

1 HB365
2 128711-4
3 By Representative Ison
4 RFD: State Government
5 First Read: 29-MAR-11

1 ENGROSSED

2
3
4 A BILL
5 TO BE ENTITLED
6 AN ACT
7

8 To add a new Section 40-23-89, Code of Alabama 1975,
9 to require notification to certain purchasers of tangible
10 personal property that they have an obligation to remit
11 consumer use taxes to the State of Alabama and appropriate
12 local governments if the retailer does not collect and remit
13 on their behalf the applicable state and local sales tax on
14 the sale, and to assess a civil penalty and interest for a
15 violation of these provisions; to require those retailers to
16 send an annual summary of purchases to their Alabama
17 customers, with a reminder of the customer's potential
18 consumer use tax obligations; to exempt certain small
19 retailers from these requirements; to add a new Section
20 40-23-90, Code of Alabama 1975, to authorize the Department of
21 Revenue to facilitate the collection of the consumer use tax
22 on these sales by amending its individual income tax forms so
23 that Alabama residents and part-year residents may remit both
24 the state and local consumer use tax due, on an annual basis,
25 and to direct the distribution of the use tax revenue in
26 excess of the state general use tax rate to the local
27 governments.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. (a) The Legislature notes that the
3 Alabama sales and use tax act was passed by the Legislature in
4 1939.

5 (b) In order to protect consumers from unknowingly
6 violating Alabama's use tax laws and to encourage compliance
7 by Alabama residents who purchase tangible personal property
8 from certain retailers via the Internet, by catalog, or
9 similar means, the Legislature finds that requiring all
10 retailers selling taxable goods to Alabama residents by any of
11 these means to notify the consumers of their use tax
12 obligations if the retailer is not collecting and remitting
13 sales tax on their behalf.

14 (c) The Legislature further finds that the
15 compliance burden with the consumer use tax laws by individual
16 taxpayers can be eased by requiring certain retailers to
17 provide consumers with an annual summary of their Internet or
18 catalog purchases and allowing consumers to remit both the
19 state four percent consumer use tax and the estimated county
20 and municipal consumer use tax due on these purchases through
21 their annual income tax return.

22 (d) This act is intended to give consumer the option
23 to avoid the paperwork headaches of calculating the consumer
24 use tax and filing monthly, quarterly, or annual consumer use
25 tax returns not only with the Department of Revenue but also
26 with local governments.

1 Section 2. Section 40-23-89 is added to the Code of
2 Alabama 1975, to read as follows:

3 §40-23-89. Notification of use tax obligation.

4 (a) Except as provided in subsection (h), every
5 person engaged in the business of selling at retail tangible
6 personal property to a purchaser in this state, but which is
7 not obligated to collect and remit either the applicable sales
8 or use tax on such transaction, shall provide notification on
9 its retail Internet website or retail catalog and on its
10 invoices and receipts provided to the purchaser stating that
11 neither sales nor use tax is being collected or remitted upon
12 the transaction and that the purchaser is required to remit
13 such consumer use tax directly to the Department of Revenue
14 and local governments, unless the purchaser or the transaction
15 is exempted by law. For purposes of this act, "purchaser"
16 shall mean and refer to any ~~person~~ individual who purchases
17 tangible personal property for delivery to a location in this
18 state, but does not include any sole proprietor, partnership,
19 corporation, or other business entity making purchases for use
20 in a business. Nothing in this act shall permit or authorize a
21 person engaged in the business of selling at retail tangible
22 personal property and who is subject to or has voluntarily
23 agreed to subject itself to the obligation to collect and
24 remit either sales tax or sellers use tax under this chapter
25 to cease collecting and remitting such tax, and instead claim
26 that it is not obligated to do so, based upon the provisions
27 of this act.

1 (b) In the case of retail sales facilitated through
2 an Internet website, the notification required in subsection
3 (a) shall be made to the purchaser immediately prior to the
4 completion of the sale, including the provisions of, and in a
5 form substantially similar to, the notification set forth in
6 subsection (c). The notification requirement shall not be
7 satisfied unless the purchaser is required to affirmatively
8 acknowledge such obligation, and the vendor shall retain
9 evidence of such acknowledgement in a form and for the period
10 of time prescribed by the department.

