

1 HB470
2 192556-1
3 By Representative Scott
4 RFD: Ways and Means General Fund
5 First Read: 01-MAR-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 establishes a marketplace
21 facilitator filing and remitting program. This bill
22 provides that a marketplace facilitator is required
23 to collect and remit simplified sellers use tax on
24 transactions made by or on behalf of third party
25 marketplace sellers or be subject to information
26 reporting requirements.

1 This bill would levy an additional one
2 percent (1%) simplified sellers use tax and provide
3 for the distribution.
4

5 A BILL
6 TO BE ENTITLED
7 AN ACT
8

9 To amend Sections 40-23-190 and 40-23-191, Code of
10 Alabama 1975, relating to remote entity nexus and simplified
11 sellers use tax; to allow an out-of-state vendor with physical
12 presence established only through acquisition of an in-state
13 company the ability to participate in the Simplified Sellers
14 Use Tax Program; and to require marketplace facilitators to
15 collect and remit simplified sellers use tax or be required to
16 report such sales; to provide for an additional levy of
17 simplified sellers use tax; and to provide for additional
18 distribution provisions.

19 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

22 "§40-23-190.

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

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

4 "(2) The out-of-state vendor and the in-state
5 business use an identical or substantially similar name,
6 tradename, trademark, or goodwill, to develop, promote, or
7 maintain sales, or the in-state business and the out-of-state
8 vendor pay for each other's services in whole or in part
9 contingent upon the volume or value of sales, or the in-state
10 business and the out-of-state vendor share a common business
11 plan or substantially coordinate their business plans, or the
12 in-state business provides services to, or that inure to the
13 benefit of, the out-of-state business related to developing,
14 promoting, or maintaining the in-state market.

15 "(b) An out-of-state vendor that is an eligible
16 seller participating in the Simplified Sellers Use Tax
17 Remittance Program, as these terms are defined in Section
18 40-23-191, that establishes a physical presence in this state
19 only through the acquisition of an in-state business and
20 thereafter meets the provisions of subsection (a) may elect to
21 satisfy the requirements to collect and remit tax for the
22 out-of-state vendor's Alabama sales by continued participation
23 in the Simplified Sellers Use Tax Remittance Program.

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

1 "(1) One or both entities is a corporation, and one
2 entity and any party related to that entity in a manner that
3 would require an attribution of stock from the corporation to
4 the party or from the party to the corporation under the
5 attribution rules of Section 318 of the Internal Revenue Code
6 owns directly, indirectly, beneficially, or constructively at
7 least 50 percent of the value of the corporation's outstanding
8 stock;

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

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

22 "§40-23-191.

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

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

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

2 "(2) ELIGIBLE SELLER. ~~An individual, trust, estate,~~
3 ~~fiduciary, partnership, limited liability company, limited~~
4 ~~liability partnership, corporation, or other legal entity~~ A
5 seller that sells tangible personal property or a service, but
6 does not have a physical presence in this state or is not
7 otherwise required to collect and remit state and local sales
8 or use tax for sales delivered into the state. The seller
9 shall remain eligible for participation in the Simplified Use
10 Tax Remittance Program unless the seller establishes a
11 presence through a physical business address for the purpose
12 of making instate retail sales within the State of Alabama or
13 becomes otherwise required to collect and remit sales or use
14 tax pursuant to Section 40-23-190 through an affiliate making
15 retail sales at a physical business address in Alabama. The
16 term also includes a marketplace facilitator as defined in
17 Section 3(a) (2) of this act for all sales made through the
18 marketplace facilitator's marketplace by or on behalf of a
19 marketplace seller.

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

23 "(4) SELLER. An individual, trust, estate,
24 fiduciary, partnership, limited liability company, limited
25 liability partnership, corporation, or other legal entity.

26 "~~(4)~~ (5) SIMPLIFIED SELLERS USE TAX. The ~~eight~~
27 ~~percent~~ tax to be collected, reported, and remitted by

1 eligible sellers who are participating in the program pursuant
2 to requirements and procedures established pursuant to this
3 part.

