



**State of Tennessee**  
**PUBLIC CHAPTER NO. 624**

**HOUSE BILL NO. 2370**

**By Representatives McCormick, Kevin Brooks, Hardaway, Parkinson, Eldridge, Roach, Sargent, Watson, Dean**

**Substituted for: Senate Bill No. 2232**

**By Senators Norris, McNally**

AN ACT to amend Tennessee Code Annotated, Title 67, Chapter 6, relative to the collection of sales and use tax.

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

SECTION 1. Tennessee Code Annotated, Title 67, Chapter 6, Part 5, is amended by adding the following as a new section:

67-6-5 \_\_\_\_.

(a)

(1) Notwithstanding any other provision of law to the contrary except as otherwise provided in this section, the activities of a person's affiliates in Tennessee, including, but not limited to, the sale of tangible personal property for resale to a person for delivery to the person's customers in Tennessee and outside the state, fulfillment services and any other non-retail activities, shall not be considered in determining whether the person has a physical presence in Tennessee sufficient to establish nexus with Tennessee for sales and use tax purposes.

(2) Subdivision (1) of this subsection shall not apply to an affiliate that performs, within Tennessee, the following retail activities on behalf of a person:

(A) The operation of a retail store or kiosk at which customers make purchases, return or exchange items or place orders of tangible personal property; or

(B) The use, whether by direct employment or on a contract basis, of personnel to solicit sales of tangible personal property.

(b) This section shall only apply to a person that has an affiliate that:

(1) Places one or more distribution facilities in service, directly or through a third party, after January 1, 2011 and before January 1, 2014;

(2) Makes, or causes to be made, through a third party, a capital investment of at least three hundred fifty million dollars (\$350,000,000) after January 1, 2011 and before January 1, 2014;

(3) Creates at least three thousand five hundred (3,500) qualified jobs after January 1, 2011 and before January 1, 2014. For purposes of this subdivision (3), "qualified job" has the same meaning as provided in Section 67-4-2109(a); and

(4) After meeting the requirements of subdivision (3) of this subsection, maintains at least three thousand five hundred (3,500) qualified jobs until January 1, 2016.

(c) This section shall no longer apply and is repealed on the earlier of:

(1) January 1, 2014;

(2) When the person's affiliate or the third party fails to meet the requirements provided in subsection (b) of this section; or

(3) The effective date of a law enacted by the United States Congress that authorizes this state to require that its sales tax be collected and remitted even if the taxpayer does not have substantial nexus with that state.

(d) This section shall only apply if the person enters a written agreement pursuant to which the person and its retail affiliates will collect Tennessee sales and use tax beginning immediately after the earliest of the events described in subsection (c) of this section.

(e) For purposes of this section:

(1) "Affiliate" means a person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person. A person controls another person if that person holds more than a fifty percent (50%) direct or indirect ownership interest in the other person.

(2) "Distribution facility" means an establishment where shipments of tangible personal property are stored and processed for delivery to customers and no retail sales of the property are made.

(3) "Fulfillment Services" means all activities related to the storage and preparation of tangible personal property for shipment to customers, including, but not limited to, gift wrapping, packaging, processing, repair and assembly.

(f)

(1) A person that does not establish nexus with Tennessee for sales and use tax purposes pursuant to subsection (a)(1) of this section and that makes sales through the person's Internet website to Tennessee purchasers shall notify such purchasers in a confirmation email that the purchaser may owe Tennessee use tax on the total sales price of the transaction and include in the email an Internet link, directly or through the person's website, to the Department of Revenue's website that allows the purchaser to pay the use tax. The notice must include language that is substantially similar to the following:

"PLEASE BE AWARE THAT THIS ORDER IS SUBJECT TO USE TAX UNLESS AN EXEMPTION EXISTS UNDER STATE LAW. A SALE IS NOT EXEMPT UNDER STATE LAW BECAUSE IT IS MADE THROUGH THE INTERNET."

Any person who becomes subject to the requirements set forth in this subsection shall have sixty (60) days to comply with these requirements.

(2) The Department of Revenue shall cooperate with any person to whom subdivision (1) of this subsection applies and provide the person with the information and assistance necessary to comply with the provisions of this subsection and the means to link to the applicable portion of the Department of Revenue's website.

(3) A person, to whom subdivision (1) of this subsection applies, also shall provide to each purchaser to whom tangible goods were

delivered in this State a statement of the total sales made to the purchaser during the preceding calendar year. The person shall provide the notice for calendar year 2011 within sixty (60) days after the effective date of this act and by February 1 of each subsequent year. "Total sales" means the total purchase price of all sales of tangible personal property delivered in this State including any shipping or delivery charges. The statement must contain language substantially similar to the following:

"YOU MAY OWE USE TAX ON PURCHASES MADE FROM US DURING THE PREVIOUS TAX YEAR. THE AMOUNT OF TAX YOU OWE IS BASED ON THE TOTAL SALES PRICE OF [INSERT TOTAL SALES PRICE] UNLESS AN EXEMPTION EXISTS UNDER STATE LAW OR YOU HAVE ALREADY PAID THE TAX. A SALE IS NOT EXEMPT UNDER STATE LAW BECAUSE IT IS MADE THROUGH THE INTERNET."

The statement must not contain any other information that would indicate, imply, or identify the class, type, description, or name of the products purchased. Any information that would indicate, imply, or identify the class, type, description, or name of the products purchased is considered strictly confidential. The statement may be provided by first class mail or by email.

(g) A sale for resale of tangible personal property by a person and its affiliates to whom this section applies, when such property is delivered to a person or the person's customer in the state, shall not be subject to any tax that otherwise would be imposed on either transaction under this chapter and shall not be subject to Tenn. Comp. R. & Regs. 1320-5-1-.96.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.

HOUSE BILL NO. 2370

PASSED: MARCH 8, 2012

  
\_\_\_\_\_  
BETH HARWELL, SPEAKER  
HOUSE OF REPRESENTATIVES

  
\_\_\_\_\_  
RON RAMSEY  
SPEAKER OF THE SENATE

APPROVED this 23<sup>rd</sup> day of March 2012

  
\_\_\_\_\_  
BILL HASLAM, GOVERNOR