

1 SB86
2 181631-2
3 By Senator Pittman
4 RFD: Finance and Taxation General Fund
5 First Read: 07-FEB-17

1 SB86

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4 ENROLLED, An Act,

5 To add Section 40-23-197.1, Code of Alabama 1975,
6 relating to simplified sellers use tax; to allow monthly
7 distributions to local governments; to amend Sections 40-2-11,
8 40-23-191, 40-23-193, and 40-23-195, Code of Alabama 1975,
9 relating to simplified sellers use tax; to require reporting
10 of retail sales and customer notifications; to remove the six
11 month deferral restriction on eligible sellers; to modify the
12 requirements of the invoice language for simplified sellers
13 use transactions; to allow disclosure of participating
14 eligible seller names and start dates and cease dates.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

16 Section 1. To add Section 40-23-197.1, Code of
17 Alabama 1975, as follows:

18 §40-23-197.1.

19 Notwithstanding the provisions of Section
20 §40-23-197, the Department may initiate monthly distributions
21 of the proceeds from the simplified sellers use tax paid to
22 counties and municipalities.

23 Section 2. Sections 40-2-11, 40-23-191, 40-23-193,
24 and 40-23-195, Code of Alabama 1975, are amended to read as
25 follows:

1 "§40-2-11.

2 "It shall be the duty of the Department of Revenue,
3 and it shall have the power and authority, in addition to the
4 authority now in it vested by law:

5 "(1) To have and exercise general and complete
6 supervision and control of the valuation, equalization, and
7 assessment of property, privilege, or franchise and of the
8 collection of all property, privilege, license, excise,
9 intangible, franchise, or other taxes for the state and
10 counties, and of the enforcement of the tax laws of the state,
11 and of the several county tax assessors and county tax
12 collectors, probate judges, and each and every state and
13 county official, board, or commission charged with any duty in
14 the enforcement of tax laws, to the end that all taxable
15 property in the state shall be assessed and taxes shall be
16 imposed and collected thereon in compliance with the law and
17 that all assessments on property, privileges, intangibles, and
18 franchises in the state shall be made in exact proportion to
19 the fair and reasonable market value thereof in substantial
20 compliance with the law;

21 "(2) To equalize, value, and assess or cause to be
22 equalized, valued, and assessed any property subject to
23 taxation, and such valuations and assessments it shall enter
24 or cause to be entered in the proper assessment book, record,
25 or minutes of the proper official, board, or tribunal; to set

1 aside all assessments so entered in any assessment book,
2 record, or minutes within any time before the end of the
3 assessment year and, after 10 days' notice given the taxpayer,
4 which notice shall be given by certified or registered mail,
5 return receipt demanded, of the time and place of hearing,
6 revalue and reassess said property and cause such revaluation
7 and reassessment to be entered in the proper assessment book,
8 record, or minutes in lieu of the original valuation and
9 assessment; provided, that no reassessment or revaluation
10 shall be made of any particular assessment from which an
11 appeal is then pending, or if the valuation of the property
12 for that year has been fixed on appeal by the circuit court or
13 Supreme Court; provided further, that parties may appeal from
14 such revaluation and assessment to the circuit court within
15 like time and in like manner as from the valuation and
16 assessment as fixed by the board of equalization;

17 "(3) To confer with, advise, and direct the several
18 county tax assessors, county tax collectors, probate judges,
19 boards, or commissions and each and every state and county
20 official charged with the assessment and collection of taxes
21 as to their duties under the laws of this state;

22 "(4) To direct actions to be instituted by the
23 Attorney General, district attorneys, or attorneys especially
24 employed for such purposes, with the approval of the Attorney
25 General for the collection of any taxes or penalties due the

1 state or any county, or to compel any officer or taxpayer to
2 comply with the provisions of the tax laws; to direct actions,
3 prosecutions, and proceedings to be instituted to enforce the
4 laws of this state relating to taxes, penalties, forfeitures,
5 and liabilities, and for the punishment of any public officers
6 or any person or any officer or agent of any corporation,
7 company, or association, trustee, or receiver for failure or
8 neglect to comply with the provisions of the tax laws, and to
9 cause complaints, informations, actions, or prosecutions to be
10 made or instituted against any tax assessor, tax collector,
11 probate judge, or other public official for the removal of
12 such officers for official misconduct or neglect of duty and
13 to further direct actions as may become necessary to obtain an
14 order from circuit court enjoining or restraining a taxpayer
15 from continuing in business in Alabama whenever such taxpayer
16 fails to collect, account for, and/or pay over any trust fund
17 tax imposed by Sections ~~40-17-2~~, 40-17-220, 40-17-325,
18 40-18-71, 40-21-82, 40-21-102, 40-21-121, 40-23-2, 40-23-61,
19 40-23-193, 40-26-1, or any other local sales, use, and gross
20 receipts taxes collected by the department. Such actions and
21 proceedings may be instituted in the circuit court of any
22 county in which the taxpayer resides or does business, or in
23 the Circuit Court of Montgomery County, Alabama, and shall
24 remain in effect until such time as the taxpayer has come into
25 full compliance with said tax laws;

