

Transmittal Sheet For Notice Of Intended Action

Control: 810Department or Agency: RevenueRule Nos: 810-6-2-.90-.04Rule Title: Requirements for Certain Marketplace Facilitators and Marketplace Sellers☒ New; ☐ Amended; ☐ Repealed; ☐ Adopt by Reference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? Yes

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-.04

Rule Title: Requirements for Certain Marketplace Facilitators and Marketplace Sellers

X New _____ 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:

ALABAMA DEPARTMENT OF REVENUE
Sales and Use Tax

NOTICE OF INTENDED ACTION

RULE NO. & TITLE

810-6-2-.27 Gold, Coin And Bullion

INTENDED ACTION

Amend

SUBSTANCE OF

PROPOSED ACTION:

The department proposes to amend this rule in order to update with new exemption dates in Act 2018-164.

RULE NO. & TITLE

810-6-2-.90.02

Simplified Sellers Use Tax Remittance Program

810-6-2-.90.03

Requirements For Certain Out-Of-State Sellers Making Significant Sales Into Alabama

INTENDED ACTION

Amend

SUBSTANCE OF

PROPOSED ACTION:

The department proposes to amend these rules to incorporate changes and update taxpayer guidance

RULE NO. & TITLE

810-6-2-.90-.04

Requirements for Certain Marketplace Facilitators and Marketplace Sellers

INTENDED ACTION

New

SUBSTANCE OF

PROPOSED ACTION:

The department proposes to promulgate this rule to provide guidance to taxpayers due to the passage of Act 2018-539.

RULE NO. & TITLE

810-6-5-.16

Churches And Other Religious Organizations And Institutions.

INTENDED ACTION

Amend

SUBSTANCE OF

PROPOSED ACTION:

The department proposes to amend this rule to incorporate Act 2018-562 integration of the sales tax exemptions into the use tax law and a provision of a special use tax exemption of religious publications.

TIME, PLACE, MANNER OF PRESENTING VIEWS: A public hearing will be held at **02:00 PM on Tuesday, September 11, 2018, Room 1203, First Floor**, Gordon Persons Building, located at 50 N Ripley Street, Montgomery, Alabama. Copies of the rule(s) can be obtained at <http://www.revenue.alabama.gov/tax-policy/>.

All interested parties may present their views in writing to the **Secretary of the Alabama Department of Revenue, Room 4131, Gordon Persons Building, 50 N Ripley Street, Montgomery, Alabama 36132** at any time following publication of the notice up until the conclusion of the hearing. Interested parties may also appear at the hearing to present their views.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

Tuesday, September 11, 2018

CONTACT PERSON AT AGENCY:

Meagan Barrett

Alabama Department of Revenue
4131 Gordon Persons Building
Montgomery, Alabama 36132
(334) 242-1380

A handwritten signature in black ink, appearing to read "Michael D. Gamble".

Michael D. Gamble, Secretary
Alabama Department of Revenue

810-6-2-.90.04 Requirements for Certain Marketplace Facilitators and Marketplace Sellers. (NEW)

(1) For the purpose of this rule, the following terms shall have the following meanings:

(a) Department: The Alabama Department of Revenue.

(b) Simplified Sellers Use Tax Remittance Program ("SSUT Program"): As defined in § 40-23-191, Code of Ala. 1975.

(c) Simplified Sellers Use Tax ("SSUT"): As defined in § 40-23-191, Code of Ala. 1975.

(d) Marketplace facilitator: As defined in § 40-23-199.1, Code of Ala. 1975.

(e) Marketplace seller: As defined in § 40-23-199.1, Code of Ala. 1975.

(f) Transaction: A sale or purchase at retail of tangible personal property made through the marketplace facilitator's marketplace by or on behalf of a marketplace seller for delivery to a location in this state, whether by the marketplace facilitator or another person.

(g) Purchaser: As defined in § 40-23-199.1, Code of Ala. 1975.

(h) Non-participating marketplace facilitator: A marketplace facilitator that elects to comply with the notice and reporting requirements prescribed herein on transactions made through the marketplace facilitator's marketplace by or on behalf of a marketplace seller. A marketplace facilitator that is not a registered participant in good standing in the SSUT Program is deemed to have elected to comply with these notice and reporting requirements.

(i) Participating marketplace facilitator: A marketplace facilitator that elects to collect and remit SSUT on transactions made through the marketplace facilitator's marketplace by or on behalf of a marketplace seller and is registered and in good standing in the SSUT Program.

(j) Taxable transaction: Any transaction made through the marketplace facilitator's marketplace by or on behalf of a marketplace seller except the following:

i. Sales to licensed retailers with a valid sales tax license. See Rules 810-6-1-.144.03, and 810-6-1-.89.02.

ii. Sales to purchasers with valid exemption certificates. See Rules 810-6-5-.02 and 810-6-5-.02.01.

iii. Sales of motor vehicles as this term is defined in § 40-12-240, Code of Ala. 1975.

