

1 SB437
2 166544-1
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

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8 SYNOPSIS: This bill, known as the Non-Nexus Use Tax
9 Remittance Act, would provide an easily-accessible
10 method for non-nexus sellers to remit, on behalf of
11 their customers, a non-nexus sellers use tax on
12 items delivered into Alabama.

13
14 A BILL
15 TO BE ENTITLED
16 AN ACT

17
18 Relating to non-nexus sellers use tax to establish
19 an easily-accessible method for non-nexus sellers to remit, on
20 behalf of their customers, use tax on items delivered into
21 Alabama.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

23 Section 1. Sections 40-23-191 through 40-23-199 are
24 hereby added to Division 3 of Article 6 of Chapter 23 of Title
25 40 of the Code of Alabama 1975, as follows:

26 §40-23-191.

1 "(a) This act shall be titled "The Non-Nexus Use Tax
2 Remittance Act".

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

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

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

10 "(3) NEXUS. Business activity within the state of
11 Alabama that is sufficient to require a non-resident seller to
12 be subject to requirements for collecting and remitting state
13 and local sales or use tax for sales delivered into the state
14 of Alabama.

15 "(4) NON-NEXUS SELLER. An individual, trust, estate,
16 fiduciary, partnership, limited liability company, limited
17 liability partnership, corporation or other legal entity that
18 sells tangible personal property or a service, but does not
19 have nexus in this state.

20 "(5) NON-NEXUS SELLERS USE TAX. The eight percent
21 (8%) tax to be collected, reported, and remitted by non-nexus
22 sellers who are participating in the program pursuant to
23 requirements and procedures established pursuant to this act.

24 "(6) NON-NEXUS USE TAX REMITTANCE PROGRAM or
25 PROGRAM. The program established in this act to provide a
26 mechanism for non-nexus sellers to collect, report, and remit

1 the non-nexus sellers use tax established pursuant to this
2 act.

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

4 "§40-23-192.

5 "(a) There is hereby established The Non-Nexus Use
6 Tax Remittance Program designed to allow a non-nexus seller
7 who participates in the program to collect, report, and remit
8 the non-nexus sellers use tax authorized herein in lieu of the
9 sales or use taxes otherwise due by or on behalf of Alabama
10 customers who have purchased items from the non-nexus seller
11 that were shipped or otherwise delivered into Alabama by the
12 non-nexus seller. Participation in the program shall be by
13 election of the non-nexus seller and only those non-nexus
14 sellers accepted into the program as set out herein shall
15 collect and remit the non-nexus sellers use tax.

16 Participation in the program shall not be construed as
17 subjecting a non-nexus seller to franchise, income,
18 occupation, or any other types of taxes or licensing
19 requirements levied or imposed by the state of Alabama or any
20 locality against taxpayers who have nexus with the state.

21 "(b) The program shall be administered by the
22 department, which pursuant to this act, shall develop and make
23 available to the non-nexus seller an easily-accessible, online
24 system in which to collect, report, and remit the non-nexus
25 sellers use tax. Participants in the program shall be required
26 to collect, report, and remit the non-nexus sellers use tax
27 for all sales delivered into the state as long as remaining a

1 participant in the program. Participants are eligible for the
2 program as long as they do not have nexus with the state of
3 Alabama and comply with all provisions of this act and
4 procedures adopted by the department for participation in the
5 program.

6 "(c) In order to participate in the program, a
7 non-nexus seller shall make application with the department on
8 a form designed by the department for that purpose. The
9 application shall require, at a minimum, that the non-nexus
10 seller:

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

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

19 "(3) Agrees to provide the department with
20 information related to sales from Alabama customers as
21 required by this act or requested by the department.

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

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

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

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

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

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

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

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

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

27 "§40-23-193.

1 "(a) The non-nexus sellers use tax due under the
2 program is eight percent (8%) of the sales price on any
3 tangible personal property sold or delivered into Alabama by a
4 non-nexus seller participating in the program. The collection
5 and remittance of non-nexus sellers use tax relieves the
6 non-nexus seller and the purchaser from any additional state
7 or local sales and use taxes on the transaction.

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

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

1 or use tax with respect to the purchase or use of the
2 property, regardless of the actual tax rate that might have
3 otherwise been applicable.

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

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

20 "§40-23-194.

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

1 "§40-23-195.

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

16 "§40-23-196.

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

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

19 "§40-23-197.

20 "(a) The proceeds of non-nexus sellers use tax paid
21 pursuant to this act shall be appropriated to the department,
22 which shall retain the amount necessary to fund the
23 administrative costs of implementing and operating the program
24 and to cover the amounts paid for discounts authorized in §
25 40-23-194. The balance of the amounts collected shall be
26 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 non-nexus 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 national agreement for the
18 collection of sales and use taxes from remote or non-nexus
19 sellers or the other federal legislation requiring remote or
20 non-nexus sellers to collect and remit Alabama's sales or use
21 taxes is enacted, the provisions of this act shall be
22 inapplicable as to any non-nexus seller who is not registered
23 with the department as a participant in the program at least
24 six months prior to the date of passage of such national
25 agreement or act. In such event, the provisions of this act
26 will continue to apply to any non-nexus seller who has been
27 approved by the department as a participant in the program at

1 least six months prior to the passage of such agreement or act
2 and to any taxpayer who has paid or pays the non-nexus sellers
3 use tax authorized under this act provided the non-nexus
4 seller continues to collect, report, and remit the non-nexus
5 sellers use tax and otherwise complies with all procedures and
6 requirements of the program. Non-nexus sellers participating
7 in the program pursuant to this subsection may continue to
8 receive a discount of two percent (2%) on all non-nexus
9 sellers use taxes properly remitted under the provisions of
10 this act and shall continue to report sales under the
11 conditions set out in Section 40-23-193.

12 "§40-23-199.

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

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

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

1 "(d) Amnesty is not available to a non-nexus seller
2 with respect to any matter or matters for which the non-nexus
3 seller has received notice of the commencement of an audit and
4 the audit is not yet finally resolved, including any related
5 administrative and judicial processes.

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

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

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

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