

1 HB365
2 128010-1
3 By Representative Ison
4 RFD: State Government
5 First Read: 29-MAR-11

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8 SYNOPSIS: This bill would add a new Section 40-23-89,
9 Code of Alabama 1975, to require notification to
10 certain Alabama purchasers of tangible personal
11 property regarding their obligation to remit sales
12 or use taxes to the State of Alabama and
13 appropriate local governments if the retailer does
14 not collect and remit these taxes on their behalf,
15 and to levy a civil penalty for violations of these
16 provisions; to require those retailers to send an
17 annual summary of purchases to their Alabama
18 customers, with a reminder of the customer's
19 potential use tax obligations; and would add a new
20 Section 40-23-90, Code of Alabama 1975, to
21 authorize the Department of Revenue to facilitate
22 the collection of the consumer use tax on these
23 sales by amending its individual income tax forms
24 to allow Alabama residents and part-year residents
25 to remit both the state and local consumer use tax
26 due, on an annual basis, and to direct the
27 distribution of the tax revenue in excess of the

1 state general tax rate to the appropriate local
2 governments.

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4 A BILL
5 TO BE ENTITLED
6 AN ACT

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8 To add a new Section 40-23-89, Code of Alabama 1975,
9 to require notification to certain purchasers of tangible
10 personal property that they have an obligation to remit sales
11 or use taxes to the State of Alabama and appropriate local
12 governments if the retailer does not collect and remit on
13 their behalf the applicable state and local sales tax on the
14 sale, and to assess a civil penalty and interest for a
15 violation of these provisions; to require those retailers to
16 send an annual summary of purchases to their Alabama
17 customers, with a reminder of the customer's potential use tax
18 obligations; to exempt certain small retailers from these
19 requirements; to add a new Section 40-23-90, Code of Alabama
20 1975, to authorize the Department of Revenue to facilitate the
21 collection of the consumer use tax on these sales by amending
22 its individual income tax forms so that Alabama residents and
23 part-year residents may remit both the state and local
24 consumer use tax due, on an annual basis, and to direct the
25 distribution of the use tax revenue in excess of the state
26 general use tax rate to the local governments.

27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. (a) The Legislature notes that the
2 Alabama sales and use tax act was passed by the Legislature in
3 1939.

4 (b) In order to protect consumers from unknowingly
5 violating Alabama's use tax laws and to encourage compliance
6 by Alabama residents who purchase tangible personal property
7 from certain retailers via the Internet, by catalog, or
8 similar means, the Legislature finds that requiring all
9 retailers selling taxable goods to Alabama residents by any of
10 these means to notify them of their sales and use tax
11 obligations if the retailer is not collecting and remitting
12 sales or use tax on their behalf.

13 (c) The Legislature further finds that the
14 compliance burden with the consumer use tax laws by individual
15 taxpayers can be eased by requiring certain large retailers to
16 provide them with an annual summary of their Internet or
17 catalog purchases and allowing them to remit both the state
18 four percent use tax and the estimated county and municipal
19 use tax due on these purchases through their annual income tax
20 return.

21 (d) This act is intended to give consumers the
22 option to avoid the paperwork headaches of calculating the tax
23 and filing monthly, quarterly, or annual use tax returns not
24 only with the Department of Revenue but local governments.

25 Section 2. Section 40-23-89 is added to the Code of
26 Alabama 1975, to read as follows:

1 §40-23-89. Notification of Sales or Use Tax

2 Obligation.

3 (a) Except as provided in subsection (g), every
4 person engaged in the business of selling at retail tangible
5 personal property to a purchaser in this state, but which does
6 not collect and remit either the applicable sales or use tax
7 on such transaction, shall provide notification on its retail
8 Internet website or retail catalog and on its invoices and
9 receipts provided to the purchaser stating that neither sales
10 nor use tax is being collected or remitted upon the
11 transaction and that the purchaser may be required to remit
12 such tax directly to the Department of Revenue and local
13 governments, unless the purchaser or the transaction is
14 exempted by law. For purposes of this act, "purchaser" shall
15 mean and refer to any person who purchases tangible personal
16 property for delivery to a location in this state.

