

1 HB418
2 199135-1
3 By Representative Scott
4 RFD: Ways and Means General Fund
5 First Read: 11-APR-19

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8 SYNOPSIS: This bill would provide for the repeal of
9 affiliated nexus and provide for a one-time
10 calculation of the combined average state and local
11 sellers use tax rate by adding the state, average
12 county and average municipal sellers use tax rates.
13 A local rate adjustment would then be made to the
14 simplified sellers use tax rate to approximate the
15 combined average state and local sellers use tax
16 rate.

17
18 A BILL
19 TO BE ENTITLED
20 AN ACT

21
22 Relating to simplified sellers use tax; to provide
23 for the repeal of affiliated nexus; and to provide for an
24 adjustment to the simplified sellers use tax rate.

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Sections 40-23-191 and 40-23-199.2, Code
2 of Alabama 1975, as amended by Act 2018-539 of the 2018
3 Regular Session, are amended to read as follows:

4 "§40-23-191.

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

7 "(b) For the purpose of this part, the following
8 terms shall have the respective meanings ascribed to them in
9 this section:

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

11 "(2) ELIGIBLE SELLER. A seller that sells tangible
12 personal property or a service, but does not have a physical
13 presence in this state or is not otherwise required to collect
14 and remit state and local sales or use tax for sales delivered
15 into the state. The seller shall remain eligible for
16 participation in the Simplified Use Tax Remittance Program
17 unless the seller establishes a presence through a physical
18 business address for the purpose of making in-state retail
19 sales within the State of Alabama ~~or becomes otherwise~~
20 ~~required to collect and remit sales or use tax pursuant to~~
21 ~~Section 40-23-190 through an affiliate making retail sales at~~
22 ~~a physical business address in Alabama.~~ The term also includes
23 a marketplace facilitator as defined in Section
24 40-23-199.2(a) (2) for all sales made through the marketplace
25 facilitator's marketplace by or on behalf of a marketplace
26 seller.

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

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

7 "(5) SIMPLIFIED SELLERS USE TAX. The tax to be
8 collected, reported, and remitted by eligible sellers who are
9 participating in the program pursuant to requirements and
10 procedures established pursuant to this part.

11 "(6) SIMPLIFIED USE TAX REMITTANCE PROGRAM or
12 PROGRAM. The program established in this part to provide a
13 mechanism for eligible sellers to collect, report, and remit
14 the simplified sellers use tax established pursuant to this
15 part.

16 "(7) STATE. The State of Alabama.

17 "§40-23-199.2.

18 "(a) For the purpose of this ~~Act 2018-539~~ this
19 division, the following terms shall have the respective
20 meanings ascribed to them:

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

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

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

9 "3. Providing a virtual currency that purchasers are
10 allowed or required to use to purchase products from the
11 marketplace seller; or

12 "4. Software development or research and development
13 activities related to any of the activities described in
14 paragraph b. if such activities are directly related to a
15 physical or electronic marketplace operated by a person or an
16 affiliated person, and

17 "b. In any of the following activities with respect
18 to the marketplace seller's products:

19 "1. Payment processing services;

20 "2. Fulfillment or storage services;

21 "3. Listing products for sale;

22 "4. Setting prices;

23 "5. Branding sales as those of the marketplace
24 facilitator;

25 "6. Order taking;

26 "7. Advertising or promotion; or

1 "8. Providing customer service or accepting or
2 assisting with returns or exchanges.

3 "(3) MARKETPLACE SELLER. A seller that ~~is not a~~
4 ~~related party, as prescribed in Section 40-23-190(c), to a~~
5 ~~marketplace facilitator and that~~ makes sales through any
6 physical or electronic marketplaces operated by a marketplace
7 facilitator.

8 "(4) PERSON. As defined in Section 40-23-1 (a) (1).

9 "(5) PURCHASER. A person who purchases or contracts
10 to purchase tangible personal property as defined in Section
11 40-12-220.

12 "(6) QUALIFYING AMOUNT. Two hundred and fifty
13 thousand dollars (\$250,000) or an amount as otherwise
14 prescribed by the department.

15 "(7) RETAIL SALE. As defined in Section
16 40-23-1(a) (10), other than sales of motor vehicles as defined
17 in Section 40-12-240.

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

21 "(9) SIMPLIFIED SELLERS USE TAX. The tax as levied
22 under Section 40-23-193.

