

No. 22-30373

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**IN THE UNITED STATES COURT OF APPEALS FOR THE  
FIFTH CIRCUIT**

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HALSTEAD BEAD, INC.,

*Plaintiff-Appellant,*

v.

KEVIN RICHARD, IN HIS OFFICIAL CAPACITY AS LOUISIANA SECRETARY OF REVENUE; AMANDA GRANIER, IN HER OFFICIAL CAPACITY AS SALES TAX COLLECTOR, LAFOURCHE PARISH, LOUISIANA; DONNA DRUDE, IN HER OFFICIAL CAPACITY AS SALES AND USE TAX ADMINISTRATOR OF TANGIPAHOA PARISH, LOUISIANA; JAMIE BUTTS, IN HER OFFICIAL CAPACITY AS SALES TAX AUDITOR, WASHINGTON PARISH, LOUISIANA; LAFOURCHE PARISH GOVERNMENT, INCORRECTLY REFERRED TO AS LAFOURCHE PARISH; TANGIPAHOA PARISH, A HOME RULE CHARTERED PARISH; AND WASHINGTON PARISH, A HOME RULE CHARTERED PARISH,

*Defendant-Appellees.*

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On Appeal from the U.S. District Court for the Eastern District of Louisiana,  
Civil Action No. 2:21-cv-02106-JTM-KWR

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BRIEF OF AMICUS CURIAE PERMITTED, LLC, D/B/A TAXVALET  
IN SUPPORT OF APPELLANT AND REVERSAL

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## **SUPPLEMENTAL STATEMENT OF INTERESTED PARTIES**

No. 22-30373, *Halstead Bead, Inc. v. Richard*

Consistent with 5th Cir. R. 29.2, the undersigned counsel of record hereby certifies that the following listed persons and entities not otherwise listed in Appellant's certificate of interested persons have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

**Amicus Curiae:** Permitted, LLC, d/b/a TaxValet is a Wyoming-domiciled limited liability company. Alex Oxford (a Colorado resident, legal name George Alexander Oxford) is the chief executive officer and sole member of this LLC. Christine Pope (a South Carolina resident) and Alyssa Martin (an Iowa resident) are senior employees of the company and have financial interests therein.

**Counsel for Amicus Curiae:** Daniel E. Burrows from Advance Colorado. Advance Colorado's chief executive officer is Kristi Pollard. As a nonprofit corporation, Advance Colorado has no owners.

*s/ Daniel E. Burrows*

Attorney of Record for Permitted, LLC

## INTEREST OF AMICUS CURIAE<sup>1</sup>

Permitted, LLC (which does business under the name “TaxValet”), provides U.S. sales-tax services for remote sellers. It has about 160 clients nationwide for whom it handles sales-tax reporting in the forty-six states that levy such taxes, and it files about 36,000 state sales-tax returns per year for its clients. In addition, TaxValet’s chief executive officer, Alex Oxford, is a certified member of the Institute of Professionals of Taxation, the only professional organization that educates, certifies, and establishes strict codes of conduct for taxpayer-side state and local tax professionals.<sup>2</sup> TaxValet has an interest in simple, transparent sales-tax systems because such systems allow it to serve clients efficiently. (A tax-management service that can’t figure out how much to collect is not much use!)

Because of the nature of its business, TaxValet can help the Court understand what makes Louisiana’s sales-tax system so unwieldy, particularly in comparison to other U.S. jurisdictions. The company’s position in the tax-services market gives it the experience and authority to compare Louisiana’s labyrinthine requirements with the straightforward regimes in other states so

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<sup>1</sup> No counsel for any party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amicus curiae or its counsel made a monetary contribution to the preparation or submission of this brief.

<sup>2</sup> More information about Mr. Oxford’s certification can be found on the Institute’s website at <https://bit.ly/3eHKbOY>.

the Court can understand better how Louisiana hinders interstate trade in goods and effectively favors in-state, brick-and-mortar businesses over remote sellers.

