

1 SB437
2 170034-3
3 By Senators Pittman, Dial, Bussman, Holtzclaw, Chambliss,
4 Sanford, Marsh, Williams, Reed, Ross, and Smitherman
5 RFD: Finance and Taxation General Fund
6 First Read: 30-APR-15

1 SB437

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4 ENROLLED, An Act,

5 Relating to simplified sellers use tax to establish
6 an easily-accessible method for eligible sellers to remit, on
7 behalf of their customers, use tax on items delivered into
8 Alabama.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. Sections 40-23-191 through 40-23-199 are
11 hereby added to Division 3 of Article 6 of Chapter 23 of Title
12 40 of the Code of Alabama 1975, as follows:

13 §40-23-191.

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

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

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

20 "(2) ELIGIBLE SELLER. An individual, trust, estate,
21 fiduciary, partnership, limited liability company, limited
22 liability partnership, corporation or other legal entity that
23 sells tangible personal property or a service, but does not
24 have a physical presence in this state or is not otherwise
25 required to be subject to requirements for collecting and

1 remitting state and local sales or use tax for sales delivered
2 into the state.

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

6 " (4) SIMPLIFIED SELLERS USE TAX. The eight percent
7 (8%) tax to be collected, reported, and remitted by eligible
8 sellers who are participating in the program pursuant to
9 requirements and procedures established pursuant to this act.

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

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

16 "§40-23-192.

17 "(a) There is hereby established The Simplified
18 Sellers Use Tax Remittance Program designed to allow an
19 eligible seller who participates in the program to collect,
20 report, and remit the simplified sellers use tax authorized
21 herein in lieu of the sales or use taxes otherwise due by or
22 on behalf of Alabama customers who have purchased items from
23 the eligible seller that were shipped or otherwise delivered
24 into Alabama by the eligible seller. Participation in the
25 program shall be by election of the eligible seller and only

1 those eligible sellers accepted into the program as set out
2 herein shall collect and remit the simplified sellers use tax.
3 Participation in the program shall not be construed as
4 subjecting an eligible seller to franchise, income,
5 occupation, or any other type of taxes or licensing
6 requirements levied or imposed by the state of Alabama or any
7 locality.

8 "(b) The program shall be administered by the
9 department, which pursuant to this act, shall develop and make
10 available to the eligible seller an easily-accessible, online
11 system in which to collect, report, and remit the simplified
12 sellers use tax. Participants in the program shall be required
13 to collect, report, and remit the simplified sellers use tax
14 for all sales delivered into the state as long as remaining a
15 participant in the program. Eligible sellers may continue in
16 the program as long as they comply with all provisions of this
17 act and procedures adopted by the department for participation
18 in the program.

19 "(c) In order to participate in the program, an
20 eligible seller shall make application with the department on
21 a form designed by the department for that purpose. The
22 application shall require, at a minimum, that the eligible
23 seller:

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

1 "(2) Agrees to collect, report, and remit the
2 simplified sellers use tax for all sales delivered into the
3 state as long as he or she remains a participant in the
4 program.

5 "(3) Agrees to provide the department with
6 information related to sales to Alabama customers as required
7 by this act or requested by the department.

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

10 "Any applicant who falsely certifies on his or her
11 application that he or she is an eligible seller with the
12 state of Alabama shall be subject to the negligence and/or
13 fraud penalties under procedures found in Section 40-2A-11.

14 "(d) The department shall review all applications
15 for participation, and where an applicant is determined to
16 satisfy requirements to participate in the program, shall
17 establish a simplified sellers use tax account for the
18 eligible seller which will allow the eligible seller to report
19 and remit all simplified sellers use tax collected pursuant to
20 this act.

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

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

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

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

5 "(4) There is any other finding by the department
6 that the participant is not in compliance with the terms
7 authorizing participation in the program.

8 "Any participant who fails to report that he or she
9 is no longer eligible for participation in the program or
10 falsely certifies on any report that he or she is eligible
11 shall be subject to the negligence and/or fraud penalties
12 under procedures found in Section 40-2A-11. Removal from the
13 program or assessment of the fraud or negligence penalty shall
14 be subject to appeal rights and procedures established in this
15 title.

