

By: Guillen

H.B. No. 2358

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the administration and collection of sales and use
3 taxes applicable to certain sales.

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

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

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

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

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

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

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

19 (5) a person who engages in regular or systematic
20 solicitation of sales of taxable items in this state by the
21 distribution of catalogs, periodicals, advertising flyers, or
22 other advertising, by means of print, radio, or television media,
23 or by mail, telegraphy, telephone, computer data base, cable,
24 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) provide a collection certificate to each
5 marketplace seller certifying that the marketplace provider
6 assumes the rights and duties of a seller or retailer under this
7 chapter with respect to sales made by the marketplace seller
8 through the marketplace;

9 (2) report under Subchapter I all sales made through
10 the marketplace; and

11 (3) collect in the manner provided by Subchapters C
12 and D and remit the taxes imposed under this chapter on sales of
13 taxable items made through the marketplace.

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

19 (e) A marketplace seller shall retain records for all
20 marketplace sales as required by Section 151.025.

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

26 (g) Except as provided by Subsection (h), a marketplace
27 provider is not liable for failure to collect and remit the correct

1 amount of taxes imposed under this chapter if the marketplace
2 provider demonstrates that the failure resulted from the
3 marketplace provider's good faith reliance on incorrect
4 information provided by the marketplace seller. The marketplace
5 seller is liable for a deficiency resulting from incorrect
6 information provided by the marketplace seller.

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

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

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

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

19 SECTION 3. Section 151.704, Tax Code, is amended to read as
20 follows:

21 Sec. 151.704. SALES TAX ABSORPTION [~~PROHIBITED~~
22 ~~ADVERTISING~~]; CRIMINAL PENALTY. (a) Except as provided by
23 Subsections (b) and (d), a [A] retailer commits an offense if the
24 retailer directly or indirectly advertises, holds out, or states to
25 a customer or to the public that the tax is not part of the sales
26 price payable by the customer [~~retailer:~~

27 [~~(1) will assume, absorb, or refund a part of the tax,~~

1 ~~or~~

2 ~~[(2) will not add the tax to the sales price of a taxable~~
3 ~~item sold, leased, or rented].~~

4 (b) A retailer may directly or indirectly advertise, hold
5 out, or state to a customer or to the public that the retailer will
6 pay the tax for the customer if:

7 (1) the retailer indicates in the advertisement,
8 holding out, or statement that the retailer is paying the tax for
9 the customer;

10 (2) the retailer does not indicate or imply in the
11 advertisement, holding out, or statement that the sale is exempt or
12 excluded from taxation; and

13 (3) any purchaser's receipt or other statement given
14 to the customer listing the sales price paid or to be paid by the
15 customer separately states the amount of the tax and indicates that
16 the tax will be paid by the retailer.

17 (c) Notwithstanding Section 151.052, 151.102, or 151.103, a
18 retailer who directly or indirectly advertises, holds out, or
19 states to a customer or to the public that the retailer will pay the
20 tax for the customer is liable for the tax. The retailer's liability
21 continues until the tax is paid to the state.

22 (d) This section does not prohibit a utility from billing a
23 customer in one lump-sