

LOUISIANA SALES AND USE TAX COMMISSION FOR REMOTE SELLERS

Approved Minutes of March 16, 2023 Meeting

- I. **Call to Order/Roll Call** - The meeting of the Louisiana Sales and Use Tax Commission for Remote Sellers was called to order at 10:05 AM by Chairperson Clapinski. A quorum was established with six members initially in attendance. Members present were:

1. Danielle Clapinski (LDR)
2. Shawn McManus (LULSTB)
3. Kevin Richard (LDR)
4. Kelli Jumper (LDR)
5. Jeff LaGrange (LULSTB)
6. Amanda Granier (LULSTB)
7. Kressy Krennerich (LULSTB) – joined after the minutes were approved
8. Luke Morris (LDR) – joined after the minutes were approved

II. **Approval of Meeting Minutes from February 9, 2023**

- A motion was made by Mr. McManus to approve the meeting minutes from the meeting on February 9, 2023, and seconded by Ms. Granier. Following a vote and a call for public discussion, the minutes were approved unanimously by the members present.

III. **Report From Executive Director**

A. **Distribution Report**

- Ms. Roberie provided the numbers for both the January and the February collections because the February meeting was held prior to distribution.
- In January, the Commission collected \$55,424,357.19 for the December 2022 period. \$54,870,112.07 was distributed to the state and local collectors. The number of returns processed in January was 6,374. Of those, 5,974 were for the December 2022 period. As of 1/31/2023, the Commission had 7,960 open accounts.
- In February, the Commission collected \$41,255,489.78 for the January 2023 period. \$40,842,934.34 was distributed to the state and local collectors. The number of returns processed in February was 6,610. Of those, 6,128 were for the January 2023 period. As of 2/28/2023, the Commission had 8,125 open accounts.
- Ms. Roberie noted that the Commission is averaging between 7 and 9% of returns processed each month from prior periods. The Commission continues to see an increase in collections and accounts.

- Ms. Roberie also noted that to date the Commission has closed 479 accounts, rejected 171 accounts and has 151 pending applications. The majority of the pending applications are pending because we are waiting on additional information from the applicants.

B. Budget

- Ms. Roberie presented an updated budget to actual financial report. The Commission's expenditures continue to be under budget as the Commission works to bring on additional staff.

IV. Discussion Items

A. Marketplace Facilitator Information Bulletin

- Ms. Roberie re-introduced the draft of a Remote Sellers Information Bulletin (RSIB) on Marketplace Facilitators that was initially introduced at the February Commission meeting for discussion. Mr. Morris inquired if the Commission had received any comments on the draft bulletin since this last meeting and Ms. Roberie indicated that we had not. Mr. Morris provided some background and a summary of the draft. He also introduced the discussion of delivery service providers and whether or not they are considered marketplace facilitators. Mr. Morris explained that the intent of the law was that delivery service providers would not file through the Remote Sellers Commission but would continue to file with the state and local administrators.
- A discussion ensued regarding delivery services and the differences between a delivery service that picks up something the customer ordered and paid for and then delivers the order versus a company that picks up and pays for what was ordered and then delivers it to the customer. The difference being in the first scenario the customer pays the business directly and in the second the customer pays the delivery service who then pays the business.
- The Commission's contracted attorneys – Pat Amedee and Joseph Landry – provided some clarification on the guidance and discussion points that they had drafted. Including that some of the determination of where the point of sale occurs and therefore where the sales tax is charged is likely to be based on how contracts with the delivery services and the business are structured. However, it was also discussed that this is not necessarily an issue for the Commission to resolve but one for the local administrators to resolve since these delivery services should be directly registered with the parishes.
- It was further discussed as to whether or not the Commission should consider clarifying language in statute to make it clear that delivery services are not considered marketplace facilitators in Louisiana.

- It was discussed that going forward the Commission would focus on issuing the guidance for the Louisiana merchants selling through a marketplace facilitator and for marketplace facilitators located in Louisiana. The delivery services clarification and guidance would be an issue for future discussion and consideration.