(k) Qualifying amount: Transactions totaling in excess of \$250,000 for the calendar year preceding the year in which a marketplace facilitator elects to either collect SSUT or to comply with notice and reporting requirements. The qualifying amount shall be calculated by aggregating the transactions made directly by the marketplace facilitator, including sales by related parties, and the combined transactions made by all marketplace sellers through the marketplace facilitator's marketplace.

(l) Related parties: As defined in § 40-23-190, Code of Ala. 1975.

(2) Requirements for Participating Marketplace Facilitators

(a) Except as provided in subparagraph (2)(b), effective January 1, 2019, participating marketplace facilitators with transactions in excess of the qualifying amount are required to collect and remit SSUT on all taxable transactions made through the marketplace facilitator's marketplace by or on behalf of a marketplace seller, including those marketplace sellers that would otherwise have an obligation to collect and remit sales or use tax on these transactions.

(b) Transactions made through the marketplace facilitator's marketplace by or on behalf of a related party that has a retail location in this state are subject to sales tax.

(c) If more than one marketplace facilitator is involved in a transaction, the obligation to collect and remit SSUT will be as follows:

i. If each party is a participating marketplace facilitator, as agreed to by the marketplace facilitators in writing, provided that the agreement has been provided to the department;

ii. If no agreement has been provided to the department and only one of the parties is a participating marketplace facilitator, by the participating marketplace facilitator; or

iii. If no agreement has been provided to the department and each party is a participating marketplace facilitator, by the marketplace facilitator who lists the potential retail sale on its marketplace.

(d) Participating marketplace facilitators must comply with the collection, remittance, and reporting requirements set forth in §§ 40-23-192 and 40-23-193,

Code of Ala. 1975.

(e) Participating marketplace facilitators are required to maintain records of all sales delivered, in accordance with § 40-23-195, Code of Ala. 1975, and shall make such records available for review and inspection by the department upon request.

(f) Participating marketplace facilitators are not subject to audit by an Alabama locality for SSUT. However, an Alabama locality may audit the non-marketplace facilitator sales of a marketplace seller for sales or use tax that may be due.

(3) Requirements for Marketplace Sellers

(a) Marketplace sellers are relieved from the collection and remittance of sales tax, use tax, or SSUT for transactions made on or through a participating marketplace facilitator's platform for which SSUT has already been collected on such transactions and no further tax shall be collected by the marketplace seller for such transactions.

(b) Marketplace sellers making sales on or through a non-participating marketplace facilitator's marketplace are not relieved of their obligation under the laws of this state to remit sales or use tax on transactions made on or through a non-participating marketplace facilitator's marketplace, on or through the marketplace seller's own electronic sales platform, or at the marketplace seller's retail location in this state.

(4) Requirements for Non-Participating Marketplace Facilitators

(a) A non-participating marketplace facilitator must file in a form prescribed by the department an election to comply with the notice and reporting requirements set forth in sub-paragraphs (4)(b), (c), and (d) for all transactions for which sales or sellers use tax is not remitted by the marketplace facilitator on behalf of the marketplace seller. Elections required by this subparagraph must be filed with the department:

i. On or before January 31, 2019, if during calendar year 2018 transactions on or through its marketplace exceeded the qualifying amount; and

ii. On or before January 31 of each subsequent calendar year in which the marketplace facilitator's transactions for the previous calendar year exceeded the qualifying amount.

(b) TRANSACTIONAL NOTICES. Non-participating marketplace facilitators must provide notices to each purchaser who enters into a transaction as follows:

i. The notice must state that no sales or use tax is being collected or remitted upon the transaction, or that the seller is not required to collect sales or use tax and that the purchaser may be required to remit any tax owed directly to the department. The notice shall also advise that a summary of such sales is being provided to the department.

ii. The notice must be prominently displayed on each order form, invoice, and sales receipt for the transaction that is provided to the purchaser, whether provided in physical or electronic form.

(c) **ANNUAL TRANSACTION SUMMARY TO PURCHASERS.** Non-participating marketplace facilitators must provide an annual transaction summary to each purchaser who entered into, in the aggregate during the previous calendar year, more than \$200 in transactions that are subject to the notice and reporting requirements of paragraph (4) of this rule.

i. The annual transaction summary must include:

A. A statement that sales or use tax was not collected on the listed transactions in the prior calendar year and that the purchaser may be required to remit any tax owed directly to the department

B. A list of transactions entered into during the prior calendar year by the purchaser showing with respect to each transaction the

Seller's Name

Transaction Date

Invoice or Transaction Number

Purchaser's Name

Purchaser's Billing Address

Delivery Address

Number of Items Purchased

The type of tangible personal property purchased

Total Purchase Price

C. A statement that a report will be submitted to the department pursuant to subparagraph (4)(d) of this rule stating only the purchaser's name, address, total dollar amount of the purchaser's transactions, and the name and address of the

seller for each transaction included in the annual transaction summary.

