

Transmittal Sheet For Notice Of Intended Action

Control: 810 Department or Agency: Revenue
 Rule Nos: 810-6-2-.90.02
 Rule Title: Simplified Sellers Use Tax Remittance Program

☐ New; ☒ Amended; ☐ Repealed; ☐ Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? No

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? Yes

Is there another, less restrictive method of regulation available that could adequately protect the public? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? No

Is the increase in cost, if any, more harmful to the public than the harm that result from the absence of the proposed rule? N/A

Are all the facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

Does the proposed rule relate to or effect any matter of litigation which the agency is a party to concerning the subject matter of the purposed rule? No

Does the proposed rule have any economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975 and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency.

Signature of certifying officer



Date 07/20/2018

**ECONOMIC IMPACT STATEMENT
FOR APA RULE
(Section 41-22-23(f))**

Control No. 810 Department or Agency REVENUE

Rule No: 810-6-2-.90.02

Rule Title: Simplified Sellers Use Tax Remittance Program

 New X Amend Repeal Adopt by Reference

- ☒ NO
☐ YES

This rule has no economic impact.

This rule has an economic impact, as explained below:

1. NEED/EXPECTED BENEFIT OF RULE:
2. COSTS/BENEFITS OF RULE AND WHY RULE IS THE MOST EFFECTIVE, EFFICIENT, AND FEASIBLE MEANS FOR ALLOCATING RESOURCES AND ACHIEVING THE STATED PURPOSE:
3. EFFECT OF THIS RULE ON COMPETITION:
4. EFFECT OF THIS RULE ON COST OF LIVING AND DOING BUSINESS IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:
5. EFFECT OF THIS RULE ON EMPLOYMENT IN THE GEOGRAPHICAL AREA HERE THE RULE IS TO BE IMPLEMENTED:
6. SOURCE OF REVENUE TO BE USED FOR IMPLEMENTING AND ENFORCING THIS RULE:
7. THE SHORT-TERM/LONG-TERM ECONOMIC IMPACT OF THIS RULE ON AFFECTED PERSONS, INCLUDING ANALYSIS OF PERSONS WHO WILL BEAR THE COSTS AND THOSE WHO WILL BENEFIT FROM THE RULE:
8. UNCERTAINTIES ASSOCIATED WITH THE ESTIMATED BENEFITS AND BURDENS OF THE RULE, INCLUDING QUALITATIVE/QUANTITATIVE BENEFITS AND BURDEN COMPARISON:
9. THE EFFECT OF THIS RULE ON THE ENVIRONMENT AND PUBLIC HEALTH:

10. DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH
IF THE RULE IS NOT IMPLEMENTED:
11. OTHER COMMENTS:

(1) Unless otherwise defined herein, the definitions of terms set forth in **Section** ~~§~~ 40-23-191, Code of Ala. 1975, are incorporated by reference herein.

(2) The term "~~E~~eligible ~~S~~seller" shall mean ~~an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation or other legal entity~~ **(a) A seller** that sells tangible personal property or a service, but

(~~ai~~) Does not have a physical presence in this state; or

(~~bii~~) Is not otherwise required to register with the Department pursuant to **Sections** ~~§§~~ 41-4-116 or 40-23-190, Code of Ala. 1975.

(b) A marketplace facilitator for all sales made through the marketplace facilitator's marketplace by or on behalf of a marketplace seller.

(3) The terms "marketplace facilitator" and "marketplace seller" shall be as defined in § 40-23-199.1. See Rule 810-6-2-.90.04 Requirements for Certain Marketplace Facilitators.

(~~34~~) The term "locality" shall mean a county, municipality, or other local governmental taxing authority which levies a local sales and/or use tax.

(~~45~~) The term "most recent federal census" shall mean the decennial population count conducted by the U. S. Census Bureau.

(~~56~~) The term "municipality" shall mean any incorporated city or town located in the state.

