellers Information Bulletin 18-002: Definition of Remote Seller and Further Guidance to Remote Sellers.*

2. What if a seller has 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(4) and subject to state and local collection and remittance requirements.

3. What is physical presence?

Physical presence includes, but is not limited to, the following activities in Louisiana, whether done permanently or temporarily, directly or indirectly or through an agent or subsidiary:

- owning or operating retail spaces;
- owning, leasing, maintaining, occupying, or using, an office, place of distribution, sales or sample room, warehouse or storage place or other place of business;
- having an employee, representative, agent, salesman, canvasser or solicitor operating in Louisiana under the authority of the retailer or subsidiary; and
- storage of property in third party facility.

If the seller has physical presence in Louisiana, the seller is considered a Dealer as defined by LA R.S. 47:301(4), rather than a Remote Seller, and is subject to state and local sales tax collection and remittance requirements.

4. Is there a minimum threshold for physical presence?

No.



5. What is nexus (for sales tax purposes)?

Nexus can be established by either physical presence or economic nexus. A seller having physical presence is a Dealer and subject to regular state and local sales tax collection and remittance requirements. A seller without physical presence but having economic nexus is a Remote Seller. Presently, Direct Marketers voluntarily register, collect and remit sales and use tax through the Louisiana Department of Revenue ("LDR") using the Direct Marketer application and reporting forms (i.e., Form R-1031A, *Application to File Direct Marketer Sales Tax Return*, and Form R-1031, *Direct Marketer Sales Tax Returns*).

6. What is the difference between a Remote Retailer, Direct Marketer, and Remote Seller?

While the terms appear synonymous, each has a separate legal meaning in Louisiana.

Remote Retailers

Remote Retailers are out of state sellers with cumulative annual gross receipts in excess of \$50,000, including those gross receipts of its affiliates, for sales delivered into Louisiana per calendar year and must comply with the dual reporting requirements of LA R.S. 47:309.1. For purposes of calculating annual gross receipts, the Remote Retailer 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.

A Remote Retailer is relieved from the reporting requirements of LA R.S. 47:309.1 if the Remote Retailer voluntarily registers, collects, and remits on its sales for delivery into Louisiana. This relief commences on the date of collection. The portion of the calendar year preceding the date of collection remains subject to the reporting requirements of LA R.S. 47:309.1.

Direct Marketers

Direct Marketers are sellers without physical presence in Louisiana who may voluntarily collect sales tax at the 8.45% rate pursuant to the LA R.S. 47:302(K).

If a Direct Marketer does not meet the economic nexus thresholds (as set forth in the *Remote Sellers* section below), the Direct Marketer may continue to voluntarily collect at the 8.45% after July 1, 2020, and remit to the LDR. If the Direct Marketer later establishes physical presence in Louisiana, the Direct Marketer is deemed a Dealer (See Question No. 2).

Remote Sellers

Remote Sellers are required to collect and remit use tax if during the previous or current calendar year they have gross revenue in excess of \$100,000 from sales of tangible personal property delivered into Louisiana or 200 or more separate transactions for delivery into Louisiana.

7. When are Remote Sellers required to register and start collecting Louisiana sales and use tax?

Pursuant to LA R.S. 47:302 (W)(6) and LA R.S. 47:340(G)(6)(b), the Louisiana Sales and Use Tax Commission for Remote Sellers (“Commission”) is required to enforce collections, no later than July 1, 2020. The Commission is also required to provide notice of enforcement no later than 30 days prior to enforcement. On and after this date, Remote Sellers satisfying the economic thresholds set forth in LA R.S. 47:301(4)(m) will be required to register with the Commission and collect and remit state and local sales and use tax based upon actual applicable bases and rates.

The Commission provided the required notice of “*Effective Date for Remote Seller Registration and Collection of State and Local Sales and Use Tax at Actual Rates*” by Remote Sellers Information Bulletin 20-002 issued on May 7, 2020. The date of mandatory registration with the Commission is July 1, 2020.

8. I am currently a Direct Marketer who meets the economic nexus threshold and currently registered and filing the Direct Marketers’ Sales Tax Return with LDR. Will I have to re-register with the Louisiana Sales and Use Tax Commission for Remote Sellers?

No, not if your Direct Marketer sales reported for calendar 2019 or year-to-date through April 2020 met the \$100,000 threshold. Such taxpayers will receive notification from LDR and the Commission providing them guidance on how to complete their registration with the Commission. LDR will provide the underlying taxpayer account information to the Commission. However, it may be necessary for the taxpayer to verify or provide additional information to complete the conversion of such accounts.