4 "~~(5)~~ (6) SIMPLIFIED USE TAX REMITTANCE PROGRAM or
5 PROGRAM. The program established in this part to provide a
6 mechanism for eligible sellers to collect, report, and remit
7 the simplified sellers use tax established pursuant to this
8 part.

9 "~~(6)~~ (7) STATE. The State of Alabama."

10 Section 2. The Simplified Sellers Use Tax Remittance
11 Program may not be used to report sales tax obligations
12 subject to the sales tax imposed by Chapter 23 of Title 40 or
13 any local law or municipal ordinance or any county ordinance
14 enacted pursuant to Section 40-12-4 imposing a sales tax for
15 those sales of tangible personal property which are sold at a
16 retail location in this state.

17 Section 3. (a) For the purpose of this act, the
18 following terms shall have the respective meanings ascribed to
19 them:

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

21 (2) MARKETPLACE FACILITATOR. A person that contracts
22 with marketplace sellers to facilitate for a consideration,
23 regardless of whether deducted as fees from the transaction,
24 the sale of the marketplace seller's products through a
25 physical or electronic marketplace operated by a person, and
26 engages:

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

3 1. Transmitting or otherwise communicating the offer
4 or acceptance between the purchaser and marketplace seller;

5 2. Owning or operating the infrastructure,
6 electronic or physical, or technology that brings purchasers
7 and marketplace sellers together;

8 3. Providing a virtual currency that purchasers are
9 allowed or required to use to purchase products from the
10 marketplace seller; or

11 4. Software development or research and development
12 activities related to any of the activities described in
13 paragraph b, if such activities are directly related to a
14 physical or electronic marketplace operated by a person or an
15 affiliated person, and

16 b. In any of the following activities with respect
17 to the marketplace seller's products:

18 1. Payment processing services;

19 2. Fulfillment or storage services;

20 3. Listing products for sale;

21 4. Setting prices;

22 5. Branding sales as those of the marketplace
23 facilitator;

24 6. Order taking;

25 7. Advertising or promotion; or

26 8. Providing customer service or accepting or
27 assisting with returns or exchanges.

1 (3) MARKETPLACE SELLER. A seller that is not a
2 related party, as prescribed in Section 40-23-190(c), to a
3 marketplace facilitator and that makes sales through any
4 physical or electronic marketplaces operated by a marketplace
5 facilitator.

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

7 (5) PURCHASER. A person who purchases or contracts
8 to purchase tangible personal property as defined in Section
9 40-12-220.

10 (6) QUALIFYING AMOUNT. Two hundred and fifty
11 thousand dollars (\$250,000) or an amount as otherwise
12 prescribed by the department.

13 (7) RETAIL SALE. As defined in Section 40-23-1(10),
14 other than sales of motor vehicles as defined in Section
15 40-12-240.

16 (8) SELLER. An individual, trust, estate, fiduciary,
17 partnership, limited liability company, limited liability
18 partnership, corporation, or other legal entity.

19 (9) SIMPLIFIED SELLERS USE TAX. The tax as levied
20 under Section 40-23-193 and Section 4 of this act.

21 (10) STATE. The State of Alabama.

22 (b) By no later than January 1, 2019, marketplace
23 facilitators, must either register with the department to
24 collect and remit simplified sellers use tax on retail sales
25 made through the marketplace facilitator's marketplace by or
26 on behalf of a marketplace seller that are delivered in
27 Alabama, whether by the marketplace facilitator or another

1 person, or report such retail sales and provide customer
2 notifications pursuant to subsection (m). This provision shall
3 apply to any marketplace facilitator that has more than the
4 qualifying amount in retail sales in Alabama for the preceding
5 twelve (12) months. Such retail sales shall include those made
6 directly by the marketplace facilitator and shall also include
7 those retail sales made by marketplace sellers.

