

HB364 INTRODUCED



1 HB364
2 KHHTTAU-1
3 By Representatives Lomax, Shirey, Almond
4 RFD: Ways and Means General Fund
5 First Read: 27-Feb-25



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SYNOPSIS:

Under existing law, marketplace facilitators that contract with marketplace sellers to facilitate the sale of the marketplace seller's products through a physical or electronic marketplace must register with the Department of Revenue to collect the simplified sellers use tax (SSUT) on retail sales made through the marketplace facilitator's marketplace by or on behalf of the marketplace seller for delivery in Alabama.

This bill would provide that local delivery services are not marketplace facilitators subject to the simplified sellers use tax remittance program.

A BILL
TO BE ENTITLED
AN ACT

Relating to the simplified sellers use tax; to amend Section 40-23-199.2, Code of Alabama 1975, to exclude local delivery services from the definition of marketplace facilitator; and to provide that local delivery service transactions are outside the simplified sellers use tax remittance program, but subject to state and local sales and use taxes.



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29 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

30 Section 1. Section 40-23-199.2, Code of Alabama 1975,
31 is amended as follows:

32 "§40-23-199.2

33 (a) For the purpose of ~~this Act 2018-539~~this section,
34 the following terms ~~shall~~ have the respective meanings
35 ~~ascribed to them~~:

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

37 (2) MARKETPLACE FACILITATOR. A person that contracts
38 with marketplace sellers to facilitate for a consideration,
39 regardless of whether deducted as fees from the transaction,
40 the sale of the marketplace seller's products through a
41 physical or electronic marketplace operated by a person, and
42 engages:

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

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

47 2. Owning or operating the infrastructure, electronic
48 or physical, or technology that brings purchasers and
49 marketplace sellers together;

50 3. Providing a virtual currency that purchasers are
51 allowed or required to use to purchase products from the
52 marketplace seller; or

53 4. Software development or research and development
54 activities related to any of the activities described in
55 paragraph b. if such activities are directly related to a
56 physical or electronic marketplace operated by a person or an



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57 affiliated person^r; and

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

60 1. Payment processing services;

61 2. Fulfillment or storage services;

62 3. Listing products for sale;

63 4. Setting prices;

64 5. Branding sales as those of the marketplace
65 facilitator;

66 6. Order taking;

67 7. Advertising or promotion; or

68 8. Providing customer service or accepting or assisting
69 with returns or exchanges.

70 c. The term "marketplace facilitator" does not include
71 a person that picks up goods from Alabama Retail Sellers and
72 delivers them using couriers, or persons who deliver goods
73 using a personal means of transportation, including a car or
74 bicycle, or other equivalent means of transportation, or
75 maintains a website or mobile application used primarily to
76 facilitate the delivery or sale of goods by Alabama Retail
77 Sellers, such as restaurants, grocery stores, pharmacies, and
78 other businesses; provided, that the Alabama Retail Seller:

79 1. Has a business address in the State of Alabama for
80 the purpose of making retail sales; or

81 2. Is affiliated with one or more Alabama Retail
82 Sellers and is required to collect and remit sales or use tax
83 pursuant to Section 40-23-190.

84 d. Sales of goods by persons described in paragraph



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85 (a) (2)c. close where the goods are picked up at the location
86 of the Alabama Retail Seller, who shall collect and remit
87 state sales taxes under Title 40 Chapter 23 Article 2 and
88 local sales taxes under any local law, municipal ordinance, or
89 county ordinance enacted under Section 40-12-4.

90 (3) MARKETPLACE SELLER. A seller that is not a related
91 party, as prescribed in Section 40-23-190(c), to a marketplace
92 facilitator and that makes sales through any physical or
93 electronic marketplaces operated by a marketplace facilitator.

94 (4) PERSON. As defined in Section 40-23-1-~~(a)(1)~~.

95 (5) PURCHASER. A person who purchases or contracts to
96 purchase tangible personal property as defined in Section
97 40-12-220.

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

101 (7) RETAIL SALE. As defined in Section 40-23-1-~~(a)(10)~~,
102 other than sales of motor vehicles as defined in Section
103 40-12-240.