9. What rate of sales and use tax do Remote Sellers collect on remote sales for delivery into Louisiana?

Prior to July 1, 2020, Remote Sellers may collect and remit sales and use tax at the combined 8.45% rate in accordance with LA R.S. 47:302(K), as provided by Remote Sellers Information Bulletin 18-002 and LA R.S. 47:302(W)(6). Tax collected prior to July 1, 2020, is remitted to LDR for distribution to the state and local tax collectors.

Beginning July 1, 2020, the Commission will enforce the requirement to register with the Commission in accordance with [Remote Sellers Information Bulletin 20-002](#). See FAQ No. 15 below for more information on the 30 and 60 day timelines that commence on July 1, 2020 for Direct Marketers and Remote Sellers who have met the economic nexus thresholds. Direct Marketers may continue to collect and remit sales and use tax at the combined 8.45% rate between July 1, 2020 and August 31, 2020, but are encouraged to begin collecting and remitting state and local sales and use tax based upon actual applicable bases and rates as soon as possible during this window.

No later than 60 days after July 1, 2020 (September 1, 2020), Remote Sellers are required to collect and remit state and local sales and use tax based upon actual applicable bases and rates. At this time, Remote Sellers will remit tax collected to the Commission instead of LDR.

10. When is the Remote Sellers Tax Return due?

The Remote Sellers Tax Return and tax payments for state and local sales tax on remote sales are due on or before the 20th of the month following the close of the calendar month of the reporting period. The first Remote Sellers Tax Return will be for the July 2020 sales tax period and will be due on August 20, 2020.

11. How will the Commission calculate interest and penalties on delinquent tax payments?

The Commission shall collect and remit the actual interest and penalties due to each taxing jurisdiction based on the applicable taxing jurisdiction's statutory interest and penalty rates. Just as the tax, the actual interest and penalties due to each taxing jurisdiction will be distributed directly to the taxing jurisdiction upon collection by the Commission.

12. Will Remote Sellers receive a deduction for vendor's compensation?

Yes. Vendor's compensation shall be allowed as a deduction against tax due. However, vendor's compensation is only allowed when (1) the Remote Sellers Tax Return is filed timely on or before the 20th of the month following the month of collection and (2) all tax shown due on the Remote Sellers Tax Return is remitted on or before the 20th of the month following the month of collection.

13. How will the Commission distribute partial tax collections when a Remote Seller does not remit the entire tax balance due?

In the event a Remote Seller remits less than the full amount of sales and use tax shown due on a return, the amount of tax actually collected will be distributed to each applicable taxing jurisdiction on whose behalf the tax is collected. The distribution will be on a pro-rata basis on the total amount of tax due to each jurisdiction.

Example

Remote Seller sells for delivery into Louisiana. Remote Seller collects \$200 of tax from Louisiana purchasers due to the following taxing jurisdictions:

1. State of Louisiana - \$100
2. Taxing Jurisdiction within Parish A - \$70
3. Taxing Jurisdiction with Parish B - \$30

Although the Remote Sellers Tax Return reflects \$200 of state and local sales and use tax due, Remote Seller only remits \$50. While the outstanding \$150 of tax is subject to collection by the Commission, the Commission must distribute the \$50 remitted in accordance with LA R.S. 47:340(E)(2). The \$50 shall be remitted by the Commission to the taxing jurisdictions on a pro-rata basis, as follows:

1. State of Louisiana - \$25 ($\$100/\$200 \times \50)
2. Taxing Jurisdiction within Parish A - \$17.50 ($\$70/\$200 \times \50)
3. Taxing Jurisdiction within Parish B - \$7.50 ($\$30/\$200 \times \50)

When the remote seller remits the remaining \$150, it will be distributed based on the same pro-rata distribution to the taxing jurisdictions. Interest and penalties shall accrue on the outstanding \$150 balance until remitted in full.

14. For purposes of calculating the economic nexus thresholds, does a remote seller include both direct sales for delivery into Louisiana and sales made through a marketplace?

The remote seller should only consider direct sales for delivery into Louisiana to calculate whether the economic nexus thresholds have been met. The sales made through a marketplace may be excluded because those sales determine whether the marketplace itself meets the economic nexus thresholds.

Example

Remote Seller sells \$75,000 of tangible personal property for delivery into Louisiana during the calendar year. These remote sales are sold directly by the Remote Seller. Remote Seller also sells \$35,000 of tangible personal property for delivery into Louisiana during the calendar year through a marketplace.

Under these facts, the Remote Seller has not met the economic nexus threshold provisions because the Remote Seller may exclude the remote sales made over the marketplace. This example does not consider the transaction based economic nexus threshold.

