

1 SB218
2 197934-1
3 By Senator Albritton
4 RFD: Finance and Taxation General Fund
5 First Read: 02-APR-19

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8 SYNOPSIS: This bill would clarify transactions
9 for which simplified sellers use tax cannot be
10 collected and remitted and clarify for which
11 transactions state and local sales or use taxes
12 must be remitted.

13 This bill would provide for a one-time
14 calculation of the combined average state and local
15 sellers use tax rate by adding the state, average
16 county and average municipal sellers use tax rates.
17 A local rate adjustment would then be made to the
18 simplified sellers use tax rate to approximate the
19 combined average state and local sellers use tax
20 rate.

21
22 A BILL
23 TO BE ENTITLED
24 AN ACT

25
26 Relating to simplified sellers use tax; to modify
27 the definition of eligible seller; to clarify transactions for

1 which simplified sellers use tax cannot be remitted; to
2 clarify transactions for which state and local sales or use
3 taxes must be remitted; and to provide for an adjustment to
4 the simplified sellers use tax rate.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

6 Section 1. Sections 40-23-191, 40-23-192, 40-23-193,
7 40-23-195, and 40-23-199.2, Code of Alabama 1975, as amended
8 by Act 2018-539 of the 2018 Regular Session, are amended to
9 read as follows:

10 "§40-23-191.

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

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

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

17 "(2) ELIGIBLE SALE. The sale of tangible personal
18 property that is shipped or otherwise delivered to a location
19 within a county and municipality, if applicable, in this state
20 in which the seller does not have a physical location at which
21 it engages in the business of making retail sales
22 transactions.

23 "~~(2)~~ (3) ELIGIBLE SELLER. A seller that is
24 participating in the simplified sellers use tax remittance
25 program when making an eligible sale of tangible personal
26 property shipped or otherwise delivered in or into this state
27 ~~that sells tangible personal property or a service, but does~~

1 ~~not have a physical presence in this state or is not otherwise~~
2 ~~required to collect and remit state and local sales or use tax~~
3 ~~for sales delivered into the state. The seller shall remain~~
4 ~~eligible for participation in the Simplified Use Tax~~
5 ~~Remittance Program unless the seller establishes a presence~~
6 ~~through a physical business address for the purpose of making~~
7 ~~in-state retail sales within the State of Alabama or becomes~~
8 ~~otherwise required to collect and remit sales or use tax~~
9 ~~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 40-23-199.2(a)(2) for all sales made through the
13 marketplace facilitator's marketplace by or on behalf of a
14 marketplace seller.

15 "(4) IN-STATE SELLER. A seller that has a physical
16 location in this state at which it engages in the business of
17 making retail sales transactions.

18 ~~(3)~~ (5) LOCALITY. A county, municipality, or other
19 local governmental taxing authority which levies a local sales
20 and/or use tax.

21 ~~"(4)~~ (6) SELLER. An individual, trust, estate,
22 fiduciary, partnership, limited liability company, limited
23 liability partnership, corporation, or other legal entity.

24 ~~"(5)~~ (7) SIMPLIFIED SELLERS USE TAX. The tax to be
25 collected, reported, and remitted by eligible sellers who are
26 participating in the program pursuant to requirements and
27 procedures established pursuant to this part.

1 "~~(6)~~ (8) SIMPLIFIED USE TAX REMITTANCE PROGRAM or
2 PROGRAM. The program established in this part to provide a
3 mechanism for eligible sellers to collect, report, and remit
4 the simplified sellers use tax established pursuant to this
5 part.

6 "~~(7)~~ (9) STATE. The State of Alabama.

7 "§40-23-192.

8 "(a) There is hereby established The Simplified
9 Sellers Use Tax Remittance Program designed to allow an
10 eligible seller ~~who participates in the program~~ to collect,
11 report, and remit the simplified sellers use tax authorized
12 herein on eligible sales in lieu of the sales or use taxes
13 otherwise due by or on behalf of Alabama customers who have
14 purchased items from the eligible seller that were shipped or
15 otherwise delivered in or into a location in Alabama by the
16 eligible seller. Participation in the program shall be by
17 election of the eligible seller and only those eligible
18 sellers accepted into the program as set out herein shall
19 collect and remit the simplified sellers use tax.

20 Participation in the program shall not be construed as
21 subjecting an eligible seller to franchise, income,
22 occupation, or any other type of taxes or licensing
23 requirements levied or imposed by the state of Alabama or any
24 locality.

25 "(b) The program shall be administered by the
26 department, which pursuant to this part, shall develop and
27 make available to the eligible seller an easily accessible,

1 online system in which to collect, report, and remit the
2 simplified sellers use tax. Participants in the program shall
3 be required to collect, report, and remit the simplified
4 sellers use tax for all eligible sales shipped or otherwise
5 delivered into in or the state as long as remaining a
6 participant in the program. Eligible sellers may continue in
7 the program as long as they comply with all provisions of this
8 part and procedures adopted by the department for
9 participation in the program.