1 "(5) To require district attorneys and the Attorney
2 General of the state to commence and prosecute, within the
3 respective jurisdictions or spheres of official duty of said
4 officers, actions, proceedings, and prosecutions for
5 penalties, forfeitures, impeachments, and punishments for
6 violations of the tax laws of the state;

7 "(6) To require any public official in the state to
8 report information as to valuation, equalization, and
9 assessment of property, privileges, franchises or intangibles,
10 gross receipts, collections of taxes, receipts from licenses
11 and other sources, methods of taxation, values or franchises,
12 or intangible property, or assets subject to taxation, and
13 such other information as may be needful in the work of the
14 Department of Revenue in such forms and upon such blanks as
15 the department may prescribe and furnish;

16 "(7) (a) To require individuals, partnerships,
17 associations, corporations, trustees, and receivers, and the
18 agents, officers, and employees thereof, to furnish
19 information concerning their capital, funded or otherwise,
20 gross receipts, net profits or income, excess profits, current
21 assets and liabilities, values of franchises, intangibles,
22 value of property, earnings, operating and other expenses,
23 bonds, deeds, conduct of business, and all other facts,
24 records, books, papers, documents, and other information of
25 any kind demanded which may be needful in order to enable the

1 department to ascertain the value and relative burden to be
2 borne by every kind of property in this state and to ascertain
3 the proper amount of license, privilege, excise, corporation,
4 franchise, income, or ad valorem taxes;

5 "(b) To require reporting of retail sales and
6 customer notification, within constitutional limitations, when
7 the seller does not collect sales, use, or simplified sellers
8 use tax on Alabama sales transactions, to provide for
9 penalties pursuant to Section 40-2A-11;

10 "(8) To cause the deposition of witnesses residing
11 within or without the state to be taken upon such notice to
12 the interested party, if any, as the department may prescribe,
13 in like manner as depositions of witnesses are taken in
14 actions pending in circuit court, in any matter which the
15 department has authority to investigate and determine. The
16 depositions shall be taken upon a commission issued by the
17 Department of Revenue, or the secretary thereof, in the name
18 of the department, and returnable to the department;

19 "(9) To visit, by the commissioner or by duly
20 authorized agents, the several counties in the state for the
21 purpose of investigating the work and methods of county tax
22 assessors, tax collectors, probate judge, or other officers or
23 boards charged with the duty of administering the tax laws of
24 the state; to examine carefully into all cases where evasions
25 or violations of the tax laws are alleged, complained of, or

1 discovered, and to ascertain wherein existing laws are
2 defective or are improperly or negligently administered and to
3 report the result of the investigation and the facts
4 ascertained to the Governor from time to time when required by
5 him;

6 "(10) To investigate the tax system of other states;
7 to thoroughly inform itself upon the subject of taxation and
8 of the progress made in other states and counties in improving
9 their tax system, to formulate and recommend such legislation
10 as may be deemed expedient to prevent evasion of existing tax
11 laws and to secure just and equal taxation and improvements in
12 the system of taxation in this state;

13 "(11) To consult and confer with the Governor upon
14 the subject of taxation and the administration of the laws and
15 progress of the work of the department, and to furnish to the
16 Governor from time to time such information as he may require;

17 "(12) To transmit to the Governor, 30 days before
18 the meeting of the Legislature, a written report showing all
19 the taxable property in the state and the value of the same,
20 in tabulated form, with recommendations for improvements in
21 the system of taxation in the state, together with suggestions
22 of such measures as the department may formulate for the
23 consideration of the Legislature in regard thereto;

24 "(13) For good reason shown and entered on the
25 minutes of the department, to extend the time for filing any

1 report or written statement required to be filed with the
2 Department of Revenue;

3 "(14) To inspect and examine at all reasonable
4 business hours any books, documents, records, or papers kept
5 by any person, firm, corporation, trustee, or receiver;

6 "(15) To make all assessments of taxes or penalties
7 which it is authorized to enforce or collect and report the
8 same to the Attorney General;

9 "(16) To issue executions and writs of garnishment
10 directed to any sheriff of Alabama, on any final assessment or
11 judgment made or rendered by it, and upon such executions the
12 sheriff shall proceed as in cases issued out of the circuit
13 court and shall make return thereof to the Department of
14 Revenue within 60 days after the receipt thereof; and

15 "(17) To perform such other duties as are or may be
16 imposed on it by law."

17 "§40-23-191.

18 "(a) This part shall be titled The Simplified Seller
19 Use Tax Remittance Act.

20 "(b) For the purpose of this part, the following
21 terms shall have the respective meanings ascribed to them in
22 this section:

23 "(1) DEPARTMENT. The Alabama Department of Revenue.