## SUMMARY

Louisiana has one of the most complex and opaque sales-tax systems in the country. Only two other states—Colorado and Alaska—have anything that approaches the balkanized, nearly incomprehensible system that Louisiana asks remote sellers to navigate.<sup>3</sup> The remaining forty-three sales-tax states have much, *much* simpler systems. Because of the difficulty (and, at times, practical impossibility) of complying with Louisiana’s laws, remote sellers like Appellant, Halstead Bead, Inc., are effectively locked out of the state’s market in violation of the (dormant) Commerce Clause.

When we examine what makes Louisiana’s system burdensome and complex for out-of-state businesses relative to the rest of the country, it comes down to three main things: tax calculation, product taxability, and permit registration. In each of these areas, Louisiana has chosen a more convoluted route compared to its sister states, with the inevitable result being that resident businesses are necessarily advantaged over out-of-state businesses

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<sup>3</sup> The problems with Colorado and Alaska are briefly discussed in Claire E. Schnell, Comment, *There Must Be a Better Way: Analyzing Louisiana’s Sales Tax System in the Wake of South Dakota v. Wayfair, Inc.*, 80 La. L. Rev. 247, 267–68 (2019), and Hannah Hope, Note, *Leveling the Playing Field for Remote Sellers: Missouri’s Response in a Post-Wayfair World*, 65 St. Louis L.J. 401, 411–12 (2021), respectively.



that wish to access Louisiana's market.

## ARGUMENT

### 1. HISTORICAL AND LEGAL BACKGROUND.

Until recently, charging sales tax across state lines was unheard of. In 1967, the Supreme Court declared cross-border sales-tax collection unconstitutional. *Nat'l Bellas Hess v. Dep't of Revenue*, 386 U.S. 753, 758–59 (1967). And though the logic supporting that holding changed somewhat in the ensuing decades, *see Quill Corp. v. N. Dakota ex rel. Heitkamp*, 504 U.S. 298, 308 (1992), the core rule remained: only a business with a physical presence in the state could be compelled to participate in a state's sales-tax regime, *id.* at 312–18.

That all held true until 2018, when the Court decided *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080 (2018). In *Wayfair*, the Supreme Court overruled precedent and held for the first time that states could impose sales-tax burdens on businesses that lacked any physical presence in the state. *Id.* at 2099.

But the fact that there's no longer a per se rule against out-of-state tax collection does not mean that states can just import their entire tax regime into the online-seller context. "*Wayfair* removed the total ban on states imposing collection duties on out-of-state sellers. But it did not remove the constitutional limitations on those collection duties. Any state legislation must [still meet the requirements of the] Dormant Commerce Clause." Rifat Azam, *Online Taxation Post Wayfair*, 51 N.M.L. Rev. 116, 137 (2021); *accord Wayfair*,

138 S. Ct. at 2099–100.

Under prevailing Dormant Commerce Clause doctrine, a tax with out-of-state effects only survives analysis where “the tax is applied to an activity with a substantial nexus with the taxing State, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the State.” *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977).<sup>4</sup>

States have gone to great lengths in molding their systems to conform to Dormant Commerce Clause jurisprudence. *See generally* Hope, *supra*, 65 St. Louis L.J. at 406–21 (discussing various post-*Wayfair* responses by states). But Louisiana’s attempts have been fitful and abortive. *See* ROA.26; Schnell, *supra*, 80 La. L. Rev. at 268–74.

