

HOUSE BILL 1387

By Williams

AN ACT to amend Tennessee Code Annotated, Title 49; Title 67; Chapter 72 of the Public Acts of 2011; Chapter 193 of the Public Acts of 2017; Chapter 273 of the Public Acts of 2015; Chapter 452 of the Public Acts of 2017; Chapter 480 of the Public Acts of 2013; Chapter 530 of the Public Acts of 2009 and Chapter 602 of the Public Acts of 2007, relative to state finances.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 67, Chapter 6, is amended by adding the following as a new part:

67-6-1001. The general assembly finds that:

(1) The inability to effectively collect the sales and use tax from remote sellers who deliver tangible personal property, products transferred electronically, or services directly into this state is eroding the sales tax base of this state, causing a loss of revenue and critical funding for state and local services;

(2) Despite the fact that a use tax is owed on tangible personal property, any product transferred electronically, or services delivered for use in this state, many remote sellers actively market sales as "tax free" or "no sales tax" transactions;

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

(4) Remote sellers who make a substantial number of deliveries into or have large gross revenues from this state benefit extensively from this state's market, including the economy generally, as well as state infrastructure;

(5) In contrast with the harm caused to the state from this exemption of sales tax collection duties for remote sellers, the costs of that collection have fallen. Given modern computing and software options, advances in technology now enable remote sellers to comply with this state's tax laws at costs similar to the compliance costs of locally based businesses; and

(6) With its decision in *South Dakota v. Wayfair*, 138 S.Ct. 2080 (2018), the supreme court of the United States reconsidered its doctrine that prevented states from requiring remote sellers to collect sales tax and concluded that the physical presence rule of *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), is "unsound and incorrect" and that the court's decisions in *Quill* and *National Bellas Hess, Inc. v. Dept. of Revenue of Ill.*, 386 U.S. 753 (1967), are overruled.

67-6-1002.

(a) Notwithstanding this chapter to the contrary, a dealer with no physical presence in this state shall collect and remit sales tax in accordance with this chapter as if the dealer has a physical presence in this state if the dealer meets either of the following criteria based on the previous twelve-month period:

(1) The dealer's gross revenue from sales made in this state exceeds one hundred thousand dollars (\$100,000); or

(2) The dealer made two hundred (200) or more separate sales transactions in this state.

(b) Subsection (a) does not require a dealer to collect or remit the sales tax required by this section for sales made before July 1, 2019.

67-6-1003.

(a) Notwithstanding part 7 of this chapter, a dealer with no physical presence in this state may choose to pay, in lieu of the tax otherwise authorized by part 7 of this chapter, local tax at the rate of two and twenty-five hundredths percent (2.25%) of the sales price on all sales made in this state.

(b) Proceeds of the tax provided for in subsection (a) must be distributed to the counties based on the ratio of local tax collections in the county under § 67-6-710 over total tax collections in all counties under § 67-6-710.

(c)

(1) The amount received by the county under subsection (b) must be distributed first as provided for in § 67-6-712(a)(1). The remainder must be distributed to the cities or towns in the county based on the ratio of total collections in the municipality to total collections in the county.

(2) A county and a municipality may, by contract, provide for an alternative distribution for the amount not distributed under § 67-6-712(a)(1).

67-6-1004.

(a) A dealer who is required to collect and remit sales tax pursuant to § 67-6-1002 shall register with the department of revenue in accordance with part 6 of this chapter.

(b) This part does not change the substantial nexus criteria for determining when a person is required to pay the business tax under § 67-4-717, excise tax under § 67-4-2007, or franchise tax under § 67-4-2105.

67-6-1005.

(a) The department is authorized to provide dealers with no physical presence in this state access to sales tax administration software free of charge.

(b) A dealer with no physical presence in this state who uses sales tax administration software provided through the department is immune from audit liability regarding the collection and remittance of sales tax in accordance with this part.

SECTION 2. Tennessee Code Annotated, Section 67-6-702(f), is amended by deleting the subsection in its entirety.

SECTION 3. Tennessee Code Annotated, Section 67-6-710(e), is amended by deleting the subsection in its entirety.

SECTION 4. Tennessee Code Annotated, Section 67-4-3204(c), is amended by deleting the subsection in its entirety and substituting instead the following:

Any surcharge on the local option sales and use tax does not apply to sales made by dealers with no physical presence in this state who choose to pay local tax pursuant to § 67-6-1003 at the rate set forth in that section.

SECTION 5. Tennessee Code Annotated, Section 67-6-509(a), is amended by deleting the language "An out-of-state person making sales in Tennessee, who cannot be required to register for sales and use tax under applicable law" and substituting instead the language "An out-of-state person making sales in this state, who is not required to register for sales and use tax under applicable law".

SECTION 6. Chapter 452 of the Public Acts of 2017, is amended by deleting the following:

SECTION 2. The department of revenue shall be prohibited from collecting any internet sales or use taxes authorized under department rule 1320-05-01.129(2) and permitted under a ruling of any court, until such court's ruling has been fully reviewed and rule 1320-05-01.129(2) has been approved by the general assembly pursuant to § 4-5-226.

SECTION 7. For purposes of promulgating rules and forms, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2019, the public welfare requiring it.