

By: Burrows

H.B. No. 1525

A BILL TO BE ENTITLED

AN ACT

relating to the administration and collection of sales and use taxes applicable to sales involving marketplace providers.

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

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

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

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

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

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

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

(5) a person who engages in regular or systematic solicitation of sales of taxable items in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, by means of print, radio, or television media, or by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system for the purpose of

1 effecting sales of taxable items; ~~and~~

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

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

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

10 (7) a person who is a marketplace provider under
11 Section 151.0242.

12 SECTION 2. Subchapter B, Chapter 151, Tax Code, is amended
13 by adding Section 151.0242 to read as follows:

14 Sec. 151.0242. MARKETPLACE PROVIDERS AND MARKETPLACE
15 SELLERS. (a) In this section:

16 (1) "Marketplace" means a physical or electronic
17 medium through which persons other than the owner or operator of the
18 medium make sales of taxable items. The term includes a store,
19 Internet website, software application, or catalog.

20 (2) "Marketplace provider" means a person who owns or
21 operates a marketplace and directly or indirectly processes sales
22 or payments for marketplace sellers.

23 (3) "Marketplace seller" means a seller, other than
24 the marketplace provider, who makes a sale of a taxable item through
25 a marketplace.

26 (b) Except as otherwise provided by this section, a
27 marketplace provider has the rights and duties of a seller or

1 retailer under this chapter with respect to sales made through the
2 marketplace.

3 (c) A marketplace provider shall:

4 (1) certify to each marketplace seller that the
5 marketplace provider assumes the rights and duties of a seller or
6 retailer under this chapter with respect to sales made by the
7 marketplace seller through the marketplace;

8 (2) collect in the manner provided by Subchapters C
9 and D the taxes imposed by this chapter on sales of taxable items
10 made through the marketplace; and

11 (3) report and remit under Subchapter I the taxes
12 imposed by this chapter on all sales made through the marketplace.

13 (d) A marketplace seller who in good faith accepts a
14 marketplace provider's certification under Subsection (c)(1) shall
15 exclude sales made through the marketplace from the marketplace
16 seller's report under Subchapter I, notwithstanding Section
17 [151.406](#).

18 (e) A marketplace seller shall retain records for all
19 marketplace sales as required by Section [151.025](#).

20 (f) A marketplace seller shall furnish to the marketplace
21 provider information that is required to correctly collect and
22 remit taxes imposed by this chapter. The information may include a
23 certification of taxability that an item being sold is a taxable
24 item, is not a taxable item, or is exempt from taxation.

25 (g) Except as provided by Subsection (h), a marketplace
26 provider is not liable for failure to collect and remit the correct
27 amount of taxes imposed by this chapter if the marketplace provider

demonstrates that the failure resulted from the marketplace provider's good faith reliance on incorrect or insufficient information provided by the marketplace seller. The marketplace seller is liable for a deficiency resulting from incorrect or insufficient information provided by the marketplace seller.

(h) A marketplace provider and marketplace seller that are affiliates or associates, as defined by Section 1.002, Business Organizations Code, are jointly and severally liable for a deficiency resulting from a sale made by the marketplace seller through the marketplace.

(i) This section does not affect the tax liability of a purchaser under Section 151.052 or 151.102.

(j) A court may not certify an action brought against a marketplace provider concerning this section as a class action.

(k) The comptroller may adopt rules and forms to implement this section and by rule except certain small marketplace providers from some or all of the requirements of this section.

SECTION 3. Section 321.203, Tax Code, is amended by adding Subsection (e-1) to read as follows:

(e-1) Notwithstanding any other provision of this section, a sale of a taxable item made by a marketplace seller through a marketplace as provided by Section 151.0242 is consummated at the location in this state to which the item is shipped or delivered or at which possession is taken by the purchaser.

SECTION 4. Section 323.203, Tax Code, is amended by adding Subsection (e-1) to read as follows:

(e-1) Notwithstanding any other provision of this section,

1 a sale of a taxable item made by a marketplace seller through a
2 marketplace as provided by Section 151.0242 is consummated at the
3 location in this state to which the item is shipped or delivered or
4 at which possession is taken by the purchaser.

5 SECTION 5. (a) The comptroller of public accounts, in
6 coordination with affected industry leaders, shall study the
7 estimated fiscal and other impacts to this state of providing an
8 exception under Section 151.0242(k), Tax Code, as added by this
9 Act, for marketplace providers with each of the following maximum
10 amounts of annual gross revenue from the sale of taxable items for
11 storage, use, or other consumption in this state:

- 12 (1) \$500,000;
13 (2) \$200,000;
14 (3) \$100,000; and
15 (4) \$50,000.

16 (b) Not later than December 1, 2020, the comptroller shall
17 prepare a report with the findings of the study and make the report
18 available in an electronic format to the public and each member of
19 the legislature.

20 SECTION 6. The changes in law made by this Act do not affect
21 tax liability accruing before the effective date of this Act. That
22 liability continues in effect as if this Act had not been enacted,
23 and the former law is continued in effect for the collection of
24 taxes due and for civil and criminal enforcement of the liability
25 for those taxes.

26 SECTION 7. This Act takes effect October 1, 2019.