

1 HB660  
2 166544-1  
3 By Representative Scott  
4 RFD: Ways and Means General Fund  
5 First Read: 12-MAY-15

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8 SYNOPSIS: This bill, known as the Non-Nexus Use Tax  
9 Remittance Act, would provide an easily-accessible  
10 method for non-nexus sellers to remit, on behalf of  
11 their customers, a non-nexus sellers use tax on  
12 items delivered into Alabama.

13  
14 A BILL  
15 TO BE ENTITLED  
16 AN ACT

17  
18 Relating to non-nexus sellers use tax to establish  
19 an easily-accessible method for non-nexus sellers to remit, on  
20 behalf of their customers, use tax on items delivered into  
21 Alabama.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

23 Section 1. Sections 40-23-191 through 40-23-200 are  
24 hereby added to Division 3 of Article 6 of Chapter 23 of Title  
25 40 of the Code of Alabama 1975, as follows:

26 §40-23-191.

1            "This act shall be titled "The Non-Nexus Use Tax  
2 Remittance Act".

3            "§40-23-192.

4            "For the purpose of this act, the following terms  
5 shall have the respective meanings ascribed to them in this  
6 section:

7            "(1) DEPARTMENT. The Alabama Department of Revenue.

8            "(2) LOCALITY. A county, municipality, or other  
9 local governmental taxing authority which levies a local sales  
10 and/or use tax.

11            "(3) NEXUS. Business activity within the state of  
12 Alabama that is sufficient to require a non-resident seller to  
13 be subject to requirements for collecting and remitting state  
14 and local sales or use tax for purchases delivered into the  
15 state of Alabama.

16            "(4) NON-NEXUS SELLER. An individual, trust, estate,  
17 fiduciary, partnership, limited liability company, limited  
18 liability partnership, corporation or other legal entity that  
19 sells tangible personal property or a service, but does not  
20 have nexus in this state.

21            "(5) NON-NEXUS SELLERS USE TAX. The eight percent  
22 (8%) tax to be collected, reported, and remitted by non-nexus  
23 sellers who are participating in the program pursuant to  
24 requirements and procedures established pursuant to this act.

25            "(6) NON-NEXUS USE TAX REMITTANCE PROGRAM or  
26 PROGRAM. The program established in this act to provide a  
27 mechanism for non-nexus sellers to collect, report, and remit

1 the non-nexus sellers use tax established pursuant to this  
2 act.

3 "(7) STATE. The State of Alabama.

4 "§40-23-193.

5 "(a) There is hereby established The Non-Nexus Use  
6 Tax Remittance Program designed to allow a non-nexus seller  
7 who participates in the program to collect, report, and remit  
8 the non-nexus sellers use tax authorized herein in lieu of the  
9 sales or use taxes otherwise due by or on behalf of Alabama  
10 customers who have purchased items from the non-nexus seller  
11 that were shipped or otherwise delivered into Alabama by the  
12 non-nexus seller. Participation in the program shall be by  
13 election of the non-nexus seller and only those non-nexus  
14 sellers accepted into the program as set out herein shall  
15 collect and remit the non-nexus sellers use tax. Participation  
16 in the program shall not be construed as subjecting a  
17 non-nexus seller to franchise, income, occupation, or any  
18 other type of taxes or licensing requirements levied or  
19 imposed by the state of Alabama or any locality against  
20 taxpayers who have nexus with the state.

21 "(b) The program shall be administered by the  
22 department, which pursuant to this act, shall develop and make  
23 available to the non-nexus seller an easily-accessible, online  
24 system in which to collect, report, and remit the non-nexus  
25 sellers use tax. Participants in the program shall be required  
26 to collect, report, and remit the non-nexus sellers use tax  
27 for all sales delivered into the state as long as remaining a

1 participant in the program. Participants are eligible for the  
2 program as long as they do not have nexus with the state of  
3 Alabama and comply with all provisions of this act and  
4 procedures adopted by the department for participation in the  
5 program.

6 "(c) In order to participate in the program, a  
7 non-nexus seller shall make application with the department on  
8 a form designed by the department for that purpose. The  
9 application shall require, at a minimum, that the non-nexus  
10 seller:

11 "(1) Certifies that he or she does not have nexus  
12 with the state of Alabama sufficient to legally require the  
13 seller to collect and remit sales and use tax due on purchases  
14 delivered into the state.

15 "(2) Agrees to collect, report, and remit the  
16 non-nexus sellers use tax for all sales delivered into the  
17 state as long as he or she remains a participant in the  
18 program.

19 "(3) Agrees to provide the department with  
20 information related to sales from Alabama customers as  
21 required by this act or requested by the department.

22 "(4) Agrees to comply with all program reporting  
23 requirements established under program procedures.

24 "Any applicant who falsely certifies on his or her  
25 application that he or she does not have nexus with the state  
26 of Alabama shall be subject to the negligence and/or fraud  
27 penalties under procedures found in Section 40-2A-11.

