

1 State of Arkansas *As Engrossed: H1/31/17 H2/3/17 S2/23/17*

2 91st General Assembly

A Bill

3 Regular Session, 2017

HOUSE BILL 1388

4

5 By: Representative D. Douglas

6 *By: Senator Files*

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For An Act To Be Entitled

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AN ACT TO REQUIRE OUT-OF-STATE SELLERS AND

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FACILITATORS TO PROVIDE NOTICE TO ARKANSAS PURCHASERS

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REGARDING TAX DUE ON CERTAIN PURCHASES; TO REQUIRE

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OUT-OF-STATE SELLERS AND FACILITATORS TO REPORT SALES

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MADE TO ARKANSAS PURCHASERS; AND FOR OTHER PURPOSES.

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Subtitle

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TO REQUIRE OUT-OF-STATE SELLERS AND

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FACILITATORS TO PROVIDE NOTICE TO

19

ARKANSAS PURCHASERS REGARDING TAX DUE ON

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CERTAIN PURCHASES AND TO REPORT SALES

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MADE TO ARKANSAS PURCHASERS.

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

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26 SECTION 1. Arkansas Code § 26-52-110(f), concerning referral

27 agreements between sellers and affiliated persons and the notice required, is

28 amended to read as follows:

29 (f) A seller that does not have a physical presence in this state and

30 does not collect Arkansas sales or use tax on sales made to Arkansas

31 purchasers shall:

32 (1)(A) Notify Arkansas purchasers at the time of purchase that

33 sales or use tax is due on certain purchases made from the seller and that

34 the State of Arkansas requires the purchaser to file a sales or use tax

35 return.

36 (B) A seller that fails to provide the notice required



1 under this subdivision (f)(1) is subject to a penalty of five dollars (\$5.00)
2 for each failure to provide notice, unless the seller shows reasonable cause
3 for the failure to provide notice;

4 (2)(A) If a seller does not collect Arkansas sales or use tax,
5 send notice to all Arkansas purchasers by January 31 of each year showing the
6 total amount paid by the purchaser for Arkansas purchases made from the
7 seller in the previous calendar year.

8 (B) The notice required under this subdivision (f)(2)
9 shall:

10 (i) Include, if available, the date of each
11 purchase, the amount of each purchase, and the category of each purchase,
12 including without limitation whether the purchase is exempt from taxation;

13 (ii) State that the State of Arkansas requires a
14 sales or use tax return to be filed and sales or use tax paid on certain
15 Arkansas purchases made by the purchaser from the seller;

16 (iii) Be sent separately to each Arkansas purchaser
17 through communication by electronic means or first-class mail;

18 (iv) Not be included with any other *shipment or*
19 *electronic communication*; and

20 (v) Include the words *important tax document*
21 *enclosed*” and the name of the seller on the exterior of the *mailing or within*
22 *the electronic communication*.

23 (C) A seller that fails to provide the notice required
24 under this subdivision (f)(2) is subject to a penalty of ten dollars (\$10.00)
25 for each failure to provide notice, unless the seller shows reasonable cause
26 for the failure to provide notice; and

27 (3)(A) By March 1 of each year, file an annual report of sales
28 to each Arkansas purchaser with the Director of the Department of Finance and
29 Administration.

30 (B) The report required under this subdivision (f)(3)
31 shall include:

32 (i) The name of the purchaser;

33 (ii) The total amount paid by each purchaser to the
34 seller during the immediately preceding calendar year; and

35 (iii) Each delivery or shipping address provided by
36 the purchaser to the seller.

1 (C) A seller that fails to provide the annual report
2 required under this subdivision (f)(3) is subject to a penalty of ten dollars
3 (\$10.00) for each purchaser that should have been included in the annual
4 report, unless the seller shows reasonable cause for the failure to provide
5 the report.

6 (g) A seller or facilitator that does not have a physical presence in
7 this state but collects and remits Arkansas sales and use tax on sales made
8 to Arkansas purchasers is not required to comply with the requirements of
9 subsection (f) of this section.

10 (h) A seller is presumed to be engaged in the business of selling
11 tangible personal property or taxable services for use in this state if the
12 seller enters into an agreement with a facilitator to directly aid or assist
13 the seller in making remote sales.

14 (i) A facilitator that does not have a physical presence in this state
15 and does not collect Arkansas sales Arkansas sales or use tax on sales made
16 to Arkansas purchasers shall:

17 (1)(A) Notify:

18 (i) Arkansas purchasers at the time of purchase that
19 sales or use tax is due on certain purchases made from sellers and that the
20 State of Arkansas requires the purchaser to file a sales or use tax return;
21 and

22 (ii) Sellers to Arkansas purchasers that sales or
23 use tax is imposed on sales made to Arkansas purchasers.

24 (B) A facilitator that fails to provide the notices
25 required under this subdivision (h)(1) is subject to a penalty of five
26 dollars (\$5.00) for each failure to provide notice, unless the facilitator
27 shows reasonable cause for the failure to provide notice.

28 (2)(A) By March 1 each year, file an annual report of each
29 seller to the director showing the total amount paid by Arkansas purchasers
30 to the seller during the preceding calendar year.

31 (B) A facilitator that fails to provide the annual report
32 required under this subdivision (h)(2) is subject to a penalty of ten dollars
33 (\$10.00) for each seller that should have been included in the annual report,
34 unless the facilitator shows reasonable cause for the failure to provide the
35 report.

36 (j) The Director of the Department of Finance and Administration shall

1 promulgate rules to implement this section.

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3 SECTION 2. EFFECTIVE DATE. Section 1 of this act is effective on and
4 after January 1, 2018.

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/s/D. Douglas

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