

1 State of Arkansas
2 88th General Assembly
3 Regular Session, 2011
4

A Bill

SENATE BILL 738

5 By: Senators Files, Crumbly, L. Chesterfield, Burnett, S. Flowers
6

For An Act To Be Entitled

8 AN ACT TO TRANSFER RESPONSIBILITY FOR COLLECTION OF
9 SALES AND USE TAXES TO SELLERS ENGAGING IN THE
10 BUSINESS OF SELLING TANGIBLE PERSONAL PROPERTY AND
11 SERVICES IN CERTAIN CIRCUMSTANCES; AND FOR OTHER
12 PURPOSES.
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Subtitle

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16 TO TRANSFER RESPONSIBILITY FOR COLLECTION
17 OF SALES AND USE TAXES TO SELLERS
18 ENGAGING IN THE BUSINESS OF SELLING
19 TANGIBLE PERSONAL PROPERTY AND SERVICES
20 IN CERTAIN CIRCUMSTANCES.
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

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

27 26-52-117. Sellers and affiliated persons – Referral agreements –
28 Notice required.

29 (a) As used in this section:

30 (1) "Affiliated person" means:

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

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

36 (2) "Controlled group of corporations" means the same as in 26



1 U.S.C. § 1563(a), as it existed on January 1, 2011; and

2 (3) "Facilitator" means a person that directly aids or assists
3 sellers in making remote sales, including without limitation a person that
4 operates a website marketplace through which the seller makes sales.

5 (b) A seller is presumed to be engaged in the business of selling
6 tangible personal property or taxable services for use in the state if an
7 affiliated person is subject to the sales and use tax jurisdiction of the
8 state and the:

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

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

15 (3) Affiliated person maintains an office, distribution
16 facility, warehouse or storage place, or similar place of business to
17 facilitate the delivery of property or services sold by the seller to the
18 seller's business;

19 (4) Affiliated person uses trademarks, service marks, or trade
20 names in the state that are the same or substantially similar to those used
21 by the seller; or

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

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

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

35 (2) However, subdivision (d)(1) of this section applies only if
36 the cumulative gross receipts from sales by the seller to purchasers in the

1 state who are referred to the seller by all residents according to the type
2 of agreement described in subdivision (d)(1) of this section exceed ten
3 thousand dollars (\$10,000) during the preceding twelve (12) months.

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

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

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

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17 SECTION 2. EFFECTIVE DATE. Subsection (d) of § 26-52-117 is effective
18 ninety (90) days after the effective date of this act and shall apply to
19 sales made, uses occurring, and services rendered on or after the effective
20 date of this act in accordance with the applicable transition provisions and
21 without regard to the date the seller and the resident entered into the
22 agreement described in subsection (d) of § 26-52-117. The twelve (12) months
23 before the effective date of this act are included as part of the preceding
24 twelve (12) months for purposes of subdivision (d)(2) of § 26-52-117.