To understand why Louisiana’s sales-tax system is so problematic, it helps to compare it with a normal jurisdiction. So this brief will make frequent

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<sup>4</sup> While this brief focuses on whether Louisiana’s system discriminates against interstate commerce, it is worth noting that “Louisiana’s local governments . . . rely more heavily on local sales taxes than most local governments in other states. . . . [L]ocal government property tax collections in many places in Louisiana are relatively meek, due to the homestead exemption, an assessment freeze for seniors and other breaks enshrined in the state Constitution. Nearly half of the state’s parishes have 49% or more of their homesteads 100% exempted.” Pub. Affairs Research Council of La., *Louisiana Constitutional Reform Part II: An Enduring Fiscal Framework* 32–33 (2021), available at <https://bit.ly/3eHKd9m>. There is therefore a legitimate question about whether sales taxes in Louisiana, when applied to out-of-state sellers, are fairly apportioned or related to the services provided by the state.

reference to South Dakota for comparative purposes.

South Dakota was not chosen at random, of course: its system is the one the Supreme Court addressed in *Wayfair*. As that decision noted, “South Dakota’s tax system includes several features that appear designed to prevent discrimination against or undue burdens upon interstate commerce.” 138 S. Ct. at 2100. Much of this has to do with South Dakota’s adherence to the Streamlined Sales and Use Tax<sup>5</sup> Agreement (SSUTA).

The SSUTA came out of a multistate project in the early 2000s to “simplify and modernize sales and use tax administration in member states in order to substantially reduce the burden of tax compliance,” SSUTA § 102, Nov. 12, 2002 (as amended through May 25, 2022), *available at* <https://bit.ly/3D9SInm>. From the beginning, the agreement’s potential to

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<sup>5</sup> Technically, sales and use taxes are different. A sales tax is imposed on the sale itself and traditionally has been collected (and remitted) by the seller. A use tax is imposed on the privilege of storing or using goods in a particular location, and is traditionally paid by a consumer. Ordinarily, items for which a person paid sales tax are not subject to the use tax. Norman S. Newmark et al., *Cross Border State Sales and Use Taxation After South Dakota v. Wayfair: A New Paradigm for E-Commerce*, 3 Bus., Entrepreneurship & Tax L. Rev. 16, 19 (2019). Yet the fight over taxing out-of-state sales has blurred the line between the two. For example, South Dakota charges out-of-state sellers with collecting the state’s use tax in lieu of collection from the purchasers themselves. See S.D. Codified Laws § 10-46-22 (2022). While the distinction may still be useful in some contexts, this brief’s references to sales taxes are meant to encompass use taxes as well. The practical effects on a seller are the same, regardless of which tax the state directs him to collect.

“remove the stare decisis underpinnings of the [physical presence rule] by changing the underlying legal and factual environment” was obvious. John A. Swain, *State Sales and Use Tax Jurisdiction: An Economic Nexus Standard for the Twenty-First Century*, 38 Ga. L. Rev. 343, 383 (2003). And, indeed, this is precisely what happened.

The SSUTA has been adopted by twenty-four states. Streamlined Sales Tax Governing Board, Inc., *About Us*, <https://www.streamlinedsalestax.org/about-us/about-sstgb> (last visited Oct. 17, 2022). There are thirty-five requirements that any state must accept to participate in the agreement. *See* SSUTA art. III. These requirements include state-level (rather than local-level) administration of sales and use taxes, *id.* § 301; a uniform state and local tax base, *id.* § 302; uniform exemptions based on standardized definitions, *id.* §§ 316, 317, 327, and a host of other requirements intended to simplify compliance with sales-tax laws.

A state need not join the SSUTA or adhere to all of its requirements to comply with Dormant Commerce Clause jurisprudence, of course. The point is merely that South Dakota’s efforts to simplify its tax code (which it pursued via the SSUTA) were a significant factor in the *Wayfair* Court’s observation that the state had designed its system “to prevent discrimination against or undue burdens upon interstate commerce.” 138 S. Ct. at 2099; *see also* Philip Jester, *The Aftermath of South Dakota v. Wayfair, Inc., Why Congress Needs to Prevent Undue Burdens on Remote Sellers*, 20 Wake Forest J. Bus. & Intell. Prop. L. 106, 121–22 (2020) (“South Dakota legislators worked directly with the National

Governors Association in order to draft a law that would challenge *Quill*. . . . The South Dakota law was designed to force the United States Supreme Court to take action.”).