(~~67~~) The term "otherwise delivered" shall mean delivery by a method other than in equipment owned or leased by the seller. Delivery in the seller's own vehicle or in equipment leased by the seller establishes a physical presence and disqualifies the seller from participation in the program.

(~~78~~) The term "participating eligible seller" shall mean a seller that has been admitted into and is in good standing in the program.

(~~89~~) The term "program" shall mean the Simplified Sellers Use Tax Remittance Program.

(10) The term "seller" shall be as defined in § 40-23-191, Code of Ala. 1975.

(911) The term “simplified sellers use tax return” shall mean the monthly report of tax due from eligible sellers participating in the program.

(1012) The term “state” shall mean the State of Alabama.

(1113) Pursuant to ~~Section 40-23-191~~ §40-23-193, Code of Ala. 1975, the ~~Simplified Sellers Use Tax Remittance P~~program is designed to allow an eligible seller who participates in the program to collect, report, and remit a statewide eight percent (8%) tax on sales made into Alabama. Participation in the program is voluntary, ~~and o~~Only those eligible sellers accepted into the program shall collect and remit the simplified sellers use tax. The collection and remittance of simplified sellers use tax relieves the eligible seller and the purchaser from any additional state or local sales and use taxes on the transaction.

(a) No participating eligible seller shall be required to collect the tax at a rate greater than eight percent (8%), regardless of the combined actual tax rate that may otherwise be applicable.

(b) No sales for which the simplified sellers use tax is collected shall be subject to any additional sales or use taxes from any locality levying a sales or use tax with respect to the purchase or use of the property, regardless of the actual tax rate that might have otherwise been applicable.

(c) The participating eligible seller shall collect the tax on all purchases shipped or otherwise delivered into the state unless the purchaser furnishes the eligible seller with a valid exemption certificate, sales tax license, or direct pay permit issued by the department.

(1214) A participating eligible seller shall provide the purchaser with an invoice showing that the simplified sellers use tax was collected and is to be remitted on the purchaser's behalf.

(1315) ~~In order t~~To participate in the program, an eligible seller shall complete the required application and provide other information as necessary to certify that the seller

(a) Meets the definition of an eligible seller,

(b) Agrees to collect, report, and remit the simplified sellers use tax for all sales shipped or otherwise delivered into the state while participating in the program,

(c) Agrees to provide the department with information related to sales to Alabama customers as required by law or requested by the department, and

(d) Agrees to comply with all program reporting requirements established under program procedures.

(1416) Subject to constitutional limitations, A a participating eligible seller shall be removed from the program if:

(a) The eligible seller substantially fails to collect, report, and remit the simplified sellers use tax.

(b) The eligible seller fails to submit required reports on a timely basis.

(c) It is determined that the seller is no longer an eligible seller, as defined by **Section §40-23-191, Code of Ala. 1975. However, pursuant to Act 2017-082, effective July 1, 2017, participating sellers shall remain eligible for participation in the program unless the seller establishes a presence through a physical business address for the purpose of making instate retail sales within the State of Alabama or becomes otherwise required to collect and remit sales or use tax pursuant to Section 40-23-190, Code of Ala. 1975, through an affiliate making retail sales at a physical business address in Alabama.**

(d) There is any other finding by the department that the participant is not in compliance with the terms authorizing participation in the program.

(17) Participating sellers remain eligible for participation in the program unless the seller establishes a presence through a physical business address for the purpose of making instate retail sales within the state or becomes otherwise required to collect and remit sales or use tax pursuant to § 40-23-190, Code of Ala. 1975, through an affiliate making retail sales at a physical business address in Alabama. A participating eligible seller that establishes a substantial nexus in this state only though the acquisition of an in-state business may continue in the program to satisfy the requirements to collect and remit tax for its Alabama sales.

(1518) Any participating eligible seller who fails to report that he or she is no longer eligible to participate in the program or falsely certifies eligibility on any report or application shall be subject to the negligence and/or fraud penalties in accordance with **Section §40-2A-11, Code of Ala. 1975.**

(1619) Participating Eeligible sellers **approved for participation in the program** shall file monthly a simplified sellers use tax return reporting all sales shipped or otherwise delivered into the state.