16 "§40-23-193.

17 "(a) The simplified sellers use tax due under the
18 program is eight percent (8%) of the sales price on any
19 tangible personal property sold or delivered into Alabama by
20 an eligible seller participating in the program. The
21 collection and remittance of simplified sellers use tax
22 relieves the eligible seller and the purchaser from any
23 additional state or local sales and use taxes on the
24 transaction.

1 "(b) The simplified sellers use tax collected by the
2 eligible seller, at the rate of eight percent, shall be
3 electronically reported in the manner prescribed by the
4 department on or before the 20th day of the month next
5 succeeding the month in which the tax accrues. The eligible
6 seller shall remit the tax at the required rate or the amount
7 of the tax collected, whichever is greater. The required
8 monthly reporting from the eligible seller shall only include
9 statewide totals of the simplified sellers use taxes collected
10 and remitted, and shall not require information related to the
11 location of purchasers or amount of sales into a specific
12 locality. The department may not require an eligible seller to
13 report and remit the simplified sellers use tax more
14 frequently than is required for other sellers.

15 "(c) No eligible seller shall be required to collect
16 the tax at a rate greater than eight percent (8%), regardless
17 of the combined actual tax rates that may otherwise be
18 applicable. Additionally, no sales for which the simplified
19 sellers use tax is collected shall be subject to any
20 additional sales or use tax from any locality levying a sales
21 or use tax with respect to the purchase or use of the
22 property, regardless of the actual tax rate that might have
23 otherwise been applicable.

24 "(d) The participating eligible seller shall collect
25 the tax on all purchases delivered into Alabama unless the

1 purchaser furnishes the eligible seller with a valid exemption
2 certificate, sales tax license, or direct pay permit issued by
3 the department. The eligible seller shall retain all exemption
4 certificates, sales tax licenses, or direct pay permits in its
5 files, or in such other manner as directed by the department.

6 "(e) The eligible seller shall provide the purchaser
7 with a statement or invoice showing that the simplified
8 sellers use tax was collected and is to be remitted on the
9 purchaser's behalf. The statement shall be in a manner
10 prescribed by the department and shall include the eligible
11 seller's program account number issued by the department upon
12 the eligible seller's approval as a participant in the
13 program.

14 "§40-23-194.

15 "Eligible sellers may deduct and retain a discount
16 equal to two percent of the simplified sellers use tax
17 properly collected and then remitted to the department in a
18 timely manner. The department is authorized to prescribe rules
19 for administering the discount. No discount shall be allowed
20 for any taxes which are not timely reported and remitted to
21 the department pursuant to program procedures.

22 "§40-23-195.

23 "(a) The department may adopt, promulgate, and
24 enforce reasonable rules and regulations related to the
25 implementation, administration, and participation in the

1 program. The department shall have exclusive responsibility
2 for reviewing and accepting applications for participation and
3 for the administration, return processing, and review of the
4 eligibility of sellers participating in the program. Eligible
5 sellers participating in the program shall not be subject to
6 audit or review by any Alabama locality. Eligible sellers
7 shall maintain records of all sales delivered into Alabama,
8 including copies of invoices showing the purchaser, address,
9 purchase amount, and simplified sellers use tax collected.
10 Such records shall be made available for review and inspection
11 upon request by the department.

12 "§40-23-196.

13 "(a) Any taxpayer who pays a simplified sellers use
14 tax through this program that is higher than the actual state
15 and local sales or use tax levied in the locality where the
16 sale was delivered may file for a refund or credit of the
17 excess amount paid to the eligible seller participating in the
18 program. A business taxpayer who has a registered consumer use
19 tax account with the department may claim credit for the
20 overpayment of simplified use tax on their consumer use tax
21 return in a manner prescribed by the department. All other
22 taxpayers may file a petition for refund in the manner
23 prescribed by the department. The petition for refund may only
24 be filed once per year. In the event the amount due to be
25 refunded in a year is less than twenty-five (\$25.00) dollars,

1 payment of the refund may be deferred by the department and
2 combined with amounts due to be paid pursuant to subsequent
3 annual refund petitions for a period of up to three years.