Louisiana, however, has done almost nothing to alleviate the burdens of its complicated tax system.<sup>6</sup> Particularly when it comes to tax calculation, product taxability and exemptions, and permit registration, Louisiana puts irrational burdens on out-of-state sellers. Of course, it is not enough to simply say that a state’s tax regime is needlessly complicated—that describes nearly every modern American tax system. But Louisiana’s system is so difficult to navigate that it ends up discriminating against out-of-state sellers. And that is unconstitutional.

2. LOUISIANA HIDES THE BALL ON PRECISELY WHAT TAX RATES OUT-OF-STATE SELLERS SHOULD CHARGE.

To report remote sales to Louisiana, a business must identify which parish and local jurisdiction each transaction falls within.<sup>7</sup> Doing this is burdensome for any out-of-state business that has more than a handful of

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<sup>6</sup> It probably goes without saying, but Louisiana has not joined the SSUTA. Nor could it qualify to do so with its current, complex sales-tax regime.

<sup>7</sup> Louisiana has 64 parishes and—presuming counsel has counted correctly—477 more local tax jurisdictions. (This number was obtained by going to the parish/city electronic tax filing website for in-state sellers, choosing each parish individually, and manually counting the jurisdictions. See Parish E-File, Rate Lookup, <https://parishe-file.revenue.louisiana.gov/lookup/lookup.aspx> (last visited Oct. 18, 2022).)

sales.<sup>8</sup> Software is available to assist with this process, but it can be expensive and difficult to implement.

Louisiana’s online portal for reporting sales tax allows a seller to look up the jurisdictions that fall within each parish.<sup>9</sup> However, the state does not provide a simple way to identify jurisdictions based on a customer’s address. Instead, it provides only a drop-down menu to see tax rates for each jurisdiction based on the parish. There is no obvious way to know which sub-parish jurisdictions apply to a particular customer. Instead, one encounters a list of obscurely named sub-parish jurisdictions.

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<sup>8</sup> Based on a 2021 survey, small and midsize businesses spend an average of “\$17,672 monthly on sales tax management.” Gail Cole, *The True Cost of Managing Sales Tax Manually*, AccountingWEB (Oct. 25, 2021), <https://bit.ly/3MEPqeN> (last visited Oct. 18, 2022).

<sup>9</sup> The lookup tool is at <https://remotesellersfiling.louisiana.gov/lookup/lookup.aspx> (last visited Oct. 17, 2022).

Take Caddo Parish, for example.

**Remittance Rates:**

Select Parish:    
 Filing Period:

Jurisdiction (Domicile Code)	Tax Rate	V.C. Rate	Delq. Rate	Int. Rate
Shreveport ONLY (0809)	2.7500%	1.0000%	5.0000%	0.5416670%
Caddo Parish (0900)	3.3500%	1.0000%	5.0000%	0.5416670%
Oil City (0902)	5.3500%	1.0000%	5.0000%	0.5416670%
Vivian (0903)	5.3500%	1.0000%	5.0000%	0.5416670%
Shreveport (0904)	4.6000%	1.0000%	5.0000%	0.5416670%
Mooringsport (0905)	5.3500%	1.0000%	5.0000%	0.5416670%
Greenwood (0906)	5.3500%	1.0000%	5.0000%	0.5416670%
Rodessa (0907)	5.3500%	1.0000%	5.0000%	0.5416670%
Blanchard (0908)	5.3500%	1.0000%	5.0000%	0.5416670%
Ida Sch (0909)	6.3500%	1.0000%	5.0000%	0.5416670%
N Caddo Hosp Dist (0910)	4.3500%	1.0000%	5.0000%	0.5416670%
Mall EDD (0911)	5.6000%	1.0000%	5.0000%	0.5416670%
Caddo Fire District #1 (0912)	4.3500%	1.0000%	5.0000%	0.5416670%
School Board/Law Enf within the City of Bossier (0913)	1.8500%	1.0000%	5.0000%	0.5416670%
Caddo Fire Dist #3 (0914)	4.3500%	1.0000%	5.0000%	0.5416670%