24 "(2) ELIGIBLE SELLER. An individual, trust, estate,
25 fiduciary, partnership, limited liability company, limited

1 liability partnership, corporation, or other legal entity that
2 sells tangible personal property or a service, but does not
3 have a physical presence in this state or is not otherwise
4 required to ~~be subject to requirements for~~ collecting and
5 ~~remitting~~ state and local sales or use tax for sales delivered
6 into the state. Such seller shall remain eligible for
7 participation in the Simplified Use Tax Remittance Program
8 unless the seller establishes a presence through a physical
9 business address for the purpose of making instate retail
10 sales within the State of Alabama or becomes otherwise
11 required to collect and remit sales or use tax pursuant to
12 Section 40-23-190 through an affiliate making retail sales at
13 a physical business address in Alabama, ~~provided the seller~~
14 ~~was a participant in the program for at least six months prior~~
15 ~~to establishing such physical presence or filing obligation.~~

16 "(3) LOCALITY. A county, municipality, or other
17 local governmental taxing authority which levies a local sales
18 and/or use tax.

19 "(4) SIMPLIFIED SELLERS USE TAX. The eight percent
20 tax to be collected, reported, and remitted by eligible
21 sellers who are participating in the program pursuant to
22 requirements and procedures established pursuant to this part.

23 "(5) SIMPLIFIED USE TAX REMITTANCE PROGRAM or
24 PROGRAM. The program established in this part to provide a
25 mechanism for eligible sellers to collect, report, and remit

1 the simplified sellers use tax established pursuant to this
2 part.

3 "(6) STATE. The State of Alabama."

4 "§40-23-193.

5 "(a) The simplified sellers use tax due under the
6 program is eight percent of the sales price on any tangible
7 personal property sold or delivered into Alabama by an
8 eligible seller participating in the program. The collection
9 and remittance of simplified sellers use tax relieves the
10 eligible seller and the purchaser from any additional state or
11 local sales and use taxes on the transaction.

12 "(b) The simplified sellers use tax collected by the
13 eligible seller, at the rate of eight percent, shall be
14 electronically reported in the manner prescribed by the
15 department on or before the 20th day of the month next
16 succeeding the month in which the tax accrues. The eligible
17 seller shall remit the tax at the required rate or the amount
18 of the tax collected, whichever is greater. The required
19 monthly reporting from the eligible seller shall only include
20 statewide totals of the simplified sellers use taxes collected
21 and remitted, and shall not require information related to the
22 location of purchasers or amount of sales into a specific
23 locality. The department may not require an eligible seller to
24 report and remit the simplified sellers use tax more
25 frequently than is required for other sellers.

1 "(c) No eligible seller shall be required to collect
2 the tax at a rate greater than eight percent, regardless of
3 the combined actual tax rates that may otherwise be
4 applicable. Additionally, no sales for which the simplified
5 sellers use tax is collected shall be subject to any
6 additional sales or use tax from any locality levying a sales
7 or use tax with respect to the purchase or use of the
8 property, regardless of the actual tax rate that might have
9 otherwise been applicable.

10 "(d) The participating eligible seller shall collect
11 the tax on all purchases delivered into Alabama unless the
12 purchaser furnishes the eligible seller with a valid exemption
13 certificate, sales tax license, or direct pay permit issued by
14 the department. The eligible seller shall retain all exemption
15 certificates, sales tax licenses, or direct pay permits in its
16 files, or in such other manner as directed by the department.

17 "(e) The eligible seller shall provide the purchaser
18 with a statement or invoice showing that the simplified
19 sellers use tax was collected and is to be remitted on the
20 purchaser's behalf. The statement shall be in a manner
21 prescribed by the department ~~and shall include the eligible~~
22 ~~seller's program account number issued by the department upon~~
23 ~~the eligible seller's approval as a participant in the~~
24 ~~program."~~

25 "§40-23-195.

1 "(a) The department may adopt, promulgate, and
2 enforce reasonable rules and regulations related to the
3 implementation, administration, and participation in the
4 program. The department shall have exclusive responsibility
5 for reviewing and accepting applications for participation and
6 for the administration, return processing, and review of the
7 eligibility of sellers participating in the program. Eligible
8 sellers participating in the program shall not be subject to
9 audit or review by any Alabama locality. Eligible sellers
10 shall maintain records of all sales delivered into Alabama,
11 including copies of invoices showing the purchaser, address,
12 purchase amount, and simplified sellers use tax collected.
13 Such records shall be made available for review and inspection
14 upon request by the department.

15 "(b) The department may disclose the name of
16 eligible sellers, the effective date the eligible seller began
17 participating in the program and, if applicable, the cease
18 date the eligible seller ceased to participate in the
19 program."

20 Section 3. This act shall become effective July 1,
21 2017 following its passage and approval by the Governor, or
22 upon its otherwise becoming law.

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB86

Senate 16-FEB-17

I hereby certify that the within Act originated in and passed the Senate.

Patrick Harris,
Secretary.

House of Representatives
Passed: 14-MAR-17

By: Senator Pittman