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

24 (b) ~~By no later than January 1, 2019, marketplace~~
25 Marketplace facilitators must either register with the
26 department to collect and remit simplified sellers use tax on
27 retail sales made through the marketplace facilitator's

1 marketplace by or on behalf of a marketplace seller that are
2 delivered in Alabama, whether by the marketplace facilitator
3 or another person, or report such retail sales and provide
4 customer notifications pursuant to subsection (m). This
5 subsection shall apply to any marketplace facilitator that has
6 more than the qualifying amount in retail sales in Alabama for
7 the preceding 12 months. Such retail sales shall include those
8 made directly by the marketplace facilitator and shall also
9 include those retail sales made by marketplace sellers through
10 the marketplace facilitator's marketplace. The collection and
11 reporting requirements of this subsection shall not apply to
12 retail sales other than those made through a marketplace
13 facilitator's marketplace.

14 "(c) Marketplace facilitators that collect
15 simplified sellers use tax under this section shall report and
16 remit the tax in accordance with the provisions of Section
17 40-23-193 and shall maintain records of all sales delivered to
18 a location in Alabama, including copies of invoices showing
19 the purchaser, address, purchase amount, and simplified
20 sellers use tax collected. Such records shall be made
21 available for review and inspection upon request by the
22 department.

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

1 "(e) The collection and remittance of simplified
2 sellers use tax relieves the marketplace facilitator, the
3 marketplace seller, and the purchaser from any additional
4 state or local sales and use taxes on the transactions for
5 which simplified sellers use tax was collected and remitted.

6 "(f) Marketplace facilitators that collect
7 simplified sellers use tax shall not be subject to audit or
8 review by any Alabama locality for simplified sellers use tax.
9 Sales by marketplace sellers for which simplified sellers use
10 tax has been collected shall not be subject to audit or review
11 by an Alabama locality for simplified sellers use tax. This
12 exclusion shall not preclude an Alabama locality from auditing
13 or reviewing any other sales by a marketplace seller for which
14 sales or use tax would be due.

15 "(g) Marketplace sellers for whom marketplace
16 facilitators collect and remit simplified sellers use tax in
17 accordance with the provisions of this section on all sales
18 made by or on behalf of the marketplace seller that are
19 delivered in Alabama shall be granted the continued
20 participation and amnesty protections provided for eligible
21 sellers under Sections 40-23-198 and 40-23-199.

22 "(h) The marketplace facilitator shall provide the
23 purchaser with a statement or invoice showing that the
24 simplified sellers use tax was collected and shall be remitted
25 on the purchaser's behalf. The statement shall be in a manner
26 prescribed by the department.

1 "(i) No class action may be brought against a
2 marketplace facilitator in any court of this state on behalf
3 of customers for an overpayment of simplified sellers use tax
4 collected and remitted on sales facilitated by the marketplace
5 facilitator.

6 "(j) Any taxpayer ~~who remits~~ on whose behalf
7 simplified sellers use tax is remitted pursuant to this
8 section shall be entitled to refunds or credits to the same
9 extent and in the same manner provided for in Section
10 40-23-196 for taxes collected and remitted through the
11 Simplified Sellers Use Tax Remittance Program.

12 "(k) Marketplace facilitators shall be subject to
13 the penalty provisions and procedures of Section 40-2A-11 and
14 reporting requirements of Section 40-2-11(7) (b).

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

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

25 "(n) The department may adopt, promulgate, and
26 enforce reasonable rules and regulations for the
27 administration and enforcement of this ~~Act 2018-539~~ this act."

1 Section 2. (a) No later than December 31, 2019, the
2 Department shall be required to calculate the combined rate
3 which shall be the sum of the state, average county, and
4 average municipal sellers use tax rate in this state, rounded
5 to the nearest one percent.

6 (b) The combined rate shall be calculated based on
7 the state general sellers use tax rate, county general sellers
8 use tax rates, and municipal general sellers use tax rates in
9 effect as of January 1, 2019.

10 (c) Effective October 1, 2020, a local rate
11 adjustment in the amount of the excess if any of the combined
12 rate over the rate prescribed in section 40-23-193 shall be
13 collected and remitted by sellers participating in the
14 simplified sellers use tax program on all eligible sales.
15 This local rate adjustment to the simplified sellers use tax
16 shall be collected and remitted in addition to the tax
17 prescribed in section 40-23-193 and shall be inclusive of the
18 discount prescribed in section 40-23-194. The proceeds of the
19 local rate adjustment shall be distributed in accordance with
20 the provisions of subsection (b) of Section 40-23-197, less
21 any adjustments as prescribed in Section 40-23-196. The local
22 adjustment levied pursuant to this section shall not exceed
23 one percentage point above the simplified sellers use tax rate
24 prescribed in section 40-23-193.

25 Section 3. Section 40-23-190, Code of Alabama 1975,
26 as amended by Act 2018-539 of the 2018 Regular Session, is
27 repealed.

1 Section 4. This act shall become effective October
2 1, 2019, following its passage and approval by the Governor,
3 or its otherwise becoming law.