*Remittance rates displayed have been provided by the tax authority. The 3rd party collectors are not responsible for rate discrepancies at any time. If you have any question(s) about the rates displayed, please contact the tax authority directly for confirmation.*

The state’s tool provides a 4.6% rate for “Shreveport (0904).” But it also lists a 2.75% rate for “Shreveport ONLY (0809).” It also has a listing for “School Board/Law Enf within the City of Bossier (0913),” but the state’s official website says Bossier City is in neighboring Bossier Parish, not Caddo Parish. Louisiana.gov, Bossier Parish Profile, <https://bit.ly/3eHPxcQ> (last visited Oct. 18, 2022). The “Mall EDD (0911)” is presumably the Shreveport Mall St. Vincent Economic Development District, but according to the description of

that district in the Shreveport city code a seller would need to hire a surveyor to determine whether its 5.6% sales tax applies to any particular transaction. *See* Shreveport City Code § 37-32(f)(2) (“Beginning at a found 3/8" iron pin . . .”). And how is an out-of-state seller supposed to know the difference between “Caddo Fire District #1 (0912)” and “Caddo Fire Dist #3 (0914)”? Or where the “N Caddo Hosp Dist (0910)” is?

Nor does the website provide any direction about whether the listed tax rates are cumulative. One might think that because some of the listed jurisdictions overlap geographically (Shreveport and the Mall EDD, for example) one should combine the rates. But an examination of the actual ordinances involved shows that the Mall EDD only levies an additional 1% tax. *Id.* § 37-32(d)(1). So, at least in that case, the listed 5.6% is presumably the full rate. (The full *municipal* rate, that is—it does not include the 4.45% rate levied statewide, *see* La. Stat. Ann. §§ 47:302(A), 47:321(A), 47:321.1(A), 47:331(A) (2012 & Supp. 2018); *id.* § 51:1286(A) (2019).)

But is that true for every jurisdiction? It doesn’t appear to be. In Orleans Parish, for example, the rates within the French Quarter EDD are plainly meant



to be combined.

### Remittance Rates:

Select Parish:  ▼  
 Filing Period:  ▼

Jurisdiction (Domicile Code)	Tax Rate	V.C. Rate	Delq. Rate	Int. Rate
Orleans Parish (3600)	5.0000%	1.0000%	5.0000%	1.2500000%
Special Sales/Use Tax French Quarter EDD (3601)	0.2450%	1.0000%	5.0000%	1.2500000%
Sales Tax Within French Quarter EDD (3601)	5.0000%	1.0000%	5.0000%	1.2500000%

PRINT

PRINT ALL

*Remittance rates displayed have been provided by the tax authority. The 3rd party collectors are not responsible for rate discrepancies at any time. If you have any question(s) about the rates displayed, please contact the tax authority directly for confirmation.*

In all events, immediately below these tables, Louisiana says that the tax rates “have been provided by the [local] tax authority” and disclaims any responsibility for accuracy or uniformity of presentation. Thus, even if a business earnestly researches which jurisdiction(s) a transaction falls within, that business could still be subject to a tax-enforcement action for relying on inaccurate information that the state itself provided.

The state does link to a different website, Sales Tax Explorer, that allows by-address searching. But this is not a free service. Rather, it requires a business to purchase an annual account. The cheapest account available—up to 800 lookups per year for \$500—comes to a unit cost of 62¢ per transaction, presuming the business uses all 800 of its lookups.<sup>10</sup> See Sales Tax Explorer,

<sup>10</sup> A business must collect Louisiana taxes once it reaches 200 sales in a year. See La. Stat. Ann. § 47:301(4)(m)(i) (Supp. 2019). At that level, it’s \$2.50 per lookup.

