

1 SB437
2 166544-3
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 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 Relating to non-nexus sellers use tax to establish
12 an easily-accessible method for non-nexus sellers to remit, on
13 behalf of their customers, use tax on items delivered into
14 Alabama.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

16 Section 1. Sections 40-23-191 through 40-23-200 are
17 hereby added to Division 3 of Article 6 of Chapter 23 of Title
18 40 of the Code of Alabama 1975, as follows:

19 §40-23-191.

20 "This act shall be titled "The Non-Nexus Use Tax
21 Remittance Act".

22 "§40-23-192.

23 "For the purpose of this act, the following terms
24 shall have the respective meanings ascribed to them in this
25 section:

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

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

4 "(3) NEXUS. Business activity within the state of
5 Alabama that is sufficient to require a non-resident seller to
6 be subject to requirements for collecting and remitting state
7 and local sales or use tax for purchases delivered into the
8 state of Alabama.

9 "(4) NON-NEXUS SELLER. An individual, trust, estate,
10 fiduciary, partnership, limited liability company, limited
11 liability partnership, corporation or other legal entity that
12 sells tangible personal property or a service, but does not
13 have nexus in this state.

14 "(5) NON-NEXUS SELLERS USE TAX. The eight percent
15 (8%) tax to be collected, reported, and remitted by non-nexus
16 sellers who are participating in the program pursuant to
17 requirements and procedures established pursuant to this act.

18 "(6) NON-NEXUS USE TAX REMITTANCE PROGRAM or
19 PROGRAM. The program established in this act to provide a
20 mechanism for non-nexus sellers to collect, report, and remit
21 the non-nexus sellers use tax established pursuant to this
22 act.

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

24 "§40-23-193.

25 "(a) There is hereby established The Non-Nexus Use
26 Tax Remittance Program designed to allow a non-nexus seller

1 who participates in the program to collect, report, and remit
2 the non-nexus sellers use tax authorized herein in lieu of the
3 sales or use taxes otherwise due by or on behalf of Alabama
4 customers who have purchased items from the non-nexus seller
5 that were shipped or otherwise delivered into Alabama by the
6 non-nexus seller. Participation in the program shall be by
7 election of the non-nexus seller and only those non-nexus
8 sellers accepted into the program as set out herein shall
9 collect and remit the non-nexus sellers use tax. Participation
10 in the program shall not be construed as subjecting a
11 non-nexus seller to franchise, income, occupation, or any
12 other type of taxes or licensing requirements levied or
13 imposed by the state of Alabama or any locality against
14 taxpayers who have nexus with the state.

15 "(b) The program shall be administered by the
16 department, which pursuant to this act, shall develop and make
17 available to the non-nexus seller an easily-accessible, online
18 system in which to collect, report, and remit the non-nexus
19 sellers use tax. Participants in the program shall be required
20 to collect, report, and remit the non-nexus sellers use tax
21 for all sales delivered into the state as long as remaining a
22 participant in the program. Participants are eligible for the
23 program as long as they do not have nexus with the state of
24 Alabama and comply with all provisions of this act and
25 procedures adopted by the department for participation in the
26 program.

1 "(c) In order to participate in the program, a
2 non-nexus seller shall make application with the department on
3 a form designed by the department for that purpose. The
4 application shall require, at a minimum, that the non-nexus
5 seller:

6 "(1) Certifies that he or she does not have nexus
7 with the state of Alabama sufficient to legally require the
8 seller to collect and remit sales and use tax due on purchases
9 delivered into the state.

10 "(2) Agrees to collect, report, and remit the
11 non-nexus sellers use tax for all sales delivered into the
12 state as long as he or she remains a participant in the
13 program.

14 "(3) Agrees to provide the department with
15 information related to sales ~~from~~ to Alabama customers as
16 required by this act or requested by the department.

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

19 "Any applicant who falsely certifies on his or her
20 application that he or she does not have nexus with the state
21 of Alabama shall be subject to the negligence and/or fraud
22 penalties under procedures found in Section 40-2A-11.