B. Proposed New Rules and Regulations

- Ms. Roberie re-introduced a proposed set of rules and regulations designed to ensure Louisiana’s compliance with the Wayfair decision that was initially introduced at the February meeting.
- The Commission discussed the proposed rules and regulations and agreed on the following points:
 - VI. There is some rework that needs to be done on the section titled “Obligations for Businesses without a Physical Presence” including reiterating that remitting for businesses that do not meet the de minimus thresholds is voluntary.
 - VII. Eliminating paragraphs A and B in the “Liability of Remote Sellers for State and Local Sales Taxes on Remote Sales Delivered into Louisiana” section.
 - VIII. Removing “the Department, Collectors” from paragraph D in the “Liability of Remote Sellers for State and Local Sales Taxes on Remote Sales Delivered into Louisiana” section.
 - IX. There is also some rework that needs to be done in the “Tax Rate Lookup Tool for Remote Sellers and Limitation on Liability” including clarifying that any independent evaluation and certification process the Commission develops in order to “hold harmless” sales tax software shall also apply to the look up tool maintained by the Louisiana Uniform Sales Tax Board.

V. Action Items

A. Executive Director Salary Range

- Mr. McManus presented the results of the salary study that was conducted by the Human Resources working group in order to provide a recommendation to the Commission for the salary range. He explained that he used information from the following sources:
 - VI. Updated local administrator salary data from the 15 largest parishes
 - VII. The Louisiana Civil Service salary scale
 - VIII. The Highflyer salary study
 - IX. Research compiled by the Executive Director
 - X. Reached out to other states (although only some information was received)

- As a result of this work the Human Resources working group developed a salary range that fell between the State Civil Service AS ranges 622-624 and then added a 10% adjustment because the Executive Director is an unclassified position. The range recommended by the working group is from a minimum \$74,864 to a maximum \$147,324.
- Secretary Richard made a motion to adopt the range recommended by the working group. The motion was seconded by Mr. Lagrange. Following a call for additional discussion and a vote, the motion was unanimously approved by the Commission.

B. Avenu Change Orders

- Ms. Roberie presented the following Avenu change orders for consideration:

Request Number	Description	Cost
CR-143680	Voluntary Disclosure Agreement Processing	\$ 36,960.00
CR-143675	Outstanding Balance Report	\$ 2,640.00
CR-143674	Open Refund Report	\$ 2,640.00
CR-143676	Moving a return from one batch to another	\$ 8,580.00
CR-143681	Adding "suspense" batch type	\$ 990.00
CR-143678	Adding "payment under protest" batch type	\$ 990.00
CR-143673	Debit memo breakout in Portal	\$ 5,280.00
CR-143679	Debit memo breakout in SOR	\$ 5,280.00
CR-143677	Holiday Calendar Settings in SoR	\$ 5,280.00
		\$ 68,640.00

- Mr. McManus noted an ongoing concern about how the Commission will be able to verify that a Voluntary Disclosure Agreement (VDA) is a valid one (meaning the business has not been previously registered anywhere in Louisiana). He acknowledged that there is a no easy answer but it is a concern.
- A motion was made by Ms. Krennerich to approve the change orders in globo and the motion was seconded by Mr. LaGrange. Following a call for additional discussion and a vote, the motion was unanimously approved by the Commission.

VI. Public Comment on Act 685 Report to the Legislature

- No public comment on Act 685 Report to the Legislature.

VII. Executive Session

- A.** A motion was made to enter Executive Session by Ms. Granier in order to consider Penalty Waiver Requests and the Executive Director's salary. The motion was seconded by Mr. Lagrange. Following a call for public discussion and a vote, the motion was unanimously approved by the members present. The Commission entered Executive Session at approximately 11:25 am.
- B.** A motion was made by Ms. Granier to exit Executive Session and seconded by Mr. McManus. Following a call for public discussion and a vote, the Commission unanimously agreed to exit Executive Session and reenter the regular meeting at approximately 12:30 pm.
- C.** Ms. Granier made a motion to approve the penalty waiver requests in globo that were considered in Executive Session. Ms. Krennerich seconded the motion. After a call for public discussion and a vote, the motion was unanimously approved by the members present.
- D.** Secretary Richard made a motion to set the current Executive Director's salary at \$121,649 effective 3/20/2023. The motion was seconded by Ms. Jumper. Following a call for public discussion and a vote, the motion was unanimously approved by the members present.

VIII. Other Business

- Chairperson Danielle Clapinski has resigned from the Louisiana Department of Revenue effective 3/22/23. Secretary Richard suggested that a new Chair be voted on at the April Commission meeting and said that he would be appointing someone from the Department to fill the vacant member position.

IX. Public Comment

- No additional public comment.

X. Adjournment

- With a motion by Mr. McManus and a second by Ms. Granier, Chairperson Clapinski declared the meeting adjourned at approximately 12:33 PM.