

1 HB470
2 192556-6
3 By Representative Scott
4 RFD: Ways and Means General Fund
5 First Read: 01-MAR-18



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ENROLLED, An Act,

To amend Sections 40-23-190, 40-23-191, 40-23-194, and 40-23-197, Code of Alabama 1975, relating to remote entity nexus and simplified sellers use tax; to allow an out-of-state vendor with physical presence established only through acquisition of an in-state company the ability to participate in the Simplified Sellers Use Tax Program; and to require marketplace facilitators to collect and remit simplified sellers use tax or be required to report such sales.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections ~~40-23-190 and 40-23-191~~ 40-23-190, 40-23-191, 40-23-194 and 40-23-197, Code of Alabama 1975, are amended to read as follows:

"§40-23-190.

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

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

"(2) The out-of-state vendor and the in-state business use an identical or substantially similar name, tradename, trademark, or goodwill, to develop, promote, or maintain sales, or the in-state business and the out-of-state

1 vendor pay for each other's services in whole or in part
2 contingent upon the volume or value of sales, or the in-state
3 business and the out-of-state vendor share a common business
4 plan or substantially coordinate their business plans, or the
5 in-state business provides services to, or that inure to the
6 benefit of, the out-of-state business related to developing,
7 promoting, or maintaining the in-state market.

8 "(b) An out-of-state vendor that is an eligible
9 seller participating in the Simplified Sellers Use Tax
10 Remittance Program, as these terms are defined in Section
11 40-23-191, that establishes a physical presence substantial
12 nexus in this state only through the acquisition of an
13 in-state business and thereafter meets the provisions of
14 subsection (a) may elect to satisfy the requirements to
15 collect and remit tax for the out-of-state vendor's Alabama
16 sales by continued participation in the Simplified Sellers Use
17 Tax Remittance Program.

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

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

1 owns directly, indirectly, beneficially, or constructively at
2 least 50 percent of the value of the corporation's outstanding
3 stock;

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

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

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

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

20 "(4) SELLER. An individual, trust, estate,
21 fiduciary, partnership, limited liability company, limited
22 liability partnership, corporation, or other legal entity.

23 "~~(4)~~ (5) SIMPLIFIED SELLERS USE TAX. The ~~eight~~
24 ~~percent~~ tax to be collected, reported, and remitted by
25 eligible sellers who are participating in the program pursuant

1 to requirements and procedures established pursuant to this
 2 part.

3 "~~(5)~~ (6) SIMPLIFIED USE TAX REMITTANCE PROGRAM or
 4 PROGRAM. The program established in this part to provide a
 5 mechanism for eligible sellers to collect, report, and remit
 6 the simplified sellers use tax established pursuant to this
 7 part.

8 "~~(6)~~ (7) STATE. The State of Alabama."

9 "§40-23-194.

10 Eligible sellers may deduct and retain a discount
 11 equal to two percent of the simplified sellers use tax
 12 properly collected and then remitted to the department in a
 13 timely manner, provided that for tax periods beginning on or
 14 after January 1, 2019, the allowance for discount shall not
 15 apply to any taxes collected and then remitted which are in
 16 excess of four-hundred thousand dollars (\$400,000). The
 17 department is authorized to prescribe rules for administering
 18 the discount. No discount shall be allowed for any taxes which
 19 are not timely reported and remitted to the department
 20 pursuant to program procedures.

21 "§40-23-197.

22 (a) The proceeds of simplified sellers use tax paid
 23 pursuant to this part shall be appropriated to the department,
 24 which shall retain the amount necessary to fund the
 25 administrative costs of implementing and operating the program

1 and to cover the amounts paid for refunds authorized in
2 Section 40-23-196. The balance of the amounts collected shall
3 be distributed as follows:

4 (1) Fifty percent (50%) to the State Treasury and
5 allocated seventy-five percent (75%) to the General Fund and
6 twenty-five percent (25%) to the Education Trust Fund.

7 (2) Twenty-five percent (25%) to each county in the
8 state on a prorated basis according to population as
9 determined in the most recent federal census prior to the
10 distribution.

11 (3) Twenty-five percent (25%) of funds to be
12 distributed to each municipality in the state on a prorated
13 basis according to population as determined in the most recent
14 federal census prior to the distribution.

15 (b) Effective for tax periods beginning on or after
16 January 1, 2019, the net proceeds after the distribution
17 provided in subsection (a) (1) shall be distributed sixty
18 percent (60%) to each municipality in the state on a basis of
19 the ratio of the population of each municipality to the total
20 population of all municipalities in the state as determined in
21 the most recent federal census prior to distribution and forty
22 percent (40%) to each county in the state, and deposited into
23 the general fund of the respective county commission, on a
24 basis of the ratio of the population of each county to the

1 total population of all counties in the state as determined in
2 the most recent federal census prior to the distribution.

3 ~~(b)~~ (c) The distribution of the proceeds from the
4 simplified sellers use tax paid to counties and municipalities
5 shall occur quarterly in a manner prescribed by the
6 department."

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

14 Section 3. (a) For the purpose of this act, the
15 following terms shall have the respective meanings ascribed to
16 them:

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

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

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

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

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

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

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

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

16 1. Payment processing services;

17 2. Fulfillment or storage services;

18 3. Listing products for sale;

19 4. Setting prices;

20 5. Branding sales as those of the marketplace
21 facilitator;

22 6. Order taking;

23 7. Advertising or promotion; or

24 8. Providing customer service or accepting or
25 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

1 on behalf of a marketplace seller that are delivered in
2 Alabama, whether by the marketplace facilitator or another
3 person, or report such retail sales and provide customer
4 notifications pursuant to subsection (m). This provision shall
5 apply to any marketplace facilitator that has more than the
6 qualifying amount in retail sales in Alabama for the preceding
7 twelve (12) months. Such retail sales shall include those made
8 directly by the marketplace facilitator and shall also include
9 those retail sales made by marketplace sellers through the
10 marketplace facilitator's marketplace. The collection and
11 reporting requirements of this provision shall not apply to
12 retail sales other than those made through a marketplace
13 facilitator's marketplace.

