A Bill

For An Act To Be Entitled
AN ACT TO TRANSFER RESPONSIBILITY FOR COLLECTION OF
SALES AND USE TAXES TO SELLERS ENGAGING IN THE
BUSINESS OF SELLING TANGIBLE PERSONAL PROPERTY AND
SERVICES IN CERTAIN CIRCUMSTANCES; AND FOR OTHER
PURPOSES.

Subtitle
TO TRANSFER RESPONSIBILITY FOR COLLECTION
OF SALES AND USE TAXES TO SELLERS
ENGAGING IN THE BUSINESS OF SELLING
TANGIBLE PERSONAL PROPERTY AND SERVICES
IN CERTAIN CIRCUMSTANCES.

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

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

26-52-117. 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

(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 year 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.

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

APPROVED: 04/01/2011