HB470
192556-6
By Representative Scott
RFD: Ways and Means General Fund
First Read: 01-MAR-18
ENROLLED, An Act,

To amend Sections 40-23-190, 40-23-191, 40-23-194, and 40-23-197, Code of Alabama 1975, relating to remote entity nexus and simplified sellers use tax; to allow an out-of-state vendor with physical presence established only through acquisition of an in-state company the ability to participate in the Simplified Sellers Use Tax Program; and to require marketplace facilitators to collect and remit simplified sellers use tax or be required to report such sales.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 40-23-190 and 40-23-191, 40-23-190, 40-23-191, 40-23-194 and 40-23-197, Code of Alabama 1975, are amended to read as follows:

"§40-23-190.

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

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

"(2) The out-of-state vendor and the in-state business use an identical or substantially similar name, tradename, trademark, or goodwill, to develop, promote, or maintain sales, or the in-state business and the out-of-state
vendor pay for each other's services in whole or in part contingent upon the volume or value of sales, or the in-state business and the out-of-state vendor share a common business plan or substantially coordinate their business plans, or the in-state business provides services to, or that inure to the benefit of, the out-of-state business related to developing, promoting, or maintaining the in-state market.

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

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

"(1) One or both entities is a corporation, and one entity and any party related to that entity in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of Section 318 of the Internal Revenue Code
owns directly, indirectly, beneficially, or constructively at least 50 percent of the value of the corporation's outstanding stock;

"(2) One or both entities is a limited liability company, partnership, estate, or trust and any member, partner, or beneficiary, and the limited liability company, partnership, estate, or trust and its members, partners, or beneficiaries own directly, indirectly, beneficially, or constructively, in the aggregate, at least 50 percent of the profits, or capital, or stock, or value of the other entity or both entities; or

"(3) An individual stockholder and the members of the stockholder's family, as defined in Section 318 of the Internal Revenue Code, owns directly, indirectly, beneficially, or constructively, in the aggregate, at least 50 percent of the value of both entities' outstanding stock.

"§40-23-191.

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

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

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

"(2) ELIGIBLE SELLER. An individual, trust, estate, fiduciary, partnership, limited liability company, limited
A seller that sells tangible personal property or a service, but does not have a physical presence in this state or is not otherwise required to collect and remit state and local sales or use tax for sales delivered into the state. The seller shall remain eligible for participation in the Simplified Use Tax Remittance Program unless the seller establishes a presence through a physical business address for the purpose of making instate retail sales within the State of Alabama or becomes otherwise required to collect and remit sales or use tax pursuant to Section 40-23-190 through an affiliate making retail sales at a physical business address in Alabama. The term also includes a marketplace facilitator as defined in Section 3(a)(2) of this act for all sales made through the marketplace facilitator’s marketplace by or on behalf of a marketplace seller.

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

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

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

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

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

"§40-23-194.

Eligible sellers may deduct and retain a discount equal to two percent of the simplified sellers use tax properly collected and then remitted to the department in a timely manner, provided that for tax periods beginning on or after January 1, 2019, the allowance for discount shall not apply to any taxes collected and then remitted which are in excess of four-hundred thousand dollars ($400,000). The department is authorized to prescribe rules for administering the discount. No discount shall be allowed for any taxes which are not timely reported and remitted to the department pursuant to program procedures.

"§40-23-197.

(a) The proceeds of simplified sellers use tax paid pursuant to this part shall be appropriated to the department, which shall retain the amount necessary to fund the administrative costs of implementing and operating the program.
and to cover the amounts paid for refunds authorized in Section 40-23-196. The balance of the amounts collected shall be distributed as follows:

1. Fifty percent (50%) to the State Treasury and allocated seventy-five percent (75%) to the General Fund and twenty-five percent (25%) to the Education Trust Fund.

2. Twenty-five percent (25%) to each county in the state on a prorated basis according to population as determined in the most recent federal census prior to the distribution.