11 (c) The notification required under subsection (b)
12 shall read as follows: "The State of Alabama and its local
13 governments require the payment of a sales or use tax on
14 purchases of tangible personal property (for example,
15 furniture, books, clothing, jewelry, or household goods) for
16 storage, use, or consumption in Alabama. Since we have not
17 collected sales or sellers use tax from you on this purchase,
18 the State of Alabama requires you to remit the consumer use
19 tax directly to the Alabama Department of Revenue and
20 applicable counties and cities on taxable purchases. You can
21 find information on how to pay this tax at
22 www.revenue.alabama.gov/. Failure to pay this tax on taxable
23 purchases is a violation of Alabama and local laws and could
24 result in penalties and interest for each purchase. __ I
25 acknowledge that I have read and understand this sales and use
26 tax notice."

1 (d) A person engaged in the business of selling at
2 retail tangible personal property to purchasers in Alabama
3 shall not advertise on its retail Internet website or in its
4 retail catalog that any purchases made for use or consumption
5 in the State of Alabama are not subject to sales or use tax,
6 are "tax-free," or other similar language, consistent with the
7 limitations imposed by Section 40-23-26(b).

8 (e) A report shall be provided to each purchaser by
9 January 31 of each year with respect to the preceding calendar
10 year. The report shall include the following:

11 (1) A statement indicating that the person did not
12 collect sales or use tax on the purchaser's transactions and
13 that the purchaser is required to remit such tax directly to
14 the Department of Revenue and local governments, unless the
15 purchaser or the transaction is exempted by law.

16 (2) A list, by date, generally indicating the type
17 of product purchased during the preceding calendar year by the
18 purchaser for delivery to a location in this state and the
19 price of each product purchased.

20 (3) Instructions for obtaining additional
21 information regarding whether and how to remit the applicable
22 consumer use tax.

23 (4) Such other information as the Department of
24 Revenue may reasonably require.

25 (f) The failure to comply with (d) and (e) shall
26 disqualify the person from entering into a contract to sell

1 tangible personal property to the State of Alabama, or any
2 county or municipality therein.

3 (g) The report described in subsection (e) shall be
4 sent to the purchaser's billing address or, if unknown, to the
5 purchaser's shipping address in an envelope marked
6 prominently, in bold type, that "important tax information" is
7 enclosed. If no billing or shipping address is known to the
8 seller, the report shall be sent electronically to the
9 purchaser's last known e-mail address with a subject heading
10 that "important tax information" is enclosed.

11 (h) Notwithstanding subsections (a), (e), and (g),
12 any person otherwise subject to this section but whose total
13 gross sales in this state in the preceding calendar year were
14 ten thousand dollars (\$10,000) or less, and who reasonably
15 expects its total gross sales in this state during the current
16 calendar year will be less than ten thousand dollars
17 (\$10,000), is exempt from the website notification and annual
18 summary requirements hereof.

19 (i) Enforcement of this section shall be vested in
20 the Department of Revenue, including the assessment and
21 collection of civil penalties not to exceed one thousand
22 dollars (\$1,000) per violation, together with interest as
23 provided in this act.

24 (j) The Department of Revenue shall have the
25 authority to promulgate such reasonable rules as may be
26 necessary or appropriate to implement the purposes and intent

1 of this section, including periodic updates to the online
2 notification set forth in subsection (c).

3 Section 3. Section 40-23-90 is added to the Code of
4 Alabama 1975, to read as follows:

5 §40-23-90. Authorization for department to collect
6 certain state and local consumer use taxes via income tax
7 returns.

8 (a) In the circumstances enumerated in subsection
9 (b), the department may collect and enforce the collection of
10 applicable state, county, and municipal consumer use taxes by
11 means of the purchaser's individual income tax return in lieu
12 of or in addition to efforts by the department and local
13 governments to collect and enforce the collection of the
14 consumer use tax by means of multiple state and local consumer
15 use tax returns and remittances.