23 "(d) The department shall review all applications
24 for participation, and where an applicant is determined to
25 satisfy requirements to participate in the program, shall
26 establish a non-nexus sellers use tax account for the

1 non-nexus seller which will allow the non-nexus seller to
2 report and remit all non-nexus sellers use tax collected
3 pursuant to this act.

4 "(e) A participating non-nexus seller shall be
5 removed from the program if:

6 "(1) He or she substantially fails to collect,
7 report, and remit non-nexus sellers use taxes.

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

10 "(3) Upon a determination that the non-nexus seller
11 has nexus with Alabama.

12 "(4) There is any other finding by the department
13 that the participant is not in compliance with the terms
14 authorizing participation in the program.

15 "Any participant who fails to report that he or she
16 has established nexus with the state or falsely certifies on
17 any report that he or she does not have nexus with the state
18 of Alabama shall be subject to the negligence and/or fraud
19 penalties under procedures found in Section 40-2A-11. Removal
20 from the program or assessment of the fraud or negligence
21 penalty shall be subject to appeal rights and procedures
22 established in this title.

23 "§40-23-194.

24 "(a) The non-nexus sellers use tax due under the
25 program is eight percent (8%) of the sales price on any
26 tangible personal property sold or delivered into Alabama by a

1 non-nexus seller participating in the program. The collection
2 and remittance of non-nexus sellers use tax relieves the
3 non-nexus seller and the purchaser from any additional state
4 or local sales and use taxes on the transaction.

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

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

1 "(d) The participating non-nexus seller shall
2 collect the tax on all purchases delivered into Alabama unless
3 the purchaser furnishes the non-nexus seller with a valid
4 exemption certificate, sales tax license, or direct pay permit
5 issued by the department. The non-nexus seller shall retain
6 all exemption certificates, sales tax licenses, or direct pay
7 permits in its files, or in such other manner as directed by
8 the department.

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

17 "§40-23-195.

18 "Non-nexus sellers may deduct and retain a discount
19 equal to two percent of the non-nexus sellers use tax
20 collected and properly reported and remitted to the department
21 in a timely manner. The department is authorized to prescribe
22 rules for administering the discount. No discount shall be
23 allowed for any taxes which are not timely reported and
24 remitted to the department pursuant to program procedures.

25 "§40-23-196.

1 "(a) The department may adopt, promulgate, and
2 enforce reasonable rules and regulations related to the
3 implementation, administration, and participation in the
4 program. The department shall have exclusive responsibility
5 for reviewing and accepting applications for participation and
6 for the administration, return processing, and review of the
7 eligibility of non-nexus sellers participating in the program.
8 Non-nexus sellers participating in the program shall not be
9 subject to audit or review by any Alabama locality. Non-nexus
10 sellers shall maintain records of all sales of purchases
11 delivered into Alabama, including copies of invoices showing
12 the purchaser, address, purchase amount, and non-nexus sellers
13 use tax collected. Such records shall be made available for
14 review and inspection upon request by the department.

15 "§40-23-197.

16 "(a) Any taxpayer who pays a non-nexus sellers use
17 tax through this program that is higher than the actual state
18 and local sales or use tax levied in the locality where the
19 purchase was delivered may file for a refund or credit of the
20 excess amount paid to the non-nexus seller participating in
21 the program. A business taxpayer who has a registered consumer
22 use tax account with the department may claim credit for the
23 overpayment of non-nexus use tax on their consumer use tax
24 return in a manner prescribed by the department. All other
25 taxpayers may file a petition for refund in the manner
26 prescribed by the department. The petition for refund may only

1 be filed once per year. In the event the amount due to be
2 refunded in a year is less than twenty-five (\$25.00) dollars,
3 payment of the refund may be deferred by the department and
4 combined with amounts due to be paid pursuant to subsequent
5 annual refund petitions for a period of up to three years.

6 "(b) Any taxpayer seeking a refund or credit of
7 excess taxes paid to a non-nexus seller participating in the
8 program shall maintain records documenting the amount of
9 non-nexus sellers use tax paid. Refunds or credits shall only
10 be paid where proper documentation of amounts paid by the
11 taxpayer is submitted to the department with the petition for
12 refund.

