

**ARKANSAS SENATE**  
91st General Assembly - Regular Session, 2017  
**Amendment Form**

---

**Subtitle of Senate Bill No. 140**

TO PROVIDE FOR THE COLLECTION OF SALES TAX RATHER THAN USE TAX ON SALES BY  
CERTAIN REMOTE SELLERS.

---

**Amendment No. 1 to Senate Bill No. 140**

Amend Senate Bill No. 140 as originally introduced:

Page 1, line 9, delete "SALES" and substitute "SALES AND USE"

AND

Delete the subtitle in its entirety and substitute:

"TO PROVIDE FOR THE COLLECTION OF SALES  
AND USE TAX RATHER THAN USE TAX ON SALES  
BY CERTAIN REMOTE SELLERS."

AND

Page 1, line 25, delete "products" and substitute "any other property subject to Arkansas sales and use tax"

AND

Page 1, line 26, delete "transferred electronically"

AND

Page 1, line 34, delete "a product transferred electronically" and substitute "certain other property"

AND

Page 2, line 3, delete "sales" and substitute "sales and use"

AND

Page 2, line 9, delete "sales" and substitute "sales and use"

AND



Page 2, line 12, delete "sales taxes" and substitute "sales and use taxes"

AND

Page 2, line 18, delete "sales" and substitute "use"

AND

Page 2, line 23, delete "sales" and substitute "sales and use"

AND

Page 2, line 28, delete "sales" and substitute "sales and use"

AND

Immediately following SECTION 1 of the bill, add an additional section to read as follows:

"SECTION 2. Arkansas Code § 26-52-110 is repealed.

~~26-52-110. Sellers and affiliated persons—Referral agreements—Notice required.~~

~~(a) As used in this section:~~

~~(1) "Affiliated person" means:~~

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

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

~~(2) "Controlled group of corporations" means the same as in 26 U.S.C. § 1563(a), as it existed on January 1, 2011; and~~

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

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

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

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

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

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

~~(5) Affiliated person delivers, installs, assembles, or performs~~

~~maintenance services for the seller's purchasers within the state.~~

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

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

~~(2) However, subdivision (d)(1) of this section applies only if the cumulative gross receipts from sales by the seller to purchasers in the state who are referred to the seller by all residents according to the type of agreement described in subdivision (d)(1) of this section exceed ten thousand dollars (\$10,000) during the preceding twelve (12) months.~~

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

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

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

AND

Page 3, line 14, delete "products transferred" and substitute "any other property subject to Arkansas sales and use tax"

AND

Page 3, line 15, delete "electronically"

AND

Page 3, line 17, delete "chapter" and substitute "chapter and the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq."

AND

Page 3, line 18, delete "sales" and substitute "sales and use"

AND

Page 3, line 23, delete "product transferred electronically" and substitute "other property subject to Arkansas sales and use tax"

AND

Page 3, line 26, delete "product transferred electronically" and substitute "other property subject to Arkansas sales and use tax"

AND

Page 3, line 30, delete "sales" and substitute "sales and use"

AND

Page 4, line 10, delete "sales" and substitute "sales and use"

AND

Page 4, line 20, delete "sales" and substitute "sales and use"

AND

Page 4, line 31, delete "sales" and substitute "sales and use"

AND

Page 4, delete line 32, and substitute the following:  
"a purchaser if the seller was not required to collect sales and use tax because a"

AND

Page 4, line 36, delete "sales" and substitute "sales and use"

AND

Page 5, line 2, delete "and 2" and substitute "through 3"

AND

Appropriately renumber the sections of the bill

The Amendment was read the first time, rules suspended and read the second time and \_\_\_\_\_

By: Senator Files

JLL/JLL - 02-01-2017 09:46:08

JLL145

\_\_\_\_\_  
Secretary