1           "(d) The department shall review all applications  
2 for participation, and where an applicant is determined to  
3 satisfy requirements to participate in the program, shall  
4 establish a non-nexus sellers use tax account for the  
5 non-nexus seller which will allow the non-nexus seller to  
6 report and remit all non-nexus sellers use tax collected  
7 pursuant to this act.

8           "(e) A participating non-nexus seller shall be  
9 removed from the program if:

10           "(1) He or she substantially fails to collect,  
11 report, and remit non-nexus sellers use taxes.

12           "(2) He or she fails to submit required reports on a  
13 timely basis.

14           "(3) Upon a determination that the non-nexus seller  
15 has nexus with Alabama.

16           "(4) There is any other finding by the department  
17 that the participant is not in compliance with the terms  
18 authorizing participation in the program.

19           "Any participant who fails to report that he or she  
20 has established nexus with the state or falsely certifies on  
21 any report that he or she does not have nexus with the state  
22 of Alabama shall be subject to the negligence and/or fraud  
23 penalties under procedures found in Section 40-2A-11. Removal  
24 from the program or assessment of the fraud or negligence  
25 penalty shall be subject to appeal rights and procedures  
26 established in this title.

27           "§40-23-194.

1           "(a) The non-nexus sellers use tax due under the  
2 program is eight percent (8%) of the sales price on any  
3 tangible personal property sold or delivered into Alabama by a  
4 non-nexus seller participating in the program. The collection  
5 and remittance of non-nexus sellers use tax relieves the  
6 non-nexus seller and the purchaser from any additional state  
7 or local sales and use taxes on the transaction.

8           "(b) The non-nexus sellers use tax collected by the  
9 non-nexus seller shall be electronically reported and remitted  
10 in the manner prescribed by the department on or before the  
11 20th day of the month next succeeding the month in which the  
12 tax accrues. The required monthly reporting from the non-nexus  
13 seller shall only include statewide totals of the non-nexus  
14 sales and non-nexus sellers use taxes collected and remitted,  
15 and shall not require information related to the location of  
16 purchasers or amount of sales into a specific locality. The  
17 department may not require a non-nexus seller to report and  
18 remit the non-nexus sellers use tax more frequently than is  
19 required for other sellers.

20           "(c) No non-nexus seller shall be required to  
21 collect the tax at a rate greater than eight percent (8%),  
22 regardless of the combined actual tax rates that may otherwise  
23 be applicable. Additionally, no purchase for which the  
24 non-nexus sellers use tax is collected shall be subject to any  
25 additional sales or use tax from any locality levying a sales  
26 or use tax with respect to the purchase or use of the

1 property, regardless of the actual tax rate that might have  
2 otherwise been applicable.

3 "(d) The participating non-nexus seller shall  
4 collect the tax on all purchases delivered into Alabama unless  
5 the purchaser furnishes the non-nexus seller with a valid  
6 exemption certificate, sales tax license, or direct pay permit  
7 issued by the department. The non-nexus seller shall retain  
8 all exemption certificates, sales tax licenses, or direct pay  
9 permits in its files, or in such other manner as directed by  
10 the department.

11 "(e) The non-nexus seller shall provide the  
12 purchaser with a statement or invoice showing that the  
13 non-nexus sellers use tax was collected and is to be remitted  
14 on the purchaser's behalf. The statement shall be in a manner  
15 prescribed by the department and shall include the non-nexus  
16 seller's program account number issued by the department upon  
17 the non-nexus seller's approval as a participant in the  
18 program.

19 "§40-23-195.

20 "Non-nexus sellers may deduct and retain a discount  
21 equal to two percent of the non-nexus sellers use tax  
22 collected and properly reported and remitted to the department  
23 in a timely manner. The department is authorized to prescribe  
24 rules for administering the discount. No discount shall be  
25 allowed for any taxes which are not timely reported and  
26 remitted to the department pursuant to program procedures.

27 "§40-23-196.



1           "(a) The department may adopt, promulgate, and  
2           enforce reasonable rules and regulations related to the  
3           implementation, administration, and participation in the  
4           program. The department shall have exclusive responsibility  
5           for reviewing and accepting applications for participation and  
6           for the administration, return processing, and review of the  
7           eligibility of non-nexus sellers participating in the program.  
8           Non-nexus sellers participating in the program shall not be  
9           subject to audit or review by any Alabama locality. Non-nexus  
10          sellers shall maintain records of all sales of purchases  
11          delivered into Alabama, including copies of invoices showing  
12          the purchaser, address, purchase amount, and non-nexus sellers  
13          use tax collected. Such records shall be made available for  
14          review and inspection upon request by the department.

15               "§40-23-197.

16           "(a) Any taxpayer who pays a non-nexus sellers use  
17          tax through this program that is higher than the actual state  
18          and local sales or use tax levied in the locality where the  
19          purchase was delivered may file for a refund or credit of the  
20          excess amount paid to the non-nexus seller participating in  
21          the program. A business taxpayer who has a registered consumer  
22          use tax account with the department may claim credit for the  
23          overpayment of non-nexus use tax on their consumer use tax  
24          return in a manner prescribed by the department. All other  
25          taxpayers may file a petition for refund in the manner  
26          prescribed by the department. The petition for refund may only  
27          be filed once per year. In the event the amount due to be

1 refunded in a year is less than twenty-five (\$25.00) dollars,  
2 payment of the refund may be deferred by the department and  
3 combined with amounts due to be paid pursuant to subsequent  
4 annual refund petitions for a period of up to three years.