13 "§40-23-198.

14 "(a) The proceeds of non-nexus sellers use tax paid
15 pursuant to this act shall be appropriated to the department,
16 which shall retain the amount necessary to fund the
17 administrative costs of implementing and operating the program
18 and to cover the amounts paid for ~~discounts~~ refunds authorized
19 in ~~§40-23-194~~ §40-23-196. The balance of the amounts collected
20 shall be distributed as follows:

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

24 "(2) Twenty-five percent (25%) to each county in the
25 state on a prorated basis according to population as

1 determined in the most recent federal census prior to the
2 distribution.

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

7 "(b) The distribution of the proceeds from the
8 non-nexus sellers use tax paid to counties and municipalities
9 shall occur quarterly in a manner prescribed by the
10 Department.

11 "§40-23-199.

12 "(a) In the event that a national agreement for the
13 collection of sales and use taxes from remote or non-nexus
14 sellers or the other federal legislation requiring remote or
15 non-nexus sellers to collect and remit Alabama's sales or use
16 taxes is enacted, the provisions of this act shall be
17 inapplicable as to any non-nexus seller who is not registered
18 with the department as a participant in the program at least
19 six months prior to the date of passage of such national
20 agreement or act. In such event, the provisions of this act
21 will continue to apply to any non-nexus seller who has been
22 approved by the department as a participant in the program at
23 least six months prior to the passage of such agreement or act
24 and to any taxpayer who has paid or pays the non-nexus sellers
25 use tax authorized under this act provided the non-nexus
26 seller continues to collect, report, and remit the non-nexus

1 sellers use tax and otherwise complies with all procedures and
2 requirements of the program. Non-nexus sellers participating
3 in the program pursuant to this subsection may continue to
4 receive a discount of two percent (2%) on all non-nexus
5 sellers use taxes properly remitted under the provisions of
6 this act and shall continue to report sales under the
7 conditions set out in Section 40-23-194.

8 "§40-23-200.

9 "(a) Subject to the limitations set out herein, a
10 non-nexus seller participating in the program shall be granted
11 amnesty for any uncollected or unpaid remote use tax that may
12 have been due on sales made to purchasers in the state for the
13 twelve-month period preceding the effective date of the
14 non-nexus sellers' participation in the program.

15 "(b) The amnesty will preclude assessment for
16 uncollected or unpaid non-nexus use tax together with any
17 penalty or interest for sales made during the twelve-month
18 period prior to the effective date of the non-nexus seller's
19 participation in the program.

20 "(c) The amnesty provided herein shall be granted to
21 any non-nexus seller who applies to participate in the program
22 following acceptance into the program by the department.

23 "(d) Amnesty is not available to a non-nexus seller
24 with respect to any matter or matters for which the non-nexus
25 seller has received notice of the commencement of an audit and

1 the audit is not yet finally resolved, including any related
2 administrative and judicial processes.

3 "(e) Amnesty is not available for any non-nexus
4 sellers use tax already paid or remitted to the state or for
5 taxes collected by the non-nexus seller.

6 "(f) Amnesty is fully effective, absent the
7 non-nexus seller's fraud or intentional misrepresentation of a
8 material fact, as long as the non-nexus remote seller
9 continues his or her participation in the program and
10 continues to collect, report, and remit applicable non-nexus
11 sellers use tax for a period of at least thirty-six months.
12 The state shall toll its statute of limitations applicable to
13 asserting a tax liability during this thirty-six month period.

14 "(g) Amnesty is applicable only to non-nexus use tax
15 due from a non-nexus seller in his or her capacity as a
16 non-nexus seller and not to remote use taxes due from a seller
17 in his or her capacity as a buyer."

18 Section 2. This act shall become effective on
19 January 1, 2016, following its passage and approval by the
20 Governor, or upon its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate
committee on Finance and Taxation General Fund ... 30-APR-15

Read for the second time and placed on the calen-
dar 1 amendment..... 07-MAY-15

Read for the third time and passed as amended 21-MAY-15

Yeas 28
Nays 0

Patrick Harris
Secretary