

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019
4

A Bill

HOUSE BILL 1002

5 By: Representative D. Douglas
6

For An Act To Be Entitled

8 AN ACT TO AMEND THE LAW CONCERNING SALES AND USE TAX;
9 TO REQUIRE CERTAIN OUT-OF-STATE SELLERS TO COLLECT
10 AND REMIT ARKANSAS SALES AND USE TAX; TO REPEAL THE
11 SALES AND USE TAX LAW ON SELLERS AND AFFILIATED
12 PERSONS; AND FOR OTHER PURPOSES.
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Subtitle

15 TO REQUIRE CERTAIN OUT-OF-STATE SELLERS
16 TO COLLECT AND REMIT ARKANSAS SALES AND
17 USE TAX.
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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23 SECTION 1. DO NOT CODIFY. Legislative findings.

24 The General Assembly finds that:

25 (1) The inability to effectively collect any Arkansas sales or
26 use tax from remote sellers who deliver tangible personal property, other
27 property subject to Arkansas sales and use tax, or services directly into the
28 state is seriously eroding the sales and use tax base of this state, causing
29 revenue losses and imminent harm to the state through the loss of critical
30 funding for state and local services;

31 (2) The harm from the loss of revenue is especially serious in
32 Arkansas because sales and use tax revenues are essential in funding state
33 and local services;

34 (3) Despite the fact that a use tax is owed on tangible personal
35 property, certain other property, or services delivered for use in this
36 state, many remote sellers actively market sales as tax-free or as



1 transactions not subject to sales and use tax;

2 (4) The structural advantages of remote sellers, including the
 3 absence of point-of-sale tax collection and the general growth of online
 4 retail, make clear that further erosion of this state's sales and use tax
 5 base is likely to occur in the near future;

6 (5) Remote sellers that make a substantial number of deliveries
 7 into Arkansas or collect large gross revenues from Arkansas benefit
 8 extensively from this state's market, economy, and infrastructure;

9 (6) In contrast with the increasing harm caused to the state by
 10 the exemption of remote sellers from sales and use tax collection duties, the
 11 costs of such collection have decreased because advanced computing and
 12 software options have made it neither difficult nor burdensome for remote
 13 sellers to collect and remit sales and use taxes associated with sales of
 14 goods and services to residents of this state; and

15 (7) The United States Supreme Court recently upheld the ability
 16 of states to compel out-of-state sellers with no physical presence in the
 17 state to collect state sales and use taxes.

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 19 SECTION 2. Arkansas Code § 26-52-110 is repealed.

20 ~~26-52-110. Sellers and affiliated persons—Referral agreements—~~
 21 ~~Notice required—Definitions.~~

22 ~~(a) As used in this section:~~

23 ~~(1) "Affiliated person" means:~~

24 ~~(A) A person that is a member of the same controlled group~~
 25 ~~of corporations as the seller; or~~

26 ~~(B) Another entity that, notwithstanding its form of~~
 27 ~~organization, bears the same ownership relationship to the seller as a~~
 28 ~~corporation that is a member of the same controlled group of corporations;~~
 29 ~~and~~

30 ~~(2) "Controlled group of corporations" means the same as in 26~~
 31 ~~U.S.C. § 1563(a), as it existed on January 1, 2011.~~

32 ~~(b) A seller is presumed to be engaged in the business of selling~~
 33 ~~tangible personal property, specified digital products, a digital code, or~~
 34 ~~taxable services for use in the state if an affiliated person is subject to~~
 35 ~~the sales and use tax jurisdiction of the state and the:~~

36 ~~(1) Seller sells a similar line of products as the affiliated~~

1 ~~person and sells the products under the same business name or a similar~~
2 ~~business name;~~

3 ~~(2) Affiliated person uses his, her, or its in-state employees~~
4 ~~or in-state facilities to advertise, promote, or facilitate sales by the~~
5 ~~seller to consumers;~~

6 ~~(3) Affiliated person maintains an office, distribution~~
7 ~~facility, warehouse or storage place, or similar place of business to~~
8 ~~facilitate the delivery of property, specified digital products, a digital~~
9 ~~code, or services sold by the seller to the seller's business;~~

10 ~~(4) Affiliated person uses trademarks, service marks, or trade~~
11 ~~names in the state that are the same or substantially similar to those used~~
12 ~~by the seller; or~~

13 ~~(5) Affiliated person delivers, installs, assembles, or performs~~
14 ~~maintenance services for the seller's purchasers within the state.~~