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

17 (d) Marketplace facilitators who properly collect
18 and then remit to the department in a timely manner simplified
19 sellers use tax on sales in accordance with the provisions of
20 this section by or on behalf of marketplace sellers shall be
21 eligible for the discount provided under Section 40-23-194.

22 (e) The collection and remittance of simplified
23 sellers use tax relieves the marketplace facilitator, the
24 marketplace seller, and the purchaser from any additional
25 state or local sales and use taxes on the transactions for
26 which simplified sellers use tax was collected and remitted.

1 (f) Marketplace facilitators that collect simplified
2 sellers use tax shall not be subject to audit or review by any
3 Alabama locality for simplified sellers use tax. Sales by
4 marketplace sellers for which simplified sellers use tax has
5 been collected shall not be subject to audit or review by an
6 Alabama locality for simplified sellers use tax. This
7 exclusion shall not preclude an Alabama locality from auditing
8 or reviewing any other sales by a marketplace seller for which
9 sales or use tax would be due.

10 (g) Marketplace sellers for whom marketplace
11 facilitators collect and remit simplified sellers use tax in
12 accordance with the provisions of this section on all sales
13 made by or on behalf of the marketplace seller that are
14 delivered in Alabama shall be granted the continued
15 participation and amnesty protections provided for eligible
16 sellers under Sections 40-23-198 and 40-23-199.

17 (h) The marketplace facilitator shall provide the
18 purchaser with a statement or invoice showing that the
19 simplified sellers use tax was collected and shall be remitted
20 on the purchaser's behalf. The statement shall be in a manner
21 prescribed by the department.

22 (i) No class action may be brought against a
23 marketplace facilitator in any court of this state on behalf
24 of customers arising from or in any way related to an
25 overpayment of simplified sellers use tax collected on sales
26 facilitated by the marketplace facilitator, regardless of
27 whether that claim is characterized as a tax refund claim.

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

6 (k) Marketplace facilitators shall be subject to the
7 penalty provisions and procedures of Section 40-2A-11 and
8 reporting requirements of Section 40-2-11(7) (b).

9 (l) The distribution of simplified sellers use tax
10 remitted by marketplace facilitators shall be made in
11 accordance with Sections 40-23-197, 40-23-197.1, and Section 4
12 of this act.

13 (m) Effective January 1, 2019, any marketplace
14 facilitator who does not collect and remit sales, use, or
15 simplified sellers use tax on Alabama retail sale transactions
16 of qualifying amounts shall be required to report such retail
17 sales and provide customer notifications, within
18 constitutional limitations, pursuant to Section 40-2-11(7) (b)
19 and rules promulgated thereunder.

20 (n) The department may adopt, promulgate, and
21 enforce reasonable rules and regulations for the
22 administration and enforcement of this act.

23 Section 4. Notwithstanding any language to the
24 contrary in Sections 40-23-193, 40-23-197, and 40-23-197.1,
25 effective January 1, 2019, in addition to the simplified
26 sellers use tax levied under 40- 23-193, there is hereby
27 levied a one percent (1%) tax on the sales price on any

1 tangible personal property, the sale of which is facilitated
2 by a marketplace facilitator or sold by an eligible seller
3 participating in the simplified sellers use tax remittance
4 program and is shipped or otherwise delivered in Alabama. All
5 proceeds from the additional one percent (1%) simplified
6 sellers use tax shall be distributed to each municipality on
7 the basis of the ratio of the population of each municipality
8 to the total population of all municipalities in the state as
9 determined in the most recent federal census prior to the
10 distribution. Any taxpayer who pays a combined simplified
11 sellers use tax rate, as levied in 40-23-193 and this section,
12 that is higher than the actual state and local sales or use
13 tax levied in the locality where the sale was delivered may
14 file for a refund or credit of the excess amount paid in
15 accordance with Section 40-23-196. By no later than January 1,
16 2019, the department shall initiate an online application
17 process to simplify refunds requested pursuant to this
18 provision.

19 Section 5. This act shall become effective
20 immediately following its passage and approval by the
21 Governor, or upon its otherwise becoming law.