SB86

181631-1

By Senator Pittman

RFD: Finance and Taxation General Fund

First Read: 07-FEB-17
SYNOPSIS: This bill allows monthly distributions of simplified sellers use tax to local governments.

This bill removes the six month deferral restriction for eligible sellers and simplifies the required invoice language on simplified sellers use tax transactions. This bill allows for disclosure of the names of eligible sellers that are participating within the program, as well as their start date, and if applicable, the cease date of participation. This bill provides that the department may require reporting of retail sales and customer notifications when the seller does not collect sales, use, or simplified sellers use tax.

A BILL
TO BE ENTITLED
AN ACT

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

§40-23-197.1. Notwithstanding the provisions of Section §40-23-197, the Department may initiate monthly distributions of the proceeds from the simplified sellers use tax paid to counties and municipalities.

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

"§40-2-11. "It shall be the duty of the Department of Revenue, and it shall have the power and authority, in addition to the authority now in it vested by law:

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

"(2) To equalize, value, and assess or cause to be equalized, valued, and assessed any property subject to taxation, and such valuations and assessments it shall enter or cause to be entered in the proper assessment book, record, or minutes of the proper official, board, or tribunal; to set aside all assessments so entered in any assessment book, record, or minutes within any time before the end of the assessment year and, after 10 days' notice given the taxpayer, which notice shall be given by certified or registered mail, return receipt demanded, of the time and place of hearing, revalue and reassess said property and cause such revaluation and reassessment to be entered in the proper assessment book, record, or minutes in lieu of the original valuation and assessment; provided, that no reassessment or revaluation shall be made of any particular assessment from which an
appeal is then pending, or if the valuation of the property
for that year has been fixed on appeal by the circuit court or
Supreme Court; provided further, that parties may appeal from
such revaluation and assessment to the circuit court within
like time and in like manner as from the valuation and
assessment as fixed by the board of equalization;

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

"(4) To direct actions to be instituted by the
Attorney General, district attorneys, or attorneys especially
employed for such purposes, with the approval of the Attorney
General for the collection of any taxes or penalties due the
state or any county, or to compel any officer or taxpayer to
comply with the provisions of the tax laws; to direct actions,
prosecutions, and proceedings to be instituted to enforce the
laws of this state relating to taxes, penalties, forfeitures,
and liabilities, and for the punishment of any public officers
or any person or any officer or agent of any corporation,
company, or association, trustee, or receiver for failure or
neglect to comply with the provisions of the tax laws, and to
cause complaints, informations, actions, or prosecutions to be
made or instituted against any tax assessor, tax collector,
probate judge, or other public official for the removal of
such officers for official misconduct or neglect of duty and

Page 4
to further direct actions as may become necessary to obtain an
order from circuit court enjoining or restraining a taxpayer
from continuing in business in Alabama whenever such taxpayer
fails to collect, account for, and/or pay over any trust fund
tax imposed by Sections 40-17-2, 40-17-220, 40-17-325,
40-18-71, 40-21-82, 40-21-102, 40-21-121, 40-23-2, 40-23-61,
40-23-193, 40-26-1, or any other local sales, use, and gross
receipts taxes collected by the department. Such actions and
proceedings may be instituted in the circuit court of any
county in which the taxpayer resides or does business, or in
the Circuit Court of Montgomery County, Alabama, and shall
remain in effect until such time as the taxpayer has come into
full compliance with said tax laws;

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

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

"(7) (a) To require individuals, partnerships,
associations, corporations, trustees, and receivers, and the
agents, officers, and employees thereof, to furnish
information concerning their capital, funded or otherwise,
gross receipts, net profits or income, excess profits, current
assets and liabilities, values of franchises, intangibles,
value of property, earnings, operating and other expenses,
bonds, deeds, conduct of business, and all other facts,
records, books, papers, documents, and other information of
any kind demanded which may be needful in order to enable the
department to ascertain the value and relative burden to be
borne by every kind of property in this state and to ascertain
the proper amount of license, privilege, excise, corporation,
franchise, income, or ad valorem taxes;

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

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

"(9) To visit, by the commissioner or by duly
authorized agents, the several counties in the state for the
purpose of investigating the work and methods of county tax
assessors, tax collectors, probate judge, or other officers or
boards charged with the duty of administering the tax laws of
the state; to examine carefully into all cases where evasions
or violations of the tax laws are alleged, complained of, or
discovered, and to ascertain wherein existing laws are
defective or are improperly or negligently administered and to
report the result of the investigation and the facts
ascertained to the Governor from time to time when required by
him;

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

"(11) To consult and confer with the Governor upon
the subject of taxation and the administration of the laws and
progress of the work of the department, and to furnish to the
Governor from time to time such information as he may require;
"(12) To transmit to the Governor, 30 days before the meeting of the Legislature, a written report showing all the taxable property in the state and the value of the same, in tabulated form, with recommendations for improvements in the system of taxation in the state, together with suggestions of such measures as the department may formulate for the consideration of the Legislature in regard thereto;

"(13) For good reason shown and entered on the minutes of the department, to extend the time for filing any report or written statement required to be filed with the Department of Revenue;

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

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

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

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

"§40-23-191."
"(a) This part shall be titled The Simplified Seller Use Tax Remittance Act.

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

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

"(2) ELIGIBLE SELLER. An individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or other legal entity that sells tangible personal property or a service, but does not have a physical presence in this state or is not otherwise required to be subject to requirements for collecting and remitting state and local sales or use tax for sales delivered into the state. Such seller shall remain eligible for participation in the Simplified Use Tax Remittance Program unless the seller establishes a presence through a physical business address for the purpose of making instate retail sales within the State of Alabama or becomes otherwise required to collect and remit sales or use tax pursuant to Section 40-23-190 through an affiliate making retail sales at a physical business address in Alabama, provided the seller was a participant in the program for at least six months prior to establishing such physical presence or filing obligation.

"(3) LOCALITY. A county, municipality, or other local governmental taxing authority which levies a local sales and/or use tax.
“(4) SIMPLIFIED SELLERS USE TAX. The eight percent tax to be collected, reported, and remitted by eligible sellers who are participating in the program pursuant to requirements and procedures established pursuant to this part.

“(5) SIMPLIFIED USE TAX REMITTANCE PROGRAM or PROGRAM. The program established in this part to provide a mechanism for eligible sellers to collect, report, and remit the simplified sellers use tax established pursuant to this part.

“(6) STATE. The State of Alabama.”

“§40-23-193.

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

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

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

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

"(e) The eligible seller shall provide the purchaser with a statement or invoice showing that the simplified sellers use tax was collected and is to be remitted on the purchaser’s behalf. The statement shall be in a manner prescribed by the department and shall include the eligible seller’s program account number issued by the department upon
§40-23-195.

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

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

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