

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

1 ENGROSSED

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4 A BILL  
5 TO BE ENTITLED  
6 AN ACT  
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8 To amend Sections 40-23-190 and 40-23-191, Code of  
9 Alabama 1975, relating to remote entity nexus and simplified  
10 sellers use tax; to allow an out-of-state vendor with physical  
11 presence established only through acquisition of an in-state  
12 company the ability to participate in the Simplified Sellers  
13 Use Tax Program; and to require marketplace facilitators to  
14 collect and remit simplified sellers use tax or be required to  
15 report such sales.

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

19 "§40-23-190.

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

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

26 "(2) The out-of-state vendor and the in-state  
27 business use an identical or substantially similar name,

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

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

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

23 "(1) One or both entities is a corporation, and one  
24 entity and any party related to that entity in a manner that  
25 would require an attribution of stock from the corporation to  
26 the party or from the party to the corporation under the  
27 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~~  
26 ~~liability partnership, corporation, or other legal entity~~ A  
27 seller that sells tangible personal property or a service, but

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

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

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

21 "~~(4)~~ (5) SIMPLIFIED SELLERS USE TAX. The ~~eight~~  
22 ~~percent~~ tax to be collected, reported, and remitted by  
23 eligible sellers who are participating in the program pursuant  
24 to requirements and procedures established pursuant to this  
25 part.

26 "~~(5)~~ (6) SIMPLIFIED USE TAX REMITTANCE PROGRAM or  
27 PROGRAM. The program established in this part to provide a

1 mechanism for eligible sellers to collect, report, and remit  
2 the simplified sellers use tax established pursuant to this  
3 part.

4 "~~(6)~~ (7) STATE. The State of Alabama."

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

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

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

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

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

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

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

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

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

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

14           1. Payment processing services;

15           2. Fulfillment or storage services;

16           3. Listing products for sale;

17           4. Setting prices;

18           5. Branding sales as those of the marketplace  
19 facilitator;

20           6. Order taking;

21           7. Advertising or promotion; or

22           8. Providing customer service or accepting or  
23 assisting with returns or exchanges.

24           (3) MARKETPLACE SELLER. A seller that is not a  
25 related party, as prescribed in Section 40-23-190(c), to a  
26 marketplace facilitator and that makes sales through any

1 physical or electronic marketplaces operated by a marketplace  
2 facilitator.

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

4 (5) PURCHASER. A person who purchases or contracts  
5 to purchase tangible personal property as defined in Section  
6 40-12-220.

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

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

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

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

18 (10) STATE. The State of Alabama.

19 (b) By no later than January 1, 2019, marketplace  
20 facilitators, must either register with the department to  
21 collect and remit simplified sellers use tax on retail sales  
22 made through the marketplace facilitator's marketplace by or  
23 on behalf of a marketplace seller that are delivered in  
24 Alabama, whether by the marketplace facilitator or another  
25 person, or report such retail sales and provide customer  
26 notifications pursuant to subsection (m). This provision shall  
27 apply to any marketplace facilitator that has more than the



1 qualifying amount in retail sales in Alabama for the preceding  
2 twelve (12) months. Such retail sales shall include those made  
3 directly by the marketplace facilitator and shall also include  
4 those retail sales made by marketplace sellers.

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

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

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

24 (f) Marketplace facilitators that collect simplified  
25 sellers use tax shall not be subject to audit or review by any  
26 Alabama locality for simplified sellers use tax. Sales by  
27 marketplace sellers for which simplified sellers use tax has

1       been collected shall not be subject to audit or review by an  
2       Alabama locality for simplified sellers use tax. This  
3       exclusion shall not preclude an Alabama locality from auditing  
4       or reviewing any other sales by a marketplace seller for which  
5       sales or use tax would be due.

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

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

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

24              (i) No class action may be brought against a  
25       marketplace facilitator in any court of this state on behalf  
26       of customers for an overpayment of simplified sellers use tax

1 collected and remitted on sales facilitated by the marketplace  
2 facilitator.

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

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

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

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

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

25 ~~Section 4. Notwithstanding any language to the~~  
26 ~~contrary in Sections 40-23-193, 40-23-197, and 40-23-197.1,~~  
27 ~~effective January 1, 2019, in addition to the simplified~~

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

21           Section 5. This act shall become effective  
22 immediately following its passage and approval by the  
23 Governor, or upon 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 Ways and Means  
General Fund..... 01-MAR-18

Read for the second time and placed  
on the calendar 2 amendments ..... 08-MAR-18

Read for the third time and passed  
as amended..... 13-MAR-18

Yeas 87, Nays 8, Abstains 1

Jeff Woodard  
Clerk