17 (b) In the case of retail sales facilitated through
18 an Internet website, the notification required in subsection
19 (a) shall be made to the purchaser immediately prior to the
20 completion of the sale, including the provisions of, and in a
21 form substantially similar to, the notification set forth in
22 subsection (c). The notification requirement shall not be
23 satisfied unless the purchaser is required to affirmatively
24 acknowledge such obligation, and the vendor shall retain
25 evidence of such acknowledgement in a form and for the period
26 of time prescribed by the department.

1 (c) The notification required under subsection (b)
2 shall read as follows:

3 "The State of Alabama and its local governments
4 require the payment of a sales or use tax on purchases of
5 tangible personal property (for example, furniture, books,
6 clothing, jewelry, or household goods) for storage, use, or
7 consumption in Alabama. Since we have not collected sales or
8 use tax from you on this purchase, the State of Alabama
9 requires you to remit the tax directly to the Alabama
10 Department of Revenue and applicable counties and cities on
11 taxable purchases. You can find information on how to pay this
12 tax at www.revenue.alabama.gov/. Failure to pay this tax on
13 taxable purchases is a violation of Alabama and local laws and
14 could result in penalties and interest for each purchase.

15 ___ I acknowledge that I have read and understand
16 this sales and use tax notice."

17 (d) A person engaged in the business of selling at
18 retail tangible personal property to purchasers in Alabama
19 shall not advertise on its retail Internet website or in its
20 retail catalog that any purchases made for use or consumption
21 in the State of Alabama are not subject to sales tax, are
22 "tax-free," or other similar language, consistent with the
23 limitations imposed by Section 40-23-26(b).

24 (e) A report shall be provided to each purchaser by
25 January 31 of each year with respect to the preceding calendar
26 year. The report shall include:

1 (1) A statement indicating that the person did not
2 collect sales or use tax on the purchaser's transactions and
3 that the purchaser may be required to remit such tax directly
4 to the Department of Revenue and local governments.

5 (2) A list, by date, generally indicating the type
6 of product purchased during the preceding calendar year by the
7 purchaser for delivery to a location in this state and the
8 price of each product purchased.

9 (3) instructions for obtaining additional
10 information regarding whether and how to remit the applicable
11 sales or use tax.

12 (4) Such other information as the Department of
13 Revenue may reasonably require.

14 (f) The report described in subsection (e) shall be
15 sent to the purchaser's billing address, or if unknown, to the
16 purchaser's shipping address, in an envelope marked
17 prominently, in bold type, that "important tax information" is
18 enclosed. If no billing or shipping address is known to the
19 person, the report shall be sent electronically to the
20 purchaser's last known e-mail address with a subject heading
21 that "important tax information" is enclosed.

22 (g) Notwithstanding subsections (a), (e), and (f),
23 any person otherwise subject to this section but whose total
24 gross sales in this state in the preceding calendar year were
25 one hundred thousand dollars (\$100,000) or less, and who
26 reasonably expects its total gross sales in this state during
27 the current calendar year will be less than one hundred

1 thousand dollars (\$100,000), is exempt from the website
2 notification and annual summary requirements hereof.

3 (h) Enforcement of this section shall be vested in
4 the Department of Revenue, including the assessment and
5 collection of civil penalties not to exceed one thousand
6 dollars (\$1,000) per violation, together with interest as
7 provided in this act.

8 (i) The Department of Revenue shall have the
9 authority to promulgate such reasonable rules as may be
10 necessary or appropriate to implement the purposes and intent
11 of this section, including periodic updates to the online
12 notification set forth in subsection (c).

13 Section 3. Section 40-23-90 is added to the Code of
14 Alabama 1975, to read as follows:

15 §40-23-90. Authorization for Department to collect
16 certain state and local consumer use taxes via income tax
17 returns.

18 (a) In the circumstances enumerated in subsection
19 (b), the department may collect and enforce the collection of
20 applicable state, county, and municipal consumer use taxes by
21 means of the individual income tax return, in lieu of or in
22 addition to efforts by it and local governments to collect and
23 enforce the collection of the consumer use tax by means of
24 multiple state and local consumer use tax returns and
25 remittances.

