

By: Springer

H.B. No. 3875

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to establishing certain facilitators of sale, lease, or  
3 rental transactions as retailers engaged in business in this state  
4 for purposes of collection of the use tax.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 151.008(b), Tax Code, is amended to read  
7 as follows:

8 (b) "Seller" and "retailer" include:

9 (1) a person in the business of making sales at auction  
10 of tangible personal property owned by the person or by another;

11 (2) a person who makes more than two sales of taxable  
12 items during a 12-month period, including sales made in the  
13 capacity of an assignee for the benefit of creditors or receiver or  
14 trustee in bankruptcy;

15 (3) a person regarded by the comptroller as a seller or  
16 retailer under Section 151.024;

17 (4) a hotel, motel, or owner or lessor of an office or  
18 residential building or development that contracts and pays for  
19 telecommunications services for resale to guests or tenants;

20 (5) a person who engages in regular or systematic  
21 solicitation of sales of taxable items in this state by the  
22 distribution of catalogs, periodicals, advertising flyers, or  
23 other advertising, by means of print, radio, or television media,  
24 or by mail, telegraphy, telephone, computer data base, cable,

1 optic, microwave, or other communication system for the purpose of  
2 effecting sales of taxable items; ~~and~~

3 (6) a person who, under an agreement with another  
4 person, is:

5 (A) entrusted with possession of tangible  
6 personal property with respect to which the other person has title  
7 or another ownership interest; and

8 (B) authorized to sell, lease, or rent the  
9 property without additional action by the person having title to or  
10 another ownership interest in the property; and

11 (7) a person who is a marketplace provider as defined  
12 by Section 151.109.

13 SECTION 2. Subchapter D, Chapter 151, Tax Code, is amended  
14 by adding Section 151.109 to read as follows:

15 Sec. 151.109. MARKETPLACE PROVIDERS. (a) In this section,  
16 "marketplace provider" means a person who:

17 (1) facilitates the sale, lease, or rental of the  
18 tangible personal property of a retailer that is not the person to a  
19 purchaser in this state in any manner, including by the use of a  
20 catalog or an Internet website;

21 (2) directly or indirectly collects from a purchaser  
22 in this state receipts derived from the sale, lease, or rental of  
23 the retailer's tangible personal property to the purchaser and  
24 transmits those receipts to the retailer, other than any amount the  
25 person is authorized to retain as a fee for facilitating the sale,  
26 lease, or rental; and

27 (3) is engaged in business in this state by means of

1 any of the activities listed in Section 151.107(a).

2 (b) A marketplace provider's facilitation of a sale, lease,  
3 or rental described by Subsection (a)(1) that results in a sale,  
4 lease, or rental by the other retailer is considered the making of a  
5 sale by the marketplace provider for purposes of Sections  
6 151.008(a) and 151.103. Notwithstanding Section 151.103, the  
7 marketplace provider is not required to collect a use tax imposed  
8 under this subchapter that is due from a purchaser if the retailer  
9 for whom the marketplace provider facilitates the sale, lease, or  
10 rental collects the tax from the purchaser.

11 (c) For purposes of Subsection (b), a marketplace provider  
12 may presume that a retailer registered with the comptroller under  
13 Section 151.106 collects the use tax from a purchaser.

14 (d) Subject to Subsection (e), a marketplace provider is not  
15 subject to liability under Subchapter L for failing to collect or  
16 remit the appropriate amount of use tax if, in determining the  
17 amount, the marketplace provider relies exclusively on information  
18 provided by the retailer for whom the marketplace provider  
19 facilitates the sale, lease, or rental of the tangible personal  
20 property on which the tax is due.

21 (e) Subsection (d) does not apply if the marketplace  
22 provider holds a substantial ownership interest in the retailer for  
23 whom the marketplace provider facilitated the sale, lease, or  
24 rental of tangible personal property, or the retailer holds a  
25 substantial ownership interest in the marketplace provider. For  
26 purposes of this subsection, "ownership" and "substantial" have the  
27 meanings assigned by Section 151.107(d).

1        (f) The comptroller may adopt rules necessary to implement  
2 and administer this section, including rules establishing the  
3 requirements for an entity to be considered a marketplace provider.

4        SECTION 3. Section 151.403(b), Tax Code, is amended to read  
5 as follows:

6        (b) A retailer engaged in business in this state as provided  
7 by Section 151.107 or 151.109 [~~of this code~~] shall file a tax report  
8 with respect to the use tax.

9        SECTION 4. The change in law made by this Act does not  
10 affect tax liability accruing before the effective date of this  
11 Act. That liability continues in effect as if this Act had not been  
12 enacted, and the former law is continued in effect for the  
13 collection of taxes due and for civil and criminal enforcement of  
14 the liability for those taxes.

15        SECTION 5. This Act takes effect September 1, 2017.