5 "(b) Any taxpayer seeking a refund or credit of  
6 excess taxes paid to a non-nexus seller participating in the  
7 program shall maintain records documenting the amount of  
8 non-nexus sellers use tax paid. Refunds or credits shall only  
9 be paid where proper documentation of amounts paid by the  
10 taxpayer is submitted to the department with the petition for  
11 refund.

12 "§40-23-198.

13 "(a) The proceeds of non-nexus sellers use tax paid  
14 pursuant to this act shall be appropriated to the department,  
15 which shall retain the amount necessary to fund the  
16 administrative costs of implementing and operating the program  
17 and to cover the amounts paid for discounts authorized in  
18 §40-23-194. The balance of the amounts collected shall be  
19 distributed as follows:

20 "(1) Fifty percent (50%) to the state treasury and  
21 allocated seventy-five percent (75%) to the General Fund and  
22 twenty-five percent (25%) to the Education Trust Fund.

23 "(2) Twenty-five percent (25%) to each county in the  
24 state on a prorated basis according to population as  
25 determined in the most recent federal census prior to the  
26 distribution.

1           "(3) Twenty-five percent (25%) of funds to be  
2 distributed to each municipality in the state on a prorated  
3 basis according to population as determined in the most recent  
4 federal census prior to the distribution.

5           "(b) The distribution of the proceeds from the  
6 non-nexus sellers use tax paid to counties and municipalities  
7 shall occur quarterly in a manner prescribed by the  
8 Department.

9           "§40-23-199.

10           "(a) In the event that a national agreement for the  
11 collection of sales and use taxes from remote or non-nexus  
12 sellers or the other federal legislation requiring remote or  
13 non-nexus sellers to collect and remit Alabama's sales or use  
14 taxes is enacted, the provisions of this act shall be  
15 inapplicable as to any non-nexus seller who is not registered  
16 with the department as a participant in the program at least  
17 six months prior to the date of passage of such national  
18 agreement or act. In such event, the provisions of this act  
19 will continue to apply to any non-nexus seller who has been  
20 approved by the department as a participant in the program at  
21 least six months prior to the passage of such agreement or act  
22 and to any taxpayer who has paid or pays the non-nexus sellers  
23 use tax authorized under this act provided the non-nexus  
24 seller continues to collect, report, and remit the non-nexus  
25 sellers use tax and otherwise complies with all procedures and  
26 requirements of the program. Non-nexus sellers participating  
27 in the program pursuant to this subsection may continue to

1 receive a discount of two percent (2%) on all non-nexus  
2 sellers use taxes properly remitted under the provisions of  
3 this act and shall continue to report sales under the  
4 conditions set out in Section 40-23-194.

5 "§40-23-200.

6 "(a) Subject to the limitations set out herein, a  
7 non-nexus seller participating in the program shall be granted  
8 amnesty for any uncollected or unpaid remote use tax that may  
9 have been due on sales made to purchasers in the state for the  
10 twelve-month period preceding the effective date of the  
11 non-nexus sellers' participation in the program.

12 "(b) The amnesty will preclude assessment for  
13 uncollected or unpaid non-nexus use tax together with any  
14 penalty or interest for sales made during the twelve-month  
15 period prior to the effective date of the non-nexus seller's  
16 participation in the program.

17 "(c) The amnesty provided herein shall be granted to  
18 any non-nexus seller who applies to participate in the program  
19 following acceptance into the program by the department.

20 "(d) Amnesty is not available to a non-nexus seller  
21 with respect to any matter or matters for which the non-nexus  
22 seller has received notice of the commencement of an audit and  
23 the audit is not yet finally resolved, including any related  
24 administrative and judicial processes.

25 "(e) Amnesty is not available for any non-nexus  
26 sellers use tax already paid or remitted to the state or for  
27 taxes collected by the non-nexus seller.

1           "(f) Amnesty is fully effective, absent the  
2 non-nexus seller's fraud or intentional misrepresentation of a  
3 material fact, as long as the non-nexus remote seller  
4 continues his or her participation in the program and  
5 continues to collect, report, and remit applicable non-nexus  
6 sellers use tax for a period of at least thirty-six months.  
7 The state shall toll its statute of limitations applicable to  
8 asserting a tax liability during this thirty-six month period.

9           "(g) Amnesty is applicable only to non-nexus use tax  
10 due from a non-nexus seller in his or her capacity as a  
11 non-nexus seller and not to remote use taxes due from a seller  
12 in his or her capacity as a buyer."

13           Section 2. This act shall become effective on  
14 January 1, 2016, following its passage and approval by the  
15 Governor, or upon its otherwise becoming law.