10 "(c) In order to participate in the program, an
11 eligible seller shall make application with the department on
12 a form designed by the department for that purpose. The
13 application shall require, at a minimum, that the eligible
14 seller:

15 "(1) Certifies that he or she is an eligible seller
16 as defined herein.

17 "(2) Agrees to collect, report, and remit the
18 simplified sellers use tax for all eligible sales shipped or
19 otherwise delivered in or into the state as long as he or she
20 remains a participant in the program.

21 "(3) Agrees to provide the department with
22 information related to sales to Alabama customers as required
23 by this part or requested by the department.

24 "(4) Agrees to comply with all program reporting
25 requirements established under program procedures.

26 Any applicant who falsely certifies on his or her
27 application that he or she is an eligible seller with the

1 State of Alabama shall be subject to the negligence and/or
2 fraud penalties under procedures found in Section 40-2A-11.

3 "(d) The department shall review all applications
4 for participation, and where an applicant is determined to
5 satisfy requirements to participate in the program, shall
6 establish a simplified sellers use tax account for the
7 eligible seller which will allow the eligible seller to report
8 and remit all simplified sellers use tax collected pursuant to
9 this part.

10 "(e) A participating eligible seller shall be
11 removed from the program if:

12 "(1) He or she substantially fails to collect,
13 report, and remit simplified sellers use taxes.

14 "(2) He or she fails to submit required reports on a
15 timely basis.

16 "(3) Upon a determination that the seller is no
17 longer an eligible seller, as defined by this part.

18 "(4) There is any other finding by the department
19 that the participant is not in compliance with the terms
20 authorizing participation in the program.

21 "Any participant who fails to report that he or she
22 is no longer eligible for participation in the program or
23 falsely certifies on any report that he or she is eligible
24 shall be subject to the negligence and/or fraud penalties
25 under procedures found in Section 40-2A-11. Removal from the
26 program or assessment of the fraud or negligence penalty shall

1 be subject to appeal rights and procedures established in this
2 title.

3 "§40-23-193.

4 "(a) The simplified sellers use tax due under the
5 program is eight percent of the sales price on any tangible
6 personal property ~~sold or~~ shipped or otherwise delivered in or
7 into Alabama ~~by an eligible seller participating in the~~
8 ~~program~~. The collection and remittance of simplified sellers
9 use tax on eligible sales relieves the eligible seller and the
10 purchaser from any additional state or local sales and use
11 taxes on the transaction.

12 "(b) The simplified sellers use tax collected by the
13 eligible seller, at the rate of eight percent, shall be
14 electronically reported in the manner prescribed by the
15 department on or before the 20th day of the month next
16 succeeding the month in which the tax accrues. The eligible
17 seller shall remit the tax at the required rate or the amount
18 of the tax collected, whichever is greater. The required
19 monthly reporting from the eligible seller shall only include
20 statewide totals of the simplified sellers use taxes collected
21 and remitted, and shall not require information related to the
22 location of purchasers or amount of sales in or into a
23 specific locality. The department may not require an eligible
24 seller to report and remit the simplified sellers use tax more
25 frequently than is required for other sellers.

26 "(c) ~~No~~ Except as provided in Section 2 of this act,
27 no eligible seller shall be required to collect the tax at a

1 rate greater than eight percent on eligible sales, regardless
2 of the combined actual sales or use tax rates that may
3 otherwise be applicable. Additionally, no sales for which the
4 simplified sellers use tax is collected on eligible sales
5 shall be subject to any additional sales or use tax from any
6 locality levying a sales or use tax with respect to the
7 purchase or use of the property, regardless of the actual
8 sales or use tax rate that might have otherwise been
9 applicable.

10 "(d) The ~~participating~~ eligible seller shall collect
11 the tax on all ~~purchases~~ eligible sales shipped or otherwise
12 delivered in or into Alabama unless the purchaser furnishes
13 the eligible seller with a valid exemption certificate, sales
14 tax license, or direct pay permit issued by the department.
15 The eligible seller shall retain all exemption certificates,
16 sales tax licenses, or direct pay permits in its files, or in
17 such other manner as directed by the department.

18 "(e) The eligible seller shall provide the purchaser
19 with a statement or invoice showing that the simplified
20 sellers use tax was collected and is to be remitted on the
21 purchaser's behalf. The statement shall be in a manner
22 prescribed by the department.

23 "(f) Notwithstanding subsection (a), all state,
24 county, and municipal sales or use taxes levied at the point
25 of delivery shall be collected by the seller and remitted to
26 the appropriate taxing authority for the following
27 transactions:

1 "(1) Sales of tangible personal property shipped or
2 otherwise delivered in or into a location within a county or
3 municipality in this state in which the seller has a physical
4 location where it engages in the business of making retail
5 sales.

6 "(2) Sales of tangible personal property shipped or
7 otherwise delivered to any location in this state by an
8 in-state seller that is not participating in the simplified
9 sellers use tax remittance program, whether delivery is made
10 by the seller or another person.

11 "§40-23-195.