ii. The annual transaction summary is due by January 31 of each year following the year for which the summary is due.

iii. Except as provided in subdivision (iv) of this subparagraph (4)(c), the annual transaction summary shall be sent to the purchaser's billing address, or if unknown, the purchaser's shipping address, in an envelope marked prominently with words indicating important tax information is enclosed. If no billing or shipping address is known, the summary shall be sent electronically to the purchaser's last known e-mail address with a subject heading indicating important tax information is enclosed.

iv. If the purchaser's billing or shipping address is known, the summary may be provided to the purchaser electronically, if:

A. No earlier than December 1 of the year to be covered by the summary and no later than January 15 of the following year, the purchaser agrees to receive the report electronically, and

B. The purchaser acknowledges that she or he understands that the summary to be received electronically will contain important tax information and that information included in the summary will be provided to the department.

(d) PURCHASER REPORTS TO DEPARTMENT. Non-participating marketplace facilitators must provide reports to the department for each purchaser who entered into transactions that are subject to the transactional notice requirement of subparagraph (4)(b).

i. Reports for each purchaser must be filed electronically in a form and manner prescribed by the department.

ii. Time of filing.

A. Marketplace facilitators with transactions in excess of \$1,000,000 in any given quarter ending March 31, June 30, September 30, or December 31, must file the purchaser report required in this subparagraph on or before the 20th day of the month succeeding the end the quarter.

B. Marketplace facilitators with quarterly transactions of \$1,000,000 or less in any given calendar year may file the purchaser report required by this subparagraph annually by the January 30 of the calendar year succeeding the year for which the report is being provided or quarterly on or before the 20th day of the month succeeding the end of the quarterly reporting period.

C. For the purposes of this subdivision, total quarterly transactions shall be calculated by aggregating the transactions made directly by the marketplace

facilitator, including sales by related parties, and the combined transactions made by all marketplace sellers through the marketplace facilitator's marketplace.

- iii. The report for each purchaser must include:
 - A. The name of the purchaser;
 - B. The billing address and, if different, the last known mailing address of the purchaser;
 - C. The shipping address for each transaction that the purchaser entered into that is subject to the transactional notice requirement in subparagraph (4)(b);
 - D. The total purchase price for each transaction that the purchaser entered into that is subject to the transactional notice requirement in subparagraph (4)(b); and
 - E. The name and address of the seller for each transaction included in the report.
- iv. A certification by the filing entity that it has complied with the transactional notice requirement for each transaction included in the report.

(5) Penalties. In addition to any other applicable penalties a failure to timely file penalty in the amount of \$50 will be assessed for failure to file with the department the report for each purchaser required in subparagraph (4)(d).

(6) Waiver of Penalties. A marketplace facilitator that elects to collect and remit SSUT, in lieu of complying with the notice and reporting requirements in paragraph (4), may be granted a waiver of the penalties imposed under paragraph (5) upon a demonstration that it is impractical for the marketplace facilitator to begin collecting and remitting SSUT on marketplace sales prior to January 1, 2019. Waivers will be granted on a case-by-case basis, but shall be granted only if the following conditions are satisfied prior to January 1, 2019:

- i. The marketplace facilitator has registered with the department to participate in the SSUT Program; and
- ii. The marketplace facilitator has requested in writing and received approval from the department for a deferral of its obligation to collect and remit SSUT as required under paragraph (3) to a reasonable date certain.

(7) Marketplace Seller Exemptions

(a) The limited amount of information required to be reported to the department by this rule is designed to alleviate any concerns regarding the privacy of a marketplace seller's customers with respect to their purchases. However, if a

seller believes that, due to the nature of business conducted by the seller, reporting to the department even the limited information required by this rule would result in a violation of the rights of its customers under the First Amendment of the United States Constitution, the seller may apply to the department for an exemption from the reporting requirements of this rule.

(b) An application for a marketplace seller exemption from the reporting requirements of this rule must be submitted to the department. An application for a seller exemption must list the seller's name, address, telephone number and point of contact and must explain in detail why reporting the information required by this rule would result in a violation of the first amendment rights of its customers. The department may request additional information from the seller regarding its application. The vendor may request a conference with the department to discuss its application.

(c) The department will grant or deny the marketplace seller exemption application in a reasonable time and will notify the seller of its decision.

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| Authors: | Michele Mayberry and Victoria Williams. |
| Authority: | §§ 40-2-11(7), 40-2A-7(a)(5), 40-2A-11, 40-23-31, 40-23-83, 40-23-190, 40-23-197(3)(a), 40-23-198, 40-23-199, and 40-23-199.1, <u>Code of Ala. 1975</u> . |
| History: | New Rule: Filed: July 20, 2018; Effective |