15. What are the registration and collection timeline requirements for Remote Sellers?

Beginning on July 1, 2020, the following registration and collection timelines will apply to Remote Sellers:

July 1, 2020

First date of mandatory registration. Remote Sellers must review their Louisiana sourced sales transactions to determine whether the economic nexus provisions have been met. See FAQ No. 6.

If on July 1, 2020, the economic nexus provisions are met for either the 2019 calendar year (January 1, 2019 – December 31, 2019) or 2020 calendar year to date (January 1, 2020 – June 30, 2020), then the Remote Seller must submit an application to the Commission within 30 days of July 1, 2020 and must begin collecting state and local sales and use tax based upon actual applicable bases and rates on sales for delivery into Louisiana within 60 days of July 1, 2020.

July 31, 2020

Deadline to submit application to Commission if the Remote Seller met the economic nexus thresholds by July 1, 2020. In general, most applications will be approved automatically within 24-48 hours. Remote Seller may begin collecting sales and use tax based upon actual applicable bases and rates immediately following notice of an approved application.

September 1, 2020

Deadline to begin collecting state and local sales and use tax based upon actual applicable bases and rates on sales for delivery into Louisiana. Tax collected during the month must be remitted on or before the 20th of the following month.

Note that while the 60 day window officially ends on August 30, the Commission has deemed that September 1, 2020 will serve as the deadline to align with the beginning of the closest sales tax period.

If a Remote Seller has not met the economic nexus thresholds on the July 1, 2020 date, then the applicable registration and collection timelines follow the 30 and 60 day provisions.

16. May a Remote Seller request an exception or extensions to the 30 and 60 day provisions following July 1, 2020?

No. Louisiana law does not allow the Commission to grant an exception or extension.

17. What does “state and local sales and use tax based upon actual applicable bases and rates” mean?

Louisiana’s sales tax system is unique in that state and local governments each collect their own sales tax and provide for their own exclusions, exemptions, and deductions. To reduce administrative burdens for Remote Sellers, the Commission has compiled the state and local sales and use tax bases and rates and will provide this information on its website.

State and local sales and use tax based upon actual applicable bases and rates mean the actual rate of tax on a taxable item delivered into Louisiana. Using jurisdictional codes

established by the Commission, Remote Sellers will know the exact rate of state and local sales and use tax to collect as well as if the rate is reduced in part or full because of an exemption or exclusion.

18. Do Remote Sellers have to register with the state and each parish?

No. The Commission serves as the single entity in Louisiana to require Remote Sellers to collect from customers and remit to the Commission. Remote Sellers do not have to register with the state and each parish unless the Remote Seller has physical presence in Louisiana (which, by definition, means the seller is not a Remote Seller.)

19. If a Remote Seller is registered with the state and parishes as a regular dealer, can the Remote Seller switch to the Commission?

Yes. If the Remote Seller meets the economic nexus thresholds and does not have physical presence in Louisiana, the Remote Seller is required to register with the Commission unless the Remote Seller is registered directly with the state and parishes. The Remote Seller may switch to the Commission by (1) filing an application with the Commission; (2) upon receipt of an approved application, filing a final sales tax return with the state and parishes; and (3) attaching a copy of the approved application form to the final sales tax returns.

The Remote Seller must remit any tax collected directly to the state and parishes while registered with the state and parishes. Only following the receipt of an approved application may a Remote Seller remit tax collected to the Commission.

20. I'm a Direct Marketer and do not meet the economic nexus thresholds. Can I switch my registration to the Commission and become a Remote Seller voluntarily?

Yes. Follow the same steps outlined in FAQ No. 19.

21. I received a letter dated May 28, 2020, or an email dated June 09, 2020 notifying me that my Direct Marketer Sales Tax Account will be converted to a Remote Seller Account with the Commission. Why?

Based on your previous Direct Marketer Sales Tax Return, it appears that you have met the economic nexus thresholds for the 2019 calendar year or first quarter of 2020. Your account will be converted from the Department of Revenue's LaTAP system to the Commission's filing system. While this conversion is automatic, you will need to create an account (username and password) with the Commission's filing system.

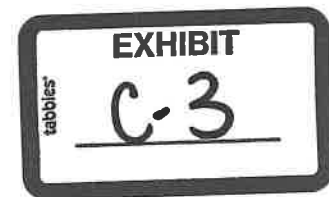
As used in these FAQs, “conversion” simply means that the Direct Marketer Sales Account has been transferred to the Commission’s filing system. “Conversion” does not mean that the Direct Marketer must switch at the time, but that the account is available for set up (finalizing the account by selecting a username and password) through the Commission’s filing system.