16 (b) In the case of any Alabama resident or part-year
17 resident who purchases, for personal non-business use, items
18 of tangible personal property during the calendar year on
19 which an aggregate of one thousand dollars (\$1,000) or less in
20 consumer use tax was not collected, for whatever reason,
21 including, but not limited to, purchases made over the
22 Internet or by catalog order, the ~~individual~~ purchaser may
23 elect to remit and the department and local governments shall
24 allow remittance of state and local consumer use tax due by
25 that individual for the calendar year by means of the
26 department's annual individual income tax return. Voluntary
27 remittance of the consumer use tax due on such purchases, by

1 means of a timely filed individual income tax return and tax
2 payment, including extensions, shall relieve the ~~taxpayer~~
3 purchaser of any liability for the state or local use tax,
4 interest, or penalties that may otherwise be due as a result
5 of the failure to timely file and remit the tax with monthly,
6 quarterly, or annual consumer use tax returns, provided that
7 the proper amount of consumer use tax was remitted.

8 Notwithstanding the above, in lieu of maintaining otherwise
9 necessary records of purchases during the preceding calendar
10 year, the ~~taxpayer~~ purchaser may rely on a table prepared from
11 time to time by the department containing an estimated amount
12 of state and local consumer use tax due based on an
13 individual's Alabama gross income. The table shall be included
14 in the instructions to the annual individual income tax
15 return.

16 (c) The aggregate rate charged by the department on
17 its individual income tax returns pursuant to this section
18 shall be 10 percent of which 4/10ths shall be deposited to the
19 State Treasury to the credit of the Education Trust Fund, and
20 the balance shall be remitted, without any cost of collection,
21 to the local governments in the manner set forth in subsection
22 (d).

23 (d) On or before July 1 and December 1 of each year,
24 the aggregate amounts designated on filed individual income
25 tax returns or schedules thereto as a consumer use tax, in
26 excess of the department's share, shall be remitted as the
27 local government share, one half to the counties based upon

1 the address listed on the individual's income tax return or,
2 if different, the individual's last known address, and one
3 half to the municipalities in this state. After taking into
4 account this allocation, each municipality shall receive its
5 proportionate share of the remaining one half based on the
6 population of the municipality relative to the total
7 population of all municipalities in the county. Except as
8 provided in subsection (e), this calculation shall be based on
9 the respective populations of each municipality in the state
10 as established by the last United States census, as published
11 from time to time, and according to the department's records
12 regarding applicable county and municipal consumer use tax
13 rates. Provided, however, that if the above address indicates
14 to the department that the individual does not reside within
15 the incorporated limits or police jurisdiction of a
16 municipality, the entire local government share with respect
17 to that individual shall be remitted to the appropriate
18 county. All monies paid to a county or municipality pursuant
19 to this act shall be distributed in accordance with any act,
20 resolution, or ordinance of the county or municipality
21 providing for distribution of a sales or use tax.

22 (e) Notwithstanding the above, the department may
23 periodically determine and implement, by rule duly
24 promulgated, following consultation with the Alabama League of
25 Municipalities and the Association of County Commissions of
26 Alabama, or their successors, a more accurate method for
27 allocating the local government share and also may make more

1 frequent distributions of the local government share. The
2 department shall have the sole right and responsibility to
3 enforce compliance with applicable state and local consumer
4 use tax laws by individuals who choose to remit the state and
5 local consumer use tax by means of the state income tax
6 return. The department shall issue reasonable rules necessary
7 to implement and interpret this section. The initial rules,
8 including forms, tables and other instructions, and related
9 taxpayer advisories, shall be issued promptly so that the
10 final version of the rules shall apply to consumer use taxes
11 due hereunder for calendar year 2011 and subsequent years.

12 Section 4. The provisions of this act are severable.
13 If any part of this act is declared invalid or
14 unconstitutional, that declaration shall not affect the part
15 which remains.

16 Section 5. The substantive provisions of Section 2
17 of this act shall become effective on the later of the
18 following: (i) the passage and approval of this act by the
19 Governor, or its otherwise becoming law, and (ii) once a rule
20 has been promulgated by the department pursuant to subsection
21 (g) of Section 40-23-89, Code of Alabama 1975, and has become
22 effective under the Alabama Administrative Procedure Act.
23 Section 3 of this act shall become effective upon its passage
24 and approval by the Governor, or its otherwise becoming law.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on State Government
..... 29-MAR-11

Read for the second time and placed
on the calendar with 1 substitute
and..... 06-APR-11

Read for the third time and passed
as amended..... 14-APR-11

Yeas 89, Nays 6, Abstains 0

Greg Pappas
Clerk