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3 SENATE F&TG COMMITTEE SUBSTITUTE FOR SB307
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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 sales, use, or simplified
24 sellers use tax on transactions made by or on
25 behalf of third party marketplace sellers.

26 This bill would increase the simplified
27 sellers use tax rate by one percent (1%).

1
2 A BILL
3 TO BE ENTITLED
4 AN ACT
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6 To amend Sections 40-23-190 and 40-23-191 Code of
7 Alabama 1975, relating to remote entity nexus and simplified
8 sellers use tax; to allow an out-of-state vendor with physical
9 presence established only through acquisition of an in-state
10 company the ability to participate in the Simplified Sellers
11 Use Tax Program; and to require marketplace facilitators to
12 collect and remit sales, use, or simplified sellers use tax;
13 to provide for a rate increase to the simplified sellers use
14 tax; to provide for additional distribution provisions.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

18 "§40-23-190.

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

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

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

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

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

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) (3) of this act for sales made through the
18 marketplace facilitator's marketplace by or on behalf of a
19 marketplace seller who does not have a retail location in this
20 state.

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

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

1 "~~(4)~~ (5) SIMPLIFIED SELLERS USE TAX. The eight
2 percent tax to be collected, reported, and remitted by
3 eligible sellers who are participating in the program pursuant
4 to requirements and procedures established pursuant to this
5 part.

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

11 "~~(6)~~ (7) STATE. The State of Alabama."

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

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

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

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

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

8 3. Providing a virtual currency that purchasers are
9 allowed or required to use to purchase products from the
10 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 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 does not have
2 a retail location in the state and makes sales through any
3 physical or electronic marketplaces operated by a marketplace
4 facilitator.

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

6 (5) PURCHASER. A person who purchases or contracts
7 to purchase tangible personal property as defined in Section
8 40-12-220, Code of Alabama 1975.

9 (6) RETAIL SALE. As defined in Section 40-23-1(10),
10 other than sales of motor vehicles as defined in Section
11 40-12-240.

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

15 (8) STATE. The State of Alabama.”

16 (b) Beginning September 1, 2018, marketplace
17 facilitators, must either collect and remit simplified sellers
18 use tax as levied by Section 40-23-193, Code of Alabama 1975,
19 on retail sales made through the marketplace facilitator’s
20 marketplace by or on behalf of a marketplace seller who does
21 not have a retail location in this state or report such retail
22 sales and provide customer notifications pursuant to
23 subsection (m).

24 (c) Marketplace facilitators that collect simplified
25 sellers use tax under this section shall report and remit the
26 tax in accordance with the provisions of Section 40-23-193 and
27 Section 4 of this act and shall maintain records of all sales

1 delivered to a location in Alabama, including copies of
2 invoices showing the purchaser, address, purchase amount, and
3 simplified sellers use tax collected. Such records shall be
4 made available for review and inspection upon request by the
5 department.

6 (d) Marketplace facilitators who properly collect
7 and then remit to the department in a timely manner simplified
8 sellers use tax on sales in accordance with the provisions of
9 this section by or on behalf of marketplace sellers shall be
10 eligible for the discount provided under Section 40-23-194,
11 Code of Alabama 1975.

12 (e) The collection and remittance of simplified
13 sellers use tax under this section relieves the marketplace
14 facilitator, the marketplace seller, and the purchaser from
15 any additional state or local sales and use taxes on the
16 transactions for which simplified sellers use tax was
17 collected and remitted.

18 (f) Marketplace facilitators that collect simplified
19 sellers use tax under this section shall not be subject to
20 audit or review by any Alabama locality for simplified sellers
21 use tax.

22 (g) Marketplace facilitators participating in the
23 simplified sellers use tax program shall be granted the
24 amnesty protections otherwise provided for eligible sellers
25 under Section 40-23-199.

26 (h) Marketplace sellers for whom marketplace
27 facilitators collect and remit simplified sellers use tax in

1 accordance with the provisions of this section on all sales
2 made by or on behalf of the marketplace seller and delivered
3 into Alabama shall be granted the continued participation and
4 amnesty protections provided for eligible sellers under
5 Sections 40-23-198 and 40-23-199.

6 (i) The marketplace facilitator shall provide the
7 purchaser with a statement or invoice showing that the
8 simplified sellers use tax was collected and shall be remitted
9 on the purchaser's behalf. The statement shall be in a manner
10 prescribed by the department.

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

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

22 (l) Marketplace facilitators shall be subject to the
23 penalty provisions and procedures of Section 40-2A-11, Code of
24 Alabama 1975 and reporting requirements of Section
25 40-2-11(7)b, Code of Alabama 1975.

26 (m) Effective September 1, 2018, any marketplace
27 facilitator who does not collect and remit simplified sellers

1 use tax on Alabama retail sale transactions shall be required
2 to report such retail sales and provide customer
3 notifications, within constitutional limitations, pursuant to
4 Section 40-2-11(7)(b), Code of Alabama 1975, and rules
5 promulgated thereunder. This provision shall apply on an
6 annual basis, starting September 1, 2018, for any marketplace
7 facilitator that has more than two hundred and fifty thousand
8 dollars (\$250,000) in retail sales in Alabama for the
9 preceding 12 months. Such retail sales shall include those
10 made directly by the marketplace facilitator and shall also
11 include those retail sales made by marketplace sellers.

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

15 Section 4. Effective January 1, 2019, in addition to
16 the simplified sellers use tax levied under 40-23-193, there
17 is hereby levied a one percent (1%) tax on the sales price on
18 any tangible personal property sold or delivered into Alabama
19 by an eligible seller participating in the simplified sellers
20 use tax remittance program. Proceeds from the additional one
21 percent (1%) simplified sellers use tax shall be distributed
22 to each municipality in the state on a prorated basis
23 according to population as determined in the most recent
24 federal census prior to the distribution.

25 Section 5. This act shall become effective
26 immediately following its passage and approval by the
27 Governor, or upon its otherwise becoming law.

