

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1002

Amendment Number: H2

Bill Subtitle: TO REQUIRE CERTAIN OUT-OF-STATE SELLERS TO COLLECT AND REMIT ARKANSAS SALES AND USE TAX.

Basic Change :

Sponsor: Rep. D. Douglas

House Amendment 2 --- Amends the bill to replace incorrect language regarding marketplace facilitators to state that a "marketplace facilitator" is a person that facilitates the sale of tangible personal property, taxable services, a digital code, or specified digital products by:

1. Listing or advertising tangible personal property, taxable services, a digital code, or specified digital products for sale in a forum; **and**
2. Either directly or indirectly through an agreement or arrangement with a third party, collecting payment from a purchaser and transmitting the payment to the person selling the tangible personal property, taxable services, a digital code, or specified digital products, regardless of whether the person receives compensation or other consideration in exchange for its services in collecting and transmitting the payment.

The bill as engrossed on 1/29/2019 used the term "or" instead of "and".

House Amendment 1 --- Amends the bill to require in addition to remote sellers the requirement for "marketplace facilitators" that sell or facilitate sales of products and services for their marketplace participating sellers to collect and remit the applicable Arkansas taxes on all sales conducted through the marketplace. The facilitator would collect and remit the sales and use taxes for their participating sellers eliminating the need for the sellers to register directly with DFA unless the seller's direct sales to consumers conducted outside the marketplace exceed the established threshold levels of annual sales of one hundred thousand dollars (\$100,000) or two hundred (200) separate sales transactions. The amendment also defines the terms "marketplace facilitator", "marketplace seller", and "remote seller" for purposes of the act.

Original Bill --- HB1002 would add a new code section to the Arkansas Gross Receipts Tax Act of 1941, § 26-52-101 et seq., to require out-of-state sellers having no physical presence in Arkansas to collect Arkansas state and local sales and use tax. Out-of-state or "remote" sellers subject to the provisions of the bill would include those sellers meeting either of the following criteria in the previous calendar year or the current calendar year:

1. A seller having gross revenue from sales of products and services delivered into Arkansas that exceeds one hundred thousand dollars (\$100,000); or
2. A seller who has sold products and services for delivery into Arkansas in at least two hundred (200) separate sales transactions.

The remote sellers subject to collecting the tax would be those out-of-state remote sellers found to be doing business with Arkansas customers equaling the same business operating thresholds as found to be acceptable in the U.S. Supreme Court decision of *South Dakota v. Wayfair*. The bill provides that the tax collection responsibility would not be applied retroactively, and businesses would be subject to the provisions only upon the effective date of the act.

The bill also repeals § 26-52-110, which established sales tax collection by businesses that have a

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connection to the state through affiliated companies. With the adoption of the requirement for remote sellers to collect the tax, these affiliate nexus provisions are likely no longer be needed.

The effective date of the act would be the first day of the calendar quarter following the effective date of the act, which would likely fall on October 1, 2019.

Revenue Impact :

FY2020 - \$23,592,606 Million Total Gain to State Sales Tax Revenue
(8 months of Monthly Tax Deposits Only)

+\$ 495,445 --- State Central Services
+\$ 235,926 --- Constitutional Officers
+\$ 15,827,009 --- General Revenue
+\$ 0 --- Educational Excellence Trust Fund
+\$ 0 --- Educational Adequacy (GR transfer)
+\$ 3,077,474 --- Educational Adequacy (7/8% tax)
+\$ 1,758,557 --- Property Tax Relief Trust Fund
+\$ 439,639 --- Conservation Tax
+\$ 1,758,557 --- Highway Fund
Gain to City and County Sales Tax Revenue: +\$7,864,202

FY2021 - \$35,388,909 Million Total Gain to State Sales Tax Revenue

+\$ 743,167 --- State Central Services
+\$ 353,889 --- Constitutional Officers
+\$ 21,304,737 --- General Revenue
+\$ 2,237,939 --- Educational Excellence Trust Fund
+\$ 197,838 --- Educational Adequacy (GR transfer)
+\$ 4,616,211 --- Educational Adequacy (7/8% tax)
+\$ 2,637,835 --- Property Tax Relief Trust Fund
+\$ 659,459 --- Conservation Tax
+\$ 2,637,835 --- Highway Fund
Gain to City and County Sales Tax Revenue: +\$11,796,303

Taxpayer Impact :

An out-of-state remote seller having no physical presence in Arkansas or a marketplace facilitator meeting the sales transactions or sales volume criteria as provided in the bill would register with the Department of Finance and Administration (DFA) to collect and remit Arkansas state and local sales and use tax and begin collecting the tax on October 1, 2019.

Resources Required :

None.

Time Required :

Adequate time is provided for implementation.

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Procedural Changes :

Updates to the sales tax rules will be promulgated.

Other Comments :

The bill mirrors that previously adopted by the State of South Dakota and upheld by the U.S. Supreme Court in its decision of *South Dakota v. Wayfair*. As of January 2019, of the 45 states that levy sales taxes, 32 have implemented or adopted state laws requiring remote sellers to collect sales tax on products and services sold for delivery into their states following the South Dakota model of establishing thresholds levels.

Marketplace facilitators and the states recently worked with the Multistate Tax Commission to create provisions and standardized procedures for marketplace facilitator tax collections. The final report included the procedures as requested by the marketplace facilitators for their collection of the state and local sales taxes on behalf of their participating marketplace sellers for the states with those provisions reflected in HB1002.

Legal Analysis :

HB1002 empowers DFA to impose collection of sales tax on remote sellers and marketplace facilitators who deliver taxable goods or services into the state if the seller receives gross revenue of \$100,000 or conducts at least 200 transactions into the state. These thresholds are identical to those imposed by South Dakota which were recently upheld by the United States Supreme Court in *South Dakota v. Wayfair, Inc.* 585 U.S. ____, 138 S.Ct. 2080 (2018). This amendment fixes a clerical error in the bill regarding the definition of "marketplace facilitators."