Pricing, <https://app.salestaxexplorer.com/#/pricing> (last visited Oct. 17, 2022).

South Dakota is much simpler. The state provides a free online tool that allows businesses to import transactions via spreadsheets and download the applicable sales tax rate for the jurisdiction. South Dakota's tool also identifies which jurisdiction, with its applicable tax code, the transaction falls within. *See* S.D. Dep't of Revenue, South Dakota: Sales Tax Rates by Address, <https://apps.sd.gov/rv25taxmatch/main.aspx> (last visited Oct. 17, 2022).

As South Dakota has proved, an easy, free way to determine accurate tax rates is technologically and fiscally possible. Even Colorado, another state with complex tax rules and hundreds of overlapping taxation authorities, provides a free lookup tool for out-of-state businesses. Taxation Div., Colo. Dep't of Revenue, Sales and Use Tax Simplification Lookup Tool, <https://colorado.ttr.services/> (last visited Oct. 18, 2022). Louisiana's inconsistent, unreliable online tool—and requirement to pay more if you want to know the *real* tax rate for any particular transaction—puts an unnecessary burden on out-of-state sellers.

3. EVEN IF A BUSINESS CAN DETERMINE THE CORRECT STANDARD SALES-TAX RATE FOR A PARTICULAR LOCATION, THAT DOES NOT MEAN THE SPECIFIC ITEM IT'S SELLING IS ACTUALLY TAXED AT THAT RATE.

There is also the problem of product taxability. The same sales-tax rate does not necessarily apply to every sales transaction. Some items are exempted or receive a lower-than-standard rate.

“The hallmark of Louisiana taxation is . . . relatively high rates and narrow bases.” Pub. Affairs Research Council of La., *supra*, at 24. Even at the state level, Louisiana’s system is uniquely complicated. The state “is unusual in having an abundance of sales tax exemptions, numbering about 200.” *Id.* at 25. And there are about 100 more exemptions waiting in the wings for when a temporary reduction from 2018 sunsets in 2025. *Id.*

Complicating matters further, there is no standardized product-exemption system. An item might be taxable at the state level, but not at the local level (or vice versa). *Id.* at 34. The potential variability between jurisdictions is enormous. This makes determining product taxability extremely difficult without the use of expensive product-taxability-lookup software. Compare, for example, the exemptions and lowered rates for certain products in Shreveport (top) and Baton Rouge (bottom).<sup>11</sup>

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<sup>11</sup> These charts are screenshots from Louisiana’s site for electronic tax filing by remote sellers. They are not available on the public portion of the website, but appear as part of filing a return. On its return, a business must apportion its sales to account for the various exemptions and reduced rates in a particular jurisdiction.

***Shreveport Exemptions***

Optional Exemptions - Allowable Deductions	Reduced Rate Sales	Rate	Reduced Rate Tax
0019 - Prepaid telephone cards	\$0.00	0%	\$0.00
5088 - Annual 2nd Amendment Holiday (ONLY the first consecutive Friday - Sunday of September)	\$0.00	0%	\$0.00
6004 - Infused Prescription Drugs	\$0.00	0%	\$0.00
9011 - Direct pay permit holder	\$0.00	0%	\$0.00
O2 - Mfg Machinery & Equipment: Lease of other than NAICS code 331111 and codes beginning with 3361 47:301(13)(K), (16)(m), (16)(o), (28)(a) and 337.10(l)	\$0.00	1.85%	\$0.00
O2-1 - Mfg Machinery & Equipment: Sales or Cost Price of other than NAICS code 331111 and codes beginning with 3361 47:301 (3)(l), (13)(K), (16)(m), (16)(o), and 337.10(l)	\$0.00	1.85%	\$0.00
O2-2 - Mfg Machinery & Equipment: Sales or Cost Price of ONLY NAICS 331111 47:301 (3)(l), (13)(K), (16)(m), (16)(o), and 337.10(l)	\$0.00	1.85%	\$0.00
O2-3 - Mfg Machinery & Equipment: Lease of ONLY NAICS 331111 47:301(13)(K), (16)(m), (16)(o), (28)(a) and 337.10(l)	\$0.00	1.85%	\$0.00
O8 - Qualifying Radiation Therapy Equipment 47:305.64 and 47:337.10(O)	\$0.00	0%	\$0.00
O9 - VEGF inhibitors and Complex Biologics 47:337.10(K)	\$0.00	0%	\$0.00
<b>Total:</b>	<b>\$0.00</b>		<b>\$0.00</b>