Direct Marketers may continue to collect and remit sales and use tax at the combined 8.45% rate between July 1, 2020 and August 31, 2020, but are encouraged to begin collecting and remitting state and local sales and use tax based upon actual applicable bases and rates as soon as possible during this window. See FAQ Nos. 9 and 15 for more details. In no event will a Direct Marketer that met the economic nexus thresholds by July 1, 2020, file a Direct Marketer Sales Tax Return for the September 2020 or later periods.

22. I am a Direct Marketer, but did not meet the economic nexus thresholds on July 1, 2020. Will LDR or the Commission notify me when I’ve met the economic nexus thresholds?

No. The conversion process was a one-time process for existing Direct Marketers. Going forward, Direct Marketers (and any other Remote Sellers that have not previously registered) must monitor their transactions for delivery into Louisiana to determine when the economic nexus thresholds have been met. Once met, the 30 and 60 day timeline start. See FAQ No. 15 for the timelines to register and begin collection.

Louisiana Sales and Use Tax Commission for Remote Sellers Collection and Distribution Report										
Period	Collection Month	Distribution Date	Total Collected	1% Commission Fee	Total Distributed	State Portion (Distributed)	Local Portion (Distributed)	Total Returns	Total Returns > 0	Total Open Accounts
Jul-20	Aug-20	9/11/2020	\$ 20,653,150.26	\$ 206,531.45	\$ 20,446,618.81	\$ 9,834,491.56	\$ 10,612,127.25	580	433	1331
Aug-20	Sep-20	10/9/2020	\$ 20,253,297.24	\$ 202,532.93	\$ 20,050,764.31	\$ 9,708,297.61	\$ 10,342,466.70	787	654	1570
Sep-20	Oct-20	11/10/2020	\$ 22,375,834.89	\$ 223,758.66	\$ 22,152,076.23	\$ 10,575,259.83	\$ 11,576,816.40	1080	925	1757
Oct-20	Nov-20	12/9/2020	\$ 24,151,167.24	\$ 241,512.05	\$ 23,909,655.19	\$ 11,479,794.59	\$ 12,429,860.60	1249	1069	2030
Nov-20	Dec-20	1/11/2021	\$ 27,761,459.91	\$ 277,614.48	\$ 27,483,845.43	\$ 13,355,017.16	\$ 14,128,828.27	1395	1170	2216
Dec-20	Jan-21	2/9/2021	\$ 35,222,240.58	\$ 352,222.29	\$ 34,870,018.29	\$ 16,726,031.04	\$ 18,143,987.25	1534	1308	2539
Jan-21	Feb-21	3/9/2021	\$ 27,950,194.50	\$ 279,501.96	\$ 27,670,692.54	\$ 13,248,401.71	\$ 14,422,290.83	1794	1538	2762
Feb-21	Mar-21	4/9/2021	\$ 24,262,499.34	\$ 242,625.13	\$ 24,019,874.21	\$ 11,444,817.30	\$ 12,575,056.91	1957	1649	3009
Mar-21	Apr-21	5/7/2021	\$ 35,346,757.19	\$ 353,467.97	\$ 34,993,289.22	\$ 16,759,134.28	\$ 18,234,154.94	2117	1806	3210
Apr-21	May-21	6/8/2021	\$ 28,646,775.91	\$ 286,467.91	\$ 28,360,308.00	\$ 13,612,746.93	\$ 14,747,561.07	2278	1904	3402
May-21	Jun-21	7/8/2021	\$ 33,927,808.61	\$ 339,278.55	\$ 33,588,530.06	\$ 15,987,845.25	\$ 17,600,684.81	2433	2052	3606
Jun-21	Jul-21	8/6/2021	\$ 32,361,722.76	\$ 323,617.83	\$ 32,038,104.93	\$ 15,240,951.51	\$ 16,797,153.42	2598	2163	3855
Jul-21	Aug-21	9/9/2021	\$ 30,097,561.37	\$ 300,976.03	\$ 29,796,585.34	\$ 14,273,170.26	\$ 15,523,415.08	2766	2286	4030
Aug-21	Sep-21	10/6/2021	\$ 30,602,109.60	\$ 306,022.13	\$ 30,296,087.47	\$ 14,451,708.36	\$ 15,844,379.11	2912	2418	4242
Sep-21	Oct-21	11/5/2021	\$ 29,506,754.24	\$ 295,067.91	\$ 29,211,686.33	\$ 13,958,825.22	\$ 15,252,861.11	3136	2557	4523
Oct-21	Nov-21	12/8/2021	\$ 31,650,298.85	\$ 316,503.12	\$ 31,333,795.73	\$ 14,980,213.08	\$ 16,353,582.65	3312	2745	4816
TOTAL TO DATE			\$ 454,769,632.49	\$ 4,547,700.40	\$ 450,221,932.09	\$ 215,636,705.69	\$ 234,585,226.40			



12/14/2021