4 "(b) Any taxpayer seeking a refund or credit of
5 excess taxes paid to an eligible seller participating in the
6 program shall maintain records documenting the amount of
7 simplified sellers use tax paid. Refund or credit requests
8 shall require proper documentation of amounts paid by the
9 taxpayer and shall be submitted to the department with the
10 petition for refund.

11 "(c) Notwithstanding any other provision of law,
12 interest due on any refund of taxes paid directly to the
13 department under Division Three of Article Six of this chapter
14 shall be paid beginning 90 days after the receipt date of the
15 properly documented refund petition with interest accruing
16 beginning on the 91st day.

17 "§40-23-197.

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

1 "(1) Fifty percent (50%) to the state treasury and
2 allocated seventy-five percent (75%) to the General Fund and
3 twenty-five percent (25%) to the Education Trust Fund.

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

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

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

16 "§40-23-198.

17 "(a) In the event that a change in federal law,
18 whether it be federal legislation or decision of the U.S.
19 Supreme Court, removes current federal limitations on states'
20 ability to enforce their sales and use tax jurisdiction
21 against businesses that lack an instate physical presence, the
22 provisions of this act shall be inapplicable as to any
23 eligible seller who is not registered with the department as a
24 participant in the program at least six months prior to the
25 date of such change in law. In such event, the provisions of

1 this act will continue to apply to any eligible seller who has
2 been approved by the department as a participant in the
3 program at least six months prior to the change in law and to
4 any taxpayer who has paid or pays the simplified sellers use
5 tax authorized under this act provided the eligible seller
6 continues to collect, report, and remit the simplified sellers
7 use tax and otherwise complies with all procedures and
8 requirements of the program. Eligible sellers participating in
9 the program pursuant to this subsection may continue to
10 receive a discount of two percent (2%) on all simplified
11 sellers use taxes properly remitted under the provisions of
12 this act and shall continue to report sales under the
13 conditions set out in Section 40-23-193.

14 "§40-23-199.

15 "(a) Subject to the limitations set out herein, an
16 eligible seller participating in the program shall be granted
17 amnesty for any uncollected remote use tax that may have been
18 due on sales made to purchasers in the state for the
19 twelve-month period preceding the effective date of the
20 eligible sellers' participation in the program.

21 "(b) The amnesty will preclude assessment for
22 uncollected simplified use tax together with any penalty or
23 interest for sales made during the twelve-month period prior
24 to the effective date of the eligible seller's participation
25 in the program.

1 "(c) The amnesty provided herein shall be granted to
2 any eligible seller who applies to participate in the program
3 following acceptance into the program by the department.

4 "(d) Amnesty is not available to an eligible seller
5 with respect to any matter or matters for which the eligible
6 seller has received notice of the commencement of an audit and
7 the audit is not yet finally resolved, including any related
8 administrative and judicial processes.

9 "(e) Amnesty is not available for any simplified
10 sellers use tax already paid or remitted to the state or for
11 taxes collected by the eligible seller.

12 "(f) Amnesty is fully effective, absent the eligible
13 seller's fraud or intentional misrepresentation of a material
14 fact, as long as the eligible seller continues his or her
15 participation in the program and continues to collect, report,
16 and remit applicable simplified sellers use tax for a period
17 of at least thirty-six months.

18 "(g) Amnesty is applicable only to simplified use
19 tax due from an eligible seller in his or her capacity as an
20 eligible seller and not to remote use taxes due from a seller
21 in his or her capacity as a buyer."

22 Section 2. This act shall become effective on
23 October 1, 2015, following its passage and approval by the
24 Governor, or upon its otherwise becoming law.

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB437

Senate 21-MAY-15

I hereby certify that the within Act originated in and passed the Senate, as amended.

Patrick Harris
Secretary

House of Representatives
Amended and passed 04-JUN-15

Senate concurred in House amendment 04-JUN-15

By: Senator Pittman