

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
92nd General Assembly
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As Engrossed: H1/29/19 H1/31/19
A Bill

HOUSE BILL 1002

By: Representative D. Douglas

For An Act To Be Entitled

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

Subtitle

TO REQUIRE CERTAIN OUT-OF-STATE SELLERS
TO COLLECT AND REMIT ARKANSAS SALES AND
USE TAX.

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

SECTION 1. DO NOT CODIFY. Legislative findings.

The General Assembly finds that:

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

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

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



transactions not subject to sales and use tax;

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

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

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

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

SECTION 2. Arkansas Code § 26-52-103, concerning the definitions used under the Arkansas Gross Receipts Act of 1941, is amended to add additional subdivisions to read as follows:

(35)(A) "Forum" means a physical place or electronic location where sales occur.

(B) "Forum" includes without limitation a:

(i) Store;

(ii) Booth;

(iii) Publicly accessible internet website;

(iv) Catalog; and

(v) Place or location similar to the places and locations listed in subdivisions (35)(B)(i)-(iv);

(36) "Marketplace facilitator" means a person that facilitates the sale of tangible personal property, taxable services, a digital code, or specified digital products by:

(A) Listing or advertising tangible personal property, taxable services, a digital code, or specified digital products for sale in a forum; and

(B) Either directly or indirectly through an agreement or arrangement with a third party, collecting payment from a purchaser and transmitting the payment to the person selling the tangible personal property, taxable services, a digital code, or specified digital products, regardless of whether the person receives compensation or other consideration in exchange for its services in collecting and transmitting the payment;

(37) "Marketplace seller" means a person that has an agreement with a marketplace facilitator under which the marketplace facilitator facilitates sales for the person;

(38) "Referral" means the transfer by a referrer of a potential purchaser to a person that advertises or lists tangible personal property, taxable services, a digital code, or specified digital products for sale on the referrer's platform;

(39)(A) "Referrer" means a person, other than a person engaging in the business of printing or publishing a newspaper, that, under an agreement or arrangement with a marketplace seller or remote seller, does the following:

(i) Agrees to list or advertise for sale tangible personal property, taxable services, a digital code, or specified digital products of the marketplace seller or remote seller via a physical or electronic medium;

(ii) Receives consideration from the marketplace seller or remote seller from the sale offered in the listing or advertisement;

(iii) Transfers by telecommunications, internet link, or other means, a purchaser to a marketplace seller or remote seller to complete a sale; and

(iv) Does not collect a receipt from the purchaser for the sale.

(B) "Referrer" does not include a person that:

(i) Provides internet advertising services; and

(ii) Does not:

(a) Provide the marketplace seller's or the remote seller's shipping terms; or

(b) Advertise whether a marketplace seller or remote seller collects sales or use tax; and

(40) "Remote seller" means a person, other than a marketplace facilitator, that does not maintain a place of business in this state and that through a forum sells tangible personal property, taxable services, a digital code, or specified digital products, the sale or use of which is subject to the tax imposed by this chapter or the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

SECTION 3. Arkansas Code § 26-52-110 is repealed.

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

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

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

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

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

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

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

~~(1) Seller sells a similar line of products as the affiliated person and sells the products under the same business name or a similar business name;~~

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

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

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

~~by the seller; or~~

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

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

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

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

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

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

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

SECTION 4. Arkansas Code Title 26, Chapter 52, Subchapter 1, is amended to add an additional section to read as follows:

26-52-111. Remote sellers and marketplace facilitators.

(a) A remote seller or a marketplace facilitator that sells or facilitates the sale of tangible personal property, taxable services, digital codes, or specified digital products for delivery into Arkansas shall collect and remit the applicable sales tax levied under this chapter or the applicable compensating use tax levied under the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., if in the previous calendar year or in the current calendar year, the remote seller or the marketplace facilitator had aggregate sales of tangible personal property, taxable services, digital codes, or specified digital products subject to Arkansas sales or use tax within this state or delivered to locations within this state exceeding:

(1) One hundred thousand dollars (\$100,000); or

(2) Two hundred (200) transactions.

(b) A sale made through a marketplace facilitator:

(1) Is a sale of the marketplace facilitator for purposes of determining whether a person satisfies the criteria stated in subsection (a) of this section; and

(2) Is not a sale of the marketplace seller for purposes of determining whether a person satisfies the criteria stated in subsection (a) of this section.

(c) The requirement to collect and remit sales or use tax under this section shall not be applied retroactively.

(d) This section does not affect or impair the:

(1) Obligation of a purchaser in this state to remit use tax on any applicable transaction in which the seller does not collect and remit sales or use tax;

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

(3) Ability of a state entity to immediately collect the taxes described in subdivision (d)(2) of this section.

SECTION 5. EFFECTIVE DATE. Sections 1-4 of this act are effective on the first day of the calendar quarter following the effective date of this act.

/s/D. Douglas