***Baton Rouge Exemptions***

Optional Exemptions - Allowable Deductions	Reduced Rate Sales	Rate	Reduced Rate Tax
0019 - Prepaid telephone cards	\$0.00	0%	\$0.00
5088 - Annual 2nd Amendment Holiday (ONLY the first consecutive Friday - Sunday of September)	\$0.00	0%	\$0.00
6004 - Infused Prescription Drugs	\$0.00	0%	\$0.00
9011 - Direct pay permit holder	\$0.00	0%	\$0.00
FD - Food & Drug Tax Rate 47:305(D)(1)(j), (n)-(r)	\$0.00	3%	\$0.00
O1 - Custom Computer Software 47:301(16)(h), (23), 47:305.52 and 47:337.10( E)	\$0.00	2.5%	\$0.00
O10 - Feminine Hygiene Products and Diapers 47:337.10(P), 337.10.2	\$0.00	3.5%	\$0.00
<b>Total:</b>	<b>\$0.00</b>		<b>\$0.00</b>

The state has different exemptions entirely. See La. Dep't of Revenue Form R-1029Ei, at 3-7, available at [https://revenue.louisiana.gov/TaxForms/1029Ei\(7 22\).pdf](https://revenue.louisiana.gov/TaxForms/1029Ei(7 22).pdf). And exemption descriptions and codes often do not match between parishes or sub-parish jurisdictions, or between the state and a particular parish or sub-parish jurisdiction. This only complicates the matter further. In the end, the complexity of keeping up with how a product should be categorized for

reporting purposes is mind boggling.

There are multiple ways that Louisiana could solve this problem. For example, it could set standardized, statewide product classifications and simply allow taxation authorities to determine whether each category is exempt within its jurisdiction. (This is what the SSUTA requires of member states. SSUTA § 316.) Or it could mandate that all subordinate taxing authorities adhere to the state-level exemptions. Or it could even cut local jurisdictions out of levying sales tax on out-of-state sellers and simply add a uniform rate to all transactions that the state could itself divvy up among the parishes.

But Louisiana has done none of these things. Instead, it has chosen to leave in place a complicated system that discriminates against out-of-state sellers by requiring that they bear much greater compliance costs than in-state businesses.

4. LOUISIANA EVEN COMPLICATES THE PROCESS OF REGISTERING TO PAY COLLECTED SALES TAXES.

The first step for complying with a state's sales-tax laws involves registering for a sales-tax permit in the state. The more complex the registration process is, the more likelihood there is that a business registers for an incorrect permit type—which ultimately results in late filings (with penalties and accrued interest).

Louisiana's permitting system is unnecessarily complex. There are three

different sales-tax permits<sup>12</sup> available to businesses:

