

1 HB83
2 181631-1
3 By Representative Scott
4 RFD: Ways and Means General Fund
5 First Read: 07-FEB-17
6 PFD: 02/06/2017

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8 SYNOPSIS: This bill allows monthly distributions of
9 simplified sellers use tax to local governments.

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

21
22 A BILL
23 TO BE ENTITLED
24 AN ACT

25
26 To add Section 40-23-197.1, Code of Alabama 1975,
27 relating to simplified sellers use tax; to allow monthly

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

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

12 §40-23-197.1.

13 Notwithstanding the provisions of Section
14 §40-23-197, the Department may initiate monthly distributions
15 of the proceeds from the simplified sellers use tax paid to
16 counties and municipalities.

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

20 "§40-2-11.

21 "It shall be the duty of the Department of Revenue,
22 and it shall have the power and authority, in addition to the
23 authority now in it vested by law:

24 "(1) To have and exercise general and complete
25 supervision and control of the valuation, equalization, and
26 assessment of property, privilege, or franchise and of the
27 collection of all property, privilege, license, excise,

1 intangible, franchise, or other taxes for the state and
2 counties, and of the enforcement of the tax laws of the state,
3 and of the several county tax assessors and county tax
4 collectors, probate judges, and each and every state and
5 county official, board, or commission charged with any duty in
6 the enforcement of tax laws, to the end that all taxable
7 property in the state shall be assessed and taxes shall be
8 imposed and collected thereon in compliance with the law and
9 that all assessments on property, privileges, intangibles, and
10 franchises in the state shall be made in exact proportion to
11 the fair and reasonable market value thereof in substantial
12 compliance with the law;

13 "(2) To equalize, value, and assess or cause to be
14 equalized, valued, and assessed any property subject to
15 taxation, and such valuations and assessments it shall enter
16 or cause to be entered in the proper assessment book, record,
17 or minutes of the proper official, board, or tribunal; to set
18 aside all assessments so entered in any assessment book,
19 record, or minutes within any time before the end of the
20 assessment year and, after 10 days' notice given the taxpayer,
21 which notice shall be given by certified or registered mail,
22 return receipt demanded, of the time and place of hearing,
23 revalue and reassess said property and cause such revaluation
24 and reassessment to be entered in the proper assessment book,
25 record, or minutes in lieu of the original valuation and
26 assessment; provided, that no reassessment or revaluation
27 shall be made of any particular assessment from which an

1 appeal is then pending, or if the valuation of the property
2 for that year has been fixed on appeal by the circuit court or
3 Supreme Court; provided further, that parties may appeal from
4 such revaluation and assessment to the circuit court within
5 like time and in like manner as from the valuation and
6 assessment as fixed by the board of equalization;

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

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

1 to further direct actions as may become necessary to obtain an
2 order from circuit court enjoining or restraining a taxpayer
3 from continuing in business in Alabama whenever such taxpayer
4 fails to collect, account for, and/or pay over any trust fund
5 tax imposed by Sections ~~40-17-2~~, 40-17-220, 40-17-325,
6 40-18-71, 40-21-82, 40-21-102, 40-21-121, 40-23-2, 40-23-61,
7 40-23-193, 40-26-1, or any other local sales, use, and gross
8 receipts taxes collected by the department. Such actions and
9 proceedings may be instituted in the circuit court of any
10 county in which the taxpayer resides or does business, or in
11 the Circuit Court of Montgomery County, Alabama, and shall
12 remain in effect until such time as the taxpayer has come into
13 full compliance with said tax laws;

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

20 "(6) To require any public official in the state to
21 report information as to valuation, equalization, and
22 assessment of property, privileges, franchises or intangibles,
23 gross receipts, collections of taxes, receipts from licenses
24 and other sources, methods of taxation, values or franchises,
25 or intangible property, or assets subject to taxation, and
26 such other information as may be needful in the work of the

1 Department of Revenue in such forms and upon such blanks as
2 the department may prescribe and furnish;

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

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

22 "(8) To cause the deposition of witnesses residing
23 within or without the state to be taken upon such notice to
24 the interested party, if any, as the department may prescribe,
25 in like manner as depositions of witnesses are taken in
26 actions pending in circuit court, in any matter which the
27 department has authority to investigate and determine. The

1 depositions shall be taken upon a commission issued by the
2 Department of Revenue, or the secretary thereof, in the name
3 of the department, and returnable to the department;

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

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

23 "(11) To consult and confer with the Governor upon
24 the subject of taxation and the administration of the laws and
25 progress of the work of the department, and to furnish to the
26 Governor from time to time such information as he may require;

1 "(12) To transmit to the Governor, 30 days before
2 the meeting of the Legislature, a written report showing all
3 the taxable property in the state and the value of the same,
4 in tabulated form, with recommendations for improvements in
5 the system of taxation in the state, together with suggestions
6 of such measures as the department may formulate for the
7 consideration of the Legislature in regard thereto;

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

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

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

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

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

26 "§40-23-191.

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

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

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

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

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

1 "(4) SIMPLIFIED SELLERS USE TAX. The eight percent
2 tax to be collected, reported, and remitted by eligible
3 sellers who are participating in the program pursuant to
4 requirements and procedures established pursuant to this part.

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

10 "(6) STATE. The State of Alabama."

11 "§40-23-193.

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

19 "(b) The simplified sellers use tax collected by the
20 eligible seller, at the rate of eight percent, shall be
21 electronically reported in the manner prescribed by the
22 department on or before the 20th day of the month next
23 succeeding the month in which the tax accrues. The eligible
24 seller shall remit the tax at the required rate or the amount
25 of the tax collected, whichever is greater. The required
26 monthly reporting from the eligible seller shall only include
27 statewide totals of the simplified sellers use taxes collected

1 and remitted, and shall not require information related to the
2 location of purchasers or amount of sales into a specific
3 locality. The department may not require an eligible seller to
4 report and remit the simplified sellers use tax more
5 frequently than is required for other sellers.

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

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

22 "(e) The eligible seller shall provide the purchaser
23 with a statement or invoice showing that the simplified
24 sellers use tax was collected and is to be remitted on the
25 purchaser's behalf. The statement shall be in a manner
26 prescribed by the department ~~and shall include the eligible~~
27 ~~seller's program account number issued by the department upon~~

1 ~~the eligible seller's approval as a participant in the~~
2 ~~program."~~

3 "§40-23-195.

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

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

23 Section 3. This act shall become effective July 1,
24 2017 following its passage and approval by the Governor, or
25 upon its otherwise becoming law.