104 (8) SELLER. An individual, trust, estate, fiduciary,
105 partnership, limited liability company, limited liability
106 partnership, corporation, or other legal entity.

107 (9) SIMPLIFIED SELLERS USE TAX. The tax as levied under
108 Section 40-23-193.

109 (10) STATE. The State of Alabama.

110 ~~(b) By no later than January 1, 2019,~~
111 ~~marketplace~~Marketplace facilitators must either register with
112 the department to collect and remit simplified sellers use tax



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113 on retail sales made through the marketplace facilitator's
114 marketplace by or on behalf of a marketplace seller that are
115 delivered in Alabama, whether by the marketplace facilitator
116 or another person, or report such retail sales and provide
117 customer notifications pursuant to subsection (m). This
118 subsection shall apply to any marketplace facilitator that has
119 more than the qualifying amount in retail sales in Alabama for
120 the preceding 12 months. Such retail sales shall include those
121 made directly by the marketplace facilitator and shall also
122 include those retail sales made by marketplace sellers through
123 the marketplace facilitator's marketplace. The collection and
124 reporting requirements of this subsection shall not apply to
125 retail sales other than those made through a marketplace
126 facilitator's marketplace.

127 (c) Marketplace facilitators that collect simplified
128 sellers use tax under this section shall report and remit the
129 tax in accordance with the provisions of Section 40-23-193 and
130 shall maintain records of all sales delivered to a location in
131 Alabama, including copies of invoices showing the purchaser,
132 address, purchase amount, and simplified sellers use tax
133 collected. Such records shall be made available for review and
134 inspection upon request by the department.

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

140 (e) The collection and remittance of simplified sellers



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141 use tax relieves the marketplace facilitator, the marketplace
142 seller, and the purchaser from any additional state or local
143 sales and use taxes on the transactions for which simplified
144 sellers use tax was collected and remitted.

145 (f) Marketplace facilitators that collect simplified
146 sellers use tax shall not be subject to audit or review by any
147 Alabama locality for simplified sellers use tax. Sales by
148 marketplace sellers for which simplified sellers use tax has
149 been collected shall not be subject to audit or review by an
150 Alabama locality for simplified sellers use tax. This
151 exclusion shall not preclude an Alabama locality from auditing
152 or reviewing any other sales by a marketplace seller for which
153 sales or use tax would be due.

154 (g) Marketplace sellers for whom marketplace
155 facilitators collect and remit simplified sellers use ~~tax~~taxes
156 in accordance with the provisions of this section on all sales
157 made by or on behalf of the marketplace seller that are
158 delivered in Alabama shall be granted the continued
159 participation and amnesty protections provided for eligible
160 sellers under Sections 40-23-198 and 40-23-199.

161 (h) The marketplace facilitator shall provide the
162 purchaser with a statement or invoice showing that the
163 simplified sellers use tax was collected and shall be remitted
164 on the purchaser's behalf. The statement shall be in a manner
165 prescribed by the department.

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



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169 collected and remitted on sales facilitated by the marketplace
170 facilitator.

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

176 (k) Marketplace facilitators shall be subject to the
177 penalty provisions and procedures of Section 40-2A-11 and
178 reporting requirements of Section 40-2-11(7) ~~(b)~~b..

179 (l) The distribution of simplified sellers use tax
180 remitted by marketplace facilitators shall be made in
181 accordance with Sections 40-23-197 and 40-23-197.1.

182 (m) ~~Effective January 1, 2019, any~~Any marketplace
183 facilitator who does not collect and remit sales, use, or
184 simplified sellers use tax on Alabama retail sale transactions
185 of qualifying amounts shall be required to report such retail
186 sales and provide customer notifications, within
187 constitutional limitations, pursuant to Section
188 40-2-11(7) ~~(b)~~b. and rules ~~promulgated~~adopted thereunder.

189 (n) The department may adopt, ~~promulgate,~~ and enforce
190 reasonable rules ~~and regulations~~ for the administration and
191 enforcement of ~~Act 2018-539~~this section."

192 Section 2. This act shall become effective on October
193 1, 2025.