26 (b) In the case of any Alabama resident or part-year
27 resident who purchases, for personal non-business use, items

1 of tangible personal property during the calendar year on
2 which an aggregate of one thousand dollars (\$1,000) or less in
3 sales tax was not collected from them, for whatever reason
4 including, but not limited to, purchases made over the
5 Internet or by catalog order, the individual may elect to
6 remit and the department and local governments shall allow
7 remittance of state and local consumer use tax due by that
8 individual for the calendar year by means of the department's
9 annual individual income tax return. Voluntary remittance of
10 the use tax due on such purchases, by means of a timely filed,
11 including extensions, individual income tax return and tax
12 payment, shall relieve the taxpayer of any liability for the
13 state or local use tax, interest or penalties that may
14 otherwise be due as a result of their failure to timely file
15 and remit the tax with monthly, quarterly, or annual use tax
16 returns, provided that the proper amount of use tax was
17 remitted. Notwithstanding the above, in lieu of maintaining
18 otherwise necessary records of purchases during the preceding
19 calendar year, the taxpayer may rely on a table prepared from
20 time to time by the department containing an estimated amount
21 of state and local consumer use tax due based on an
22 individual's Alabama gross income. The look-up table shall be
23 included in the instructions to the annual individual income
24 tax return.

25 (c) The aggregate rate charged by the department on
26 its individual income tax returns pursuant to this section
27 shall be nine percent of which 4/9ths shall be deposited to

1 the State Treasury to the credit of the Education Trust Fund,
2 and the balance shall be remitted, without any cost of
3 collection, to the local governments in the manner set forth
4 in subsection (d).

5 (d) On or before July 1 and December 1 of each year,
6 the aggregate amounts designated on filed individual income
7 tax returns or schedules thereto as a consumer use tax, in
8 excess of the department's share, shall be remitted as the
9 local government share, one-half to the counties and one-half
10 to the municipalities in this state. After taking into account
11 this allocation, each such county and municipality shall
12 receive its proportionate share of the tax based on its
13 relative population, weighted by the rate of consumer use tax
14 it imposed as of the preceding December 31, notwithstanding
15 the actual use tax rate imposed by the various local
16 governments as of that date. Except as provided in subsection
17 (e), this calculation shall be based on the respective
18 populations of each county and municipality in the state as
19 established by the last United States census, as published
20 from time to time, and according to the Department's records
21 regarding applicable county and municipal consumer use tax
22 rates.

23 (e) Notwithstanding the above, the department may
24 periodically determine and implement, by rule duly
25 promulgated, following consultation with the Alabama League of
26 Municipalities and the Association of County Commissions of
27 Alabama, or their successors, a more accurate method for

1 allocating the local government share and also may make more
2 frequent distributions of the local government share. The
3 department shall have the sole right and responsibility to
4 enforce compliance with applicable state and local consumer
5 use tax laws by individuals who choose to remit their state
6 and local consumer use tax by means of their state income tax
7 return. The department shall issue reasonable rules necessary
8 to implement and interpret this section of the act. The
9 initial rules, including forms, look-up table and other
10 instructions, and related taxpayer advisories, shall be issued
11 promptly so that the final version of the rules shall apply to
12 consumer use taxes due hereunder for calendar year 2011 and
13 subsequent years.

14 Section 4. The provisions of this act are severable.
15 If any part of this act is declared invalid or
16 unconstitutional, that declaration shall not affect the part
17 which remains.

18 Section 5. The substantive provisions of Section 2
19 of this act shall become effective on the later of the
20 following: (i) the passage and approval of this act by the
21 Governor, or its otherwise becoming law, and (ii) once a rule
22 has been promulgated by the department pursuant to new Section
23 40-23-89(g), Code of Alabama 1975, and has become effective
24 under the Alabama Administrative Procedure Act. Section 3 of
25 this act shall become effective upon its passage and approval
26 by the Governor, or its otherwise becoming law.