

1 SB307
2 191448-1
3 By Senator Pittman
4 RFD: Finance and Taxation General Fund
5 First Read: 13-FEB-18

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8 SYNOPSIS: Under current law, the Simplified Sellers
9 Use Tax Remittance Program allows an eligible
10 seller to voluntarily participate in the program
11 and collect and remit simplified sellers use tax.

12 This bill updates the conditions of remote
13 entity nexus to allow an out-of-state vendor with
14 physical presence established only through
15 acquisition of an in-state company the ability to
16 participate in the Simplified Sellers Use Tax
17 Program. This bill clarifies certain sales of
18 tangible personal property cannot be reported under
19 the program and are subject to sales tax.

20 This bill would authorize marketplace
21 facilitators to collect and remit simplified
22 sellers use tax on Alabama sales made by or on
23 behalf of third party marketplace sellers.

24
25 A BILL
26 TO BE ENTITLED
27 AN ACT

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2 To amend Sections 40-23-190 and 40-23-191 Code of
3 Alabama 1975, relating to remote entity nexus and simplified
4 sellers use tax; to allow an out-of-state vendor with physical
5 presence established only through acquisition of an in-state
6 company the ability to participate in the Simplified Sellers
7 Use Tax Program; and to authorize marketplace facilitators to
8 collect and remit simplified sellers use tax.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. Sections 40-23-190 and 40-23-191, Code of
11 Alabama 1975, are amended to read as follows:

12 "§40-23-190.

13 "(a) An out-of-state vendor has substantial nexus
14 with this state for the collection of both state and local use
15 tax if:

16 "(1) The out-of-state vendor and an in-state
17 business maintaining one or more locations within this state
18 are related parties; and

19 "(2) The out-of-state vendor and the in-state
20 business use an identical or substantially similar name,
21 tradename, trademark, or goodwill, to develop, promote, or
22 maintain sales, or the in-state business and the out-of-state
23 vendor pay for each other's services in whole or in part
24 contingent upon the volume or value of sales, or the in-state
25 business and the out-of-state vendor share a common business
26 plan or substantially coordinate their business plans, or the
27 in-state business provides services to, or that inure to the

1 benefit of, the out-of-state business ~~related to developing,~~
2 ~~promoting, or maintaining the in-state market.~~

3 "(b) An out-of-state vendor that is an eligible
4 seller participating in the Simplified Sellers Use Tax
5 Remittance Program, as these terms are defined in Section
6 40-23-191, that establishes a physical presence in this state
7 only through the acquisition of an in-state business that
8 thereafter meets the provisions of subsection (a) may elect to
9 satisfy its requirements to collect and remit tax for its
10 Alabama sales by continued participation in the Simplified
11 Sellers Use Tax Remittance Program. The out-of-state vendor
12 may not thereafter collect and remit through the Simplified
13 Sellers Use Tax Remittance Program taxes imposed by Chapter 23
14 of Title 40, or any local law or municipal ordinance, or any
15 county ordinance enacted pursuant to Section 40-12-4 imposing
16 a sales tax, for those sales of tangible personal property
17 which are sold or removed from or at a retail location in this
18 state or delivered at a retail location in this state.

19 ~~"(b)~~ (c) Two entities are related parties under this
20 section if one of the entities meets at least one of the
21 following tests with respect to the other entity:

22 "(1) One or both entities is a corporation, and one
23 entity and any party related to that entity in a manner that
24 would require an attribution of stock from the corporation to
25 the party or from the party to the corporation under the
26 attribution rules of Section 318 of the Internal Revenue Code
27 owns directly, indirectly, beneficially, or constructively at

1 least 50 percent of the value of the corporation's outstanding
2 stock;

3 "(2) One or both entities is a limited liability
4 company, partnership, estate, or trust and any member,
5 partner, or beneficiary, and the limited liability company,
6 partnership, estate, or trust and its members, partners, or
7 beneficiaries own directly, indirectly, beneficially, or
8 constructively, in the aggregate, at least 50 percent of the
9 profits, or capital, or stock, or value of the other entity or
10 both entities; or

11 "(3) An individual stockholder and the members of
12 the stockholder's family, as defined in Section 318 of the
13 Internal Revenue Code, owns directly, indirectly,
14 beneficially, or constructively, in the aggregate, at least 50
15 percent of the value of both entities' outstanding stock.