(a) The return shall be due on or before the 20th day of the month next succeeding the month in which tax accrues.

(b) The return shall be due even in months where no tax liability is incurred.

(c) Returns and payments are required to be submitted via the Department's electronic online filing and payment system, My Alabama Taxes (MAT).

(d) Returns required to be submitted shall only include statewide totals of the simplified sellers use tax collected and remitted and shall not require information related to the location of purchasers or amounts of sales into a specific city or county.

(e) Returns and payments submitted after the due date will be subject to penalties and interest in the same manner as those applied to other tax returns due the department and in accordance with the provisions of **Sections §§40-2A-11 and 40-1-44, Code of Ala. 1975**, respectively.

(1720) Participating Eligible sellers participating in the program shall be entitled to a discount of two percent (2%) of the simplified sellers use tax collected and timely reported and remitted to the department. **For tax periods beginning on or after January 1, 2019, the allowance for discount shall not apply to any taxes collected and remitted in excess of four hundred thousand dollars (\$400,000) and is limited to \$8,000 per tax period.** No discount shall be allowed for any taxes which are not timely reported and remitted to the department pursuant to the program.

(1821) The proceeds of the simplified sellers use tax paid shall be appropriated to the department, which shall retain the amount necessary to cover the amounts paid for refunds authorized in **Section §40-23-196, Code of Ala. 1975**. The balance of the amounts collected shall be distributed as follows:

(a) Fifty percent (50%) to the state treasury **and** allocated **as** seventy-five percent (75%) to the General Fund and twenty-five percent (25%) to the Education Trust Fund.

(b) Twenty-five percent (25%) to each county in the state on a prorated basis according to population as determined in the most recent federal census prior to the distribution **for all tax periods prior to January 1, 2019. For tax periods beginning on or after January 1, 2019, the amount distributed on a prorated basis according to population as determined in the most recent federal census prior to the distribution to each county shall be twenty percent (20%).**

(c) Twenty-five percent (25%) to each municipality in the state on a prorated basis according to the population as determined in the most recent federal census prior to the distribution **for all tax periods prior to January 1, 2019. For tax periods on or after January 1, 2019, the amount distributed on a prorated basis according to population as determined in the most recent federal census prior to the distribution to each municipality shall be thirty percent (30%).**

(1922) The distribution of the proceeds from the simplified sellers use tax paid to counties and municipalities shall be made electronically and shall be deposited in the most current banking account for each county and municipality on file with the department. **~~These proceeds shall be paid to counties and municipalities quarterly, in January, April, July, and October of each year for proceeds received~~**

~~during each preceding calendar quarter. Pursuant to Act 2017-082, the last quarterly distribution will be made in July 2017 for proceeds received during the previous calendar quarter. Effective July 1, 2017, p~~Proceeds shall be paid to counties and municipalities monthly, for proceeds received during each preceding calendar month. ~~The distribution made in July 2017 will be for proceeds received for the previous calendar quarter. The distribution made in August 2017 will be for proceeds received in the previous calendar month and will continue in the same manner each month thereafter.~~

(2023) Participating Eligible sellers shall maintain records of all sales shipped or otherwise delivered into Alabama, including copies of invoices showing the purchaser's name, address, purchase amount, and the amount of simplified sellers use tax collected. Such records shall be made available for review and inspection upon request by the department.

(2124) Eligible sellers participating in the program shall not be subject to audit or review by any Alabama locality for simplified sellers use tax. The **Alabama Department of Revenue** holds the sole authority for audit and review of eligible sellers participating in the program.

Authors: Christy Edwards, Ginger Buchanan and Michelle Mayberry
Authority: §§40-2A-7(a)(5), 40-23-191, and 40-23-195 through 40-23-199.1, Code of Ala. 1975.
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