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

23 (d) Marketplace facilitators who properly collect
24 and then remit to the department in a timely manner simplified
25 sellers use tax on sales in accordance with the provisions of

1 this section by or on behalf of marketplace sellers shall be
2 eligible for the discount provided under Section 40-23-194.

3 (e) The collection and remittance of simplified
4 sellers use tax relieves the marketplace facilitator, the
5 marketplace seller, and the purchaser from any additional
6 state or local sales and use taxes on the transactions for
7 which simplified sellers use tax was collected and remitted.

8 (f) Marketplace facilitators that collect simplified
9 sellers use tax shall not be subject to audit or review by any
10 Alabama locality for simplified sellers use tax. Sales by
11 marketplace sellers for which simplified sellers use tax has
12 been collected shall not be subject to audit or review by an
13 Alabama locality for simplified sellers use tax. This
14 exclusion shall not preclude an Alabama locality from auditing
15 or reviewing any other sales by a marketplace seller for which
16 sales or use tax would be due.

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

24 (h) The marketplace facilitator shall provide the
25 purchaser with a statement or invoice showing that the

1 simplified sellers use tax was collected and shall be remitted
 2 on the purchaser's behalf. The statement shall be in a manner
 3 prescribed by the department.

4 ~~(i) No class action may be brought against a~~
 5 ~~marketplace facilitator in any court of this state on behalf~~
 6 ~~of customers arising from or in any way related to an~~
 7 ~~overpayment of simplified sellers use tax collected on sales~~
 8 ~~facilitated by the marketplace facilitator, regardless of~~
 9 ~~whether that claim is characterized as a tax refund claim.~~

10 (i) No class action may be brought against a
 11 marketplace facilitator in any court of this state on behalf
 12 of customers for an overpayment of simplified sellers use tax
 13 collected and remitted on sales facilitated by the marketplace
 14 facilitator.

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

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

23 (l) The distribution of simplified sellers use tax
 24 remitted by marketplace facilitators shall be made in

1 accordance with Sections ~~40-23-197, 40-23-197.1, and Section 4~~
2 ~~of this act~~ 40-23-197 and 40-23-197.1.

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

10 (n) The department may adopt, promulgate, and
11 enforce reasonable rules and regulations for the
12 administration and enforcement of this act.

13 Section 4. By no later than January 1, 2019, the
14 department shall initiate an online application process to
15 simplify refunds requested pursuant to Section 40-23-196.

16 ~~Notwithstanding any language to the contrary in~~
17 ~~Sections 40-23-193, 40-23-197, and 40-23-197.1, effective~~
18 ~~January 1, 2019, in addition to the simplified sellers use tax~~
19 ~~levied under 40-23-193, there is hereby levied a one percent~~
20 ~~(1%) tax on the sales price on any tangible personal property,~~
21 ~~the sale of which is facilitated by a marketplace facilitator~~
22 ~~or sold by an eligible seller participating in the simplified~~
23 ~~sellers use tax remittance program and is shipped or otherwise~~
24 ~~delivered in Alabama. All proceeds from the additional one~~
25 ~~percent (1%) simplified sellers use tax shall be distributed~~

1 ~~to each municipality on the basis of the ratio of the~~
2 ~~population of each municipality to the total population of all~~
3 ~~municipalities in the state as determined in the most recent~~
4 ~~federal census prior to the distribution. Any taxpayer who~~
5 ~~pays a combined simplified sellers use tax rate, as levied in~~
6 ~~40-23-193 and this section, that is higher than the actual~~
7 ~~state and local sales or use tax levied in the locality where~~
8 ~~the sale was delivered may file for a refund or credit of the~~
9 ~~excess amount paid in accordance with Section 40-23-196. By no~~
10 ~~later than January 1, 2019, the department shall initiate an~~
11 ~~online application process to simplify refunds requested~~
12 ~~pursuant to this provision.~~

13 Section 5. This act shall become effective
14 ~~immediately~~ the first day of the second month following its
15 passage and approval by the Governor, or upon its otherwise
16 becoming law.

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Mac McClatchey

Speaker of the House of Representatives

Del Marshall

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 13-MAR-18, as amended.

Jeff Woodard
Clerk

Senate	<u>28-MAR-18</u>	Amended and Passed
House	<u>28-MAR-18</u>	Concurred in Senate Amendment

APPROVED 04-06-18

TIME 1:33 p.m.

Kay Ivey
GOVERNOR

SENATE ACTION
(Continued)

DATE: 3-28	RD 3 at length
PASSED <input type="checkbox"/>	PASSED AS AMENDED <input checked="" type="checkbox"/>
YEAS 25	NAYS 1
And was ordered returned forthwith to the House.	
PATRICK HARRIS, Secretary	

DATE: 20__		
INDEFINITELY POSTPONED	YEAS	NAYS

DATE: 20__		
RECONSIDERED	YEAS	NAYS

CONFERENCE COMMITTEE

Senate Conferees _____

This bill having been referred to the Committee on Rules pursuant to Senate Rule 23 is reported to the Senate for assignment to the Committee on: _____

This _____ day of _____, 20____
_____, Chairperson

Date: _____ Rereferred

Committee: _____