12 "(a) The department may adopt, promulgate, and
13 enforce reasonable rules and regulations related to the
14 implementation, administration, and participation in the
15 program. The department shall have exclusive responsibility
16 for reviewing and accepting applications for participation and
17 for the administration, return processing, and review of the
18 eligibility of sellers participating in the program. Eligible
19 sellers participating in the program shall not be subject to
20 audit or review by any Alabama locality for simplified sellers
21 use tax. Eligible sellers shall maintain records of all sales
22 shipped or otherwise delivered in or into Alabama, including
23 copies of invoices showing the purchaser, address, purchase
24 amount, and simplified sellers use tax collected. Such records
25 shall be made available for review and inspection upon request
26 by the department.

1 "(b) The department may disclose the name of
2 eligible sellers, the effective date the eligible seller began
3 participating in the program and, if applicable, the cease
4 date the eligible seller ceased to participate in the program.

5 "§40-23-199.2.

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

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

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

16 "a. Either directly or indirectly, through one or
17 more affiliated persons in any of the following:

18 "1. Transmitting or otherwise communicating the
19 offer or acceptance between the purchaser and marketplace
20 seller;

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

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

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

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

8 "1. Payment processing services;

9 "2. Fulfillment or storage services;

10 "3. Listing products for sale;

11 "4. Setting prices;

12 "5. Branding sales as those of the marketplace
13 facilitator;

14 "6. Order taking;

15 "7. Advertising or promotion; or

16 "8. Providing customer service or accepting or
17 assisting with returns or exchanges.

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

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

24 "(5) PURCHASER. A person who purchases or contracts
25 to purchase tangible personal property as defined in Section
26 40-12-220.

1 "(6) QUALIFYING AMOUNT. ~~Two~~ In excess of two hundred
2 and fifty thousand dollars (\$250,000) or an amount as
3 otherwise prescribed by the department per year based on the
4 sales from the previous calendar year.

5 "(7) RELATED PARTY. Two entities are related parties
6 under this section if one of the entities meets at least one
7 of the following tests with respect to the other entity:

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

16 "b. One or both entities is a limited liability
17 company, partnership, estate, or trust and any member,
18 partner, or beneficiary, and the limited liability company,
19 partnership, estate, or trust and its members, partners, or
20 beneficiaries own directly, indirectly, beneficially, or
21 constructively, in the aggregate, at least 50 percent of the
22 profits, or capital, or stock, or value of the other entity or
23 both entities; or

24 "c. An individual stockholder and the members of the
25 stockholder's family, as defined in Section 318 of the
26 Internal Revenue Code, owns directly, indirectly,

1 beneficially, or constructively, in the aggregate, at least 50
2 percent of the value of both entities' outstanding stock.

3 ~~"(7)~~ (8) RETAIL SALE. As defined in Section
4 40-23-1(a)(10), other than sales of motor vehicles as defined
5 in Section 40-12-240.

6 ~~"(8)~~ (9) SELLER. An individual, trust, estate,
7 fiduciary, partnership, limited liability company, limited
8 liability partnership, corporation, or other legal entity.

9 ~~"(9)~~ (10) SIMPLIFIED SELLERS USE TAX. The tax as
10 levied under Section 40-23-193.

11 ~~"(10)~~ (11) STATE. The State of Alabama.

12 ~~"(b) By no later than January 1, 2019, marketplace~~
13 Marketplace facilitators must either register with the
14 department to collect and remit simplified sellers use tax on
15 retail sales made through the marketplace facilitator's
16 marketplace by or on behalf of a marketplace seller that are
17 shipped or otherwise delivered in or into Alabama, whether by
18 the marketplace facilitator or another person, or report such
19 retail sales and provide customer notifications pursuant to
20 subsection (m). This subsection shall apply to any marketplace
21 facilitator that has more than the qualifying amount in retail
22 sales in Alabama ~~for the preceding 12 months~~. Such retail
23 sales shall include those made directly by the marketplace
24 facilitator and shall also include those retail sales made by
25 marketplace sellers through the marketplace facilitator's
26 marketplace. The collection and reporting requirements of this

1 subsection shall not apply to retail sales other than those
2 made through a marketplace facilitator's marketplace.

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

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

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

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

1 exclusion shall not preclude an Alabama locality from auditing
2 or reviewing any other sales by a marketplace seller for which
3 sales or use tax would be due and not satisfied through the
4 collection of simplified sellers use tax on such transactions.

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

23 "(j) Any taxpayer ~~who remits~~ on whose behalf
24 simplified sellers use tax is remitted pursuant to this
25 section shall be entitled to refunds or credits to the same
26 extent and in the same manner provided for in Section

1 40-23-196 for taxes collected and remitted through the
2 Simplified Sellers Use Tax Remittance Program.

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

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

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

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

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

24 (b) The combined rate shall be calculated based on
25 the state general sellers use tax rate, county general sellers
26 use tax rates, and municipal general sellers use tax rates in
27 effect as of January 1, 2019.

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

16 Section 3. Section 40-23-190, Code of Alabama 1975,
17 as amended by Act 2018-539 of the 2018 Regular Session, is
18 repealed.

19 Section 4. This act shall become effective October
20 1, 2019, following its passage and approval by the Governor,
21 or its otherwise becoming law.