16 "§40-23-191.

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

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

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

23 "(2) ELIGIBLE SELLER. ~~An individual, trust, estate,~~
24 ~~fiduciary, partnership, limited liability company, limited~~
25 ~~liability partnership, corporation, or other legal entity~~ A
26 seller that sells tangible personal property or a service, but
27 does not have a physical presence in this state or is not

1 otherwise required to collect and remit state and local sales
2 or use tax for sales delivered into the state. The seller
3 shall remain eligible for participation in the Simplified Use
4 Tax Remittance Program unless the seller establishes a
5 presence through a physical business address for the purpose
6 of making instate retail sales within the State of Alabama or
7 becomes otherwise required to collect and remit sales or use
8 tax pursuant to Section 40-23-190 through an affiliate making
9 retail sales at a physical business address in Alabama.

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

13 "(4) SELLER. An individual, trust, estate,
14 fiduciary, partnership, limited liability company, limited
15 liability partnership, corporation, or other legal entity.

16 "~~(4)~~ (5) SIMPLIFIED SELLERS USE TAX. The eight
17 percent tax to be collected, reported, and remitted by
18 eligible sellers who are participating in the program pursuant
19 to requirements and procedures established pursuant to this
20 part.

21 "~~(5)~~ (6) SIMPLIFIED USE TAX REMITTANCE PROGRAM or
22 PROGRAM. The program established in this part to provide a
23 mechanism for eligible sellers to collect, report, and remit
24 the simplified sellers use tax established pursuant to this
25 part.

26 "~~(6)~~ (7) STATE. The State of Alabama."

1 Section 2. The Simplified Sellers Use Tax Remittance
2 Program may not be used to report sales tax obligations
3 subject to the sales tax imposed by Chapter 23 of Title 40 or
4 any local law or municipal ordinance or any county ordinance
5 enacted pursuant to Section 40-12-4 imposing a sales tax for
6 those sales of tangible personal property which are sold or
7 removed from or at a retail location in this state or
8 delivered at a retail location in this state.

9 Section 3. (a) For the purpose of this section, the
10 following terms shall have the respective meanings ascribed to
11 them:

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

13 (2) MARKETPLACE FACILITATOR. A person that contracts
14 with sellers to facilitate for a consideration, regardless of
15 whether deducted as fees from the transaction, the sale of the
16 seller's products through a physical or electronic marketplace
17 operated by a person, and engages:

18 a. Either directly or indirectly, through one or
19 more affiliated persons in any of the following:

20 1. Transmitting or otherwise communicating the offer
21 or acceptance between the purchaser and seller;

22 2. Owning or operating the infrastructure,
23 electronic or physical, or technology that brings purchasers
24 and sellers together;

25 3. Providing a virtual currency that purchasers are
26 allowed or required to use to purchase products from the
27 seller; or

1 4. Software development or research and development
2 activities related to any of the activities described in
3 paragraph b, if such activities are directly related to a
4 physical or electronic marketplace operated by a person or an
5 affiliated person, and

6 b. In any of the following activities with respect
7 to the seller's products:

- 8 1. Payment processing services;
- 9 2. Fulfillment or storage services;
- 10 3. Listing products for sale;
- 11 4. Setting prices;
- 12 5. Branding sales as those of the marketplace
13 facilitator;
- 14 6. Order taking;
- 15 7. Advertising or promotion; or
- 16 8. Providing customer service or accepting or
17 assisting with returns or exchanges.

18 (3) MARKETPLACE SELLER. A seller that does not have
19 a retail location in the state and is not otherwise required
20 to collect and remit sales or use tax.

21 (4) PERSON. As defined in Section 40-23-1(a)(1).

22 (5) PURCHASER. A person who purchases or contracts
23 to purchase tangible personal property as defined in Section
24 40-12-220.

25 (6) RETAIL SALE. As defined in Section 40-23-1,
26 other than sales of motor vehicles as defined in Section
27 40-12-240.

1 (7) SELLER. An individual, trust, estate, fiduciary,
2 partnership, limited liability company, limited liability
3 partnership, corporation, or other legal entity.

4 (8) STATE. The State of Alabama.