15 ~~(c) The presumption in subsection (b) of this section may be rebutted~~
16 ~~by demonstrating that the affiliated person's activities in the state are not~~
17 ~~significantly associated with the seller's ability to establish or maintain a~~
18 ~~market in the state for the seller's sales.~~

19 ~~(d)(1) If there is not an affiliated person with respect to a seller~~
20 ~~in the state, the seller is presumed to be engaged in the business of selling~~
21 ~~tangible personal property, specified digital products, a digital code, or~~
22 ~~taxable services for use in the state if the seller enters into an agreement~~
23 ~~with one (1) or more residents of the state under which the residents, for a~~
24 ~~commission or other consideration, directly or indirectly refer potential~~
25 ~~purchasers, whether by a link on an Internet website or otherwise, to the~~
26 ~~seller.~~

27 ~~(2) However, subdivision (d)(1) of this section applies only if~~
28 ~~the cumulative gross receipts from sales by the seller to purchasers in the~~
29 ~~state who are referred to the seller by all residents according to the type~~
30 ~~of agreement described in subdivision (d)(1) of this section exceed ten~~
31 ~~thousand dollars (\$10,000) during the preceding twelve (12) months.~~

32 ~~(e)(1) The presumption in subsection (d) of this section may be~~
33 ~~rebutted by submitting proof that the residents with whom the seller has an~~
34 ~~agreement did not engage in any activity within the state that was~~
35 ~~significantly associated with the seller's ability to establish or maintain~~
36 ~~the seller's market in the state during the preceding twelve (12) months.~~

1 ~~(2) Proof provided under subdivision (e)(1) of this section may~~
2 ~~consist of written statements from all of the residents with whom the seller~~
3 ~~has an agreement stating that they did not engage in any solicitation in the~~
4 ~~state on behalf of the seller during the preceding twelve (12) months if the~~
5 ~~statements were provided and obtained in good faith.~~

6 ~~(f) The Director of the Department of Finance and Administration shall~~
7 ~~promulgate rules to implement this section.~~

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9 SECTION 3. Arkansas Code Title 26, Chapter 52, Subchapter 1, is
10 amended to add an additional section to read as follows:

11 26-52-111. Collection by remote sellers.

12 (a) A seller selling tangible personal property, other property
13 subject to Arkansas sales and use tax, or services for delivery into Arkansas
14 that does not have a physical presence in this state:

15 (1) Is subject to the provisions of this chapter and the
16 Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.; and

17 (2) Shall remit the sales and use tax and follow all applicable
18 procedures and requirements of law as if the seller had a physical presence
19 in the state if the seller meets either of the following criteria for the
20 previous calendar year or the current calendar year:

21 (A) The seller's gross revenue from the sale of tangible
22 personal property, other property subject to Arkansas sales and use tax, and
23 services for delivery into Arkansas exceeds one hundred thousand dollars
24 (\$100,000); or

25 (B) The seller sold tangible personal property, other
26 property subject to Arkansas sales and use tax, or services or any
27 combination of tangible personal property, other property subject to Arkansas
28 sales and use tax, and services for delivery into Arkansas in at least two
29 hundred (200) separate transactions.

30 (b) The obligation to remit the sales and use tax required under this
31 section shall not be applied retroactively.

32 (c) A taxpayer complying with this section may seek a recovery of
33 taxes, penalties, or interest only by following the procedures established in
34 the Arkansas Tax Procedure Act, § 26-18-101 et seq.

35 (d) This section does not limit the ability of a taxpayer to obtain a
36 refund for any other reason, including without limitation a mistake of fact

1 or mathematical miscalculation of the applicable tax.

2 (e) A seller that remits sales and use tax under this section is not
 3 liable to a purchaser if the seller was not required to collect sales and use
 4 tax because a provision of this section is later deemed unlawful.

5 (f) This section does not affect the obligation of a purchaser from
 6 this state to remit use tax on any applicable transaction in which the seller
 7 does not collect and remit sales and use tax.

8 (g) This section does not affect or impair the:

9 (1) Obligation of a seller, when the seller is transacting
 10 business in the state and a point-of-sale tax is collected on the
 11 transaction, to remit all state and local taxes on any applicable transaction
 12 in which the seller provides goods or furnishes services within the state; or

13 (2) Ability of a state entity to immediately collect the taxes
 14 described in subdivision (g)(1) of this section.

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 16 SECTION 4. EFFECTIVE DATE. Sections 1 through 3 of this act are
 17 effective on the first day of the calendar quarter following the effective
 18 date of this act.

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