- *Remote-Seller Permit.* This is the standard permit available to businesses that do more than 200 transactions or \$100,000 in sales in Louisiana but do not have a physical presence there. § 47:301(4)(m)(i); *see also* La. Sales Tax & Use Comm’n for Remote Sellers, Remote Sellers Information Bulletin (RSIB) 20-002, at 1 (May 7, 2020), *available at* <https://bit.ly/3VCPX52> (requiring registration with the commission). This permit requires businesses to determine the jurisdiction that each transaction falls in and calculate the correct tax. The business then must summarize the total taxable and exempt sales for these various jurisdictions in its sales-tax return.
- *Direct-Marketer Permit.* The direct-marketer permit allows a business to pay a flat 8.45% tax to the state (i.e, the standard 4.45% statewide rate, plus a 4% direct-marketer tax) rather than any other sales and use taxes that might apply to a particular transaction. La. Stat. Ann. § 47:302(K)(5) (2012). This simplified system would likely be attractive to many businesses—and, in fact, Louisiana allowed all out-of-state sellers to use this method prior to July 1, 2020. RSIB 20-002, at 2. However, now it is only available to businesses that do not meet the aforementioned 200 transaction/\$100,000 thresholds but still “engag[e] in regular or

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<sup>12</sup> The state does not refer to these as “permits.” Rather, they are registration requirements.

systematic solicitation of a consumer market in the state.”

§ 47:302(K)(5); accord La. Dep’t of Revenue Form R-1031A, available at [https://revenue.louisiana.gov/TaxForms/1031A\(7\\_18\)F.pdf](https://revenue.louisiana.gov/TaxForms/1031A(7_18)F.pdf).

- *Sales-Tax Permit*. This is the standard permit available to businesses that have a physical presence in the state. See La. Dep’t of Revenue Form R-16019, available at [https://revenue.louisiana.gov/TaxForms/16019\(5\\_08\)F.pdf](https://revenue.louisiana.gov/TaxForms/16019(5_08)F.pdf). Many e-commerce businesses still have a physical presence in the state due to working with in-state inventory fulfillment warehouses. See La. Sales & Use Tax Comm’n for Remote Sellers, *Louisiana Sales and Use Tax on Remote Sales Frequently Asked Questions 1*, available at <https://bit.ly/3TA9UI2>. If a business qualifies for a sales-tax permit, individual registration is required at the state level, and also with individual parishes. In other words, an out-of-state seller with even a *de minimis* presence in Louisiana must register both with the state and with each of the state’s sixty-four parishes.

On top of these three tax permits, Louisiana also puts a notice and reporting burden on businesses that don’t fall into any of the aforementioned categories (and thus do not have to collect sales tax), but do more than \$50,000 worth of sales in the state. Such businesses must both report such sales to the state and provide purchasers with an annual statement listing such purchases and reminding them to pay the state’s use tax. La. Stat. Ann. § 47:309.1(C)–(D) (Supp. 2016).

In South Dakota, by contrast, there is a single sales-tax license for all entities, which covers both state and municipal sales taxes. *See* § 10-46-22 (2022); S.D. Admin. R. 64:06:01:30 (2008).

If Louisiana had a centralized sales-tax permit available, for which all businesses could qualify, it would eliminate the burden of out-of-state sellers needing to determine which permit they should register for. Alternately, if all remote businesses that crossed Louisiana's sales threshold could use the direct-marketer permit, rather than being than forced to use the remote-seller permit, the overall burden on businesses would ease substantially.

But that is not Louisiana's model. Once again, it has chosen the route that disadvantages out-of-state sellers: businesses located within Louisiana do not have the added complexity of determining which permit type they qualify for since they would only qualify for the standard sales-tax license. This is one more example of the state maintaining a complex tax system that favors local sellers.

## **CONCLUSION**

Taken as a whole, Louisiana's sales-tax regime is an instance in which a "[c]omplex state tax system [ has] the effect of discriminating against interstate commerce," *Wayfair*, 138 S. Ct. at 2099. Halstead Bead should have a chance to prove it. The Court should therefore reverse the trial court's decision to dismiss this suit.



s/ Daniel E. Burrows

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## **CERTIFICATE OF COMPLIANCE**

1. This document complies with the word limit of Fed. R. App. P. 29(a)(5) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f) and 5th Cir. R. 32.2, this document contains 3772 words.
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Date: October 18, 2022

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