5 (b) A marketplace facilitator may petition the
6 department for approval to collect and remit simplified
7 sellers use tax as levied by Section 40-23-193, on retail
8 sales delivered to a location in this state that are made
9 through the marketplace facilitator's marketplace by or on
10 behalf of a marketplace seller. Such petition may be made by
11 the marketplace facilitator regardless of whether the
12 marketplace facilitator has a retail location in this state.
13 Taxes imposed by Chapter 23 of Title 40, or any local law or
14 municipal ordinance, or any county ordinance enacted pursuant
15 to Section 40-12-4 imposing a sales tax, may not be collected
16 or remitted pursuant to this section for those sales of
17 tangible personal property which are sold or removed from or
18 at a retail location in this state or delivered at a retail
19 location in this state.

20 (c) Once approved by the department to collect and
21 remit simplified sellers use tax under this section, a
22 marketplace facilitator shall collect and remit the tax in
23 accordance with the provisions of this section and Section
24 40-23-193 on all retail sales delivered to a location in this
25 state made by or on behalf of all marketplace sellers for at
26 least twelve months thereafter, other than those sales on

1 which state or local sales taxes are due as described in
2 subsection (b).

3 (d) Marketplace facilitators that collect simplified
4 sellers use tax under this section shall report and remit the
5 tax in accordance with the provisions of Section 40-23-193 and
6 shall maintain records of all sales delivered to a location in
7 Alabama, including copies of invoices showing the purchaser,
8 address, purchase amount, and simplified sellers use tax
9 collected. Such records shall be made available for review and
10 inspection upon request by the department.

11 (e) Marketplace facilitators that properly collect
12 and then remit to the department in a timely manner simplified
13 sellers use tax on sales in accordance with the provisions of
14 this section by or on behalf of marketplace sellers shall be
15 eligible for the discount provided under Section 40-23-194.

16 (f) The collection and remittance of simplified
17 sellers use tax under this section relieves the marketplace
18 facilitator, the marketplace seller, and the purchaser from
19 any additional state or local sales and use taxes on the
20 transactions for which simplified sellers use tax was
21 collected and remitted.

22 (g) Marketplace facilitators that collect simplified
23 sellers use tax under this section shall not be subject to
24 audit or review by any Alabama locality for simplified sellers
25 use tax.

26 (h) Marketplace facilitators participating in the
27 simplified sellers use tax program shall be granted the

1 amnesty protections otherwise provided for eligible sellers
2 under Section 40-23-199.

3 (i) Marketplace sellers for whom marketplace
4 facilitators collect and remit simplified sellers use tax in
5 accordance with the provisions of this section on all sales
6 made by or on behalf of the marketplace seller and delivered
7 into Alabama shall be granted the continued participation and
8 amnesty protections provided for eligible sellers under
9 Sections 40-23-198 and 40-23-199.

10 (j) The marketplace facilitator shall provide the
11 purchaser with a statement or invoice showing that the
12 simplified sellers use tax was collected and is to be remitted
13 on the purchaser's behalf. The statement shall be in a manner
14 prescribed by the department.

15 (k) No class action may be brought against a
16 marketplace facilitator in any court of this state on behalf
17 of customers arising from or in any way related to an
18 overpayment of simplified sellers use tax collected on sales
19 facilitated by the marketplace facilitator, regardless of
20 whether that claim is characterized as a tax refund claim.

21 (l) The department may disclose the name of
22 marketplace facilitators who are participating in the
23 Simplified Sellers Use Tax program, the effective date the
24 marketplace facilitator began participating in the program
25 and, if applicable, the date the marketplace facilitator
26 ceased to participate in the program.

1 (m) The disposition of simplified sellers use tax
2 remitted by marketplace facilitators shall be made in
3 accordance with Sections 40-23-197 and 40-23-197.1.

4 (n) Any taxpayer who remits simplified sellers use
5 tax pursuant to this section shall be entitled to refunds or
6 credits to the same extent and in the same manner provided for
7 in Section 40-23-196 for taxes collected and remitted through
8 the Simplified Sellers Use Tax Remittance Program.

9 (o) Marketplace facilitators that collect and remit
10 simplified sellers use tax on sales made by or on behalf of
11 marketplace sellers shall be subject to the penalty provisions
12 and procedures of Section 40-2A-11.

13 (p) The department may adopt, promulgate, and
14 enforce reasonable rules and regulations for the
15 administration and enforcement of this section.”

16 Section 4. This act shall become effective
17 immediately following its passage and approval by the
18 Governor, or upon its otherwise becoming law.