3. Twenty-five percent (25%) of funds to be distributed to each municipality in the state on a prorated basis according to population as determined in the most recent federal census prior to the distribution.

(b) Effective for tax periods beginning on or after January 1, 2019, the net proceeds after the distribution provided in subsection (a)(1) shall be distributed sixty percent (60%) to each municipality in the state on a basis of the ratio of the population of each municipality to the total population of all municipalities in the state as determined in the most recent federal census prior to distribution and forty percent (40%) to each county in the state, and deposited into the general fund of the respective county commission, on a basis of the ratio of the population of each county to the
total population of all counties in the state as determined in
the most recent federal census prior to the distribution.

(b) (c) The distribution of the proceeds from the
simplified sellers use tax paid to counties and municipalities
shall occur quarterly in a manner prescribed by the
department."

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

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

(1) DEPARTMENT. The Alabama Department of Revenue.

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

a. Either directly or indirectly, through one or
more affiliated persons in any of the following:
1. Transmitting or otherwise communicating the offer or acceptance between the purchaser and marketplace seller;

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

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

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

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

1. Payment processing services;

2. Fulfillment or storage services;

3. Listing products for sale;

4. Setting prices;

5. Branding sales as those of the marketplace facilitator;

6. Order taking;

7. Advertising or promotion; or

8. Providing customer service or accepting or assisting with returns or exchanges.
(3) MARKETPLACE SELLER. A seller that is not a related party, as prescribed in Section 40-23-190(c), to a marketplace facilitator and that makes sales through any physical or electronic marketplaces operated by a marketplace facilitator.

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

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

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

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

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

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

(10) STATE. The State of Alabama.

(b) By no later than January 1, 2019, marketplace facilitators, must either register with the department to collect and remit simplified sellers use tax on retail sales made through the marketplace facilitator’s marketplace by or
on behalf of a marketplace seller that are delivered in Alabama, whether by the marketplace facilitator or another person, or report such retail sales and provide customer notifications pursuant to subsection (m). This provision shall apply to any marketplace facilitator that has more than the qualifying amount in retail sales in Alabama for the preceding twelve (12) months. Such retail sales shall include those made directly by the marketplace facilitator and shall also include those retail sales made by marketplace sellers through the marketplace facilitator’s marketplace. The collection and reporting requirements of this provision shall not apply to retail sales other than those made through a marketplace facilitator’s marketplace.

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

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

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

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

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

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

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

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

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

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

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

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

Section 4. By no later than January 1, 2019, the department shall initiate an online application process to simplify refunds requested pursuant to Section 40-23-196.

Notwithstanding any language to the contrary in Sections 40-23-193, 40-23-197, and 40-23-197.1, effective January 1, 2019, in addition to the simplified sellers use tax levied under 40-23-193, there is hereby levied a one percent (1%) tax on the sales price on any tangible personal property, the sale of which is facilitated by a marketplace facilitator or sold by an eligible seller participating in the simplified sellers use tax remittance program and is shipped or otherwise delivered in Alabama. All proceeds from the additional one percent (1%) simplified sellers use tax shall be distributed
to each municipality on the basis of the ratio of the
population of each municipality to the total population of all
municipalities in the state as determined in the most recent
federal census prior to the distribution. Any taxpayer who
pays a combined simplified sellers use tax rate, as levied in
40-23-193 and this section, that is higher than the actual
state and local sales or use tax levied in the locality where
the sale was delivered may file for a refund or credit of the
excess amount paid in accordance with Section 40-23-196. By no
later than January 1, 2019, the department shall initiate an
online application process to simplify refunds requested
pursuant to this provision.

Section 5. This act shall become effective
immediately the first day of the second month following its
passage and approval by the Governor, or upon its otherwise
becoming law.
I hereby certify that the within Act originated in and was passed by the House 13-MAR-18, as amended.

Jeff Woodard
Clerk

Senate 28-MAR-18 Amended and Passed
House 28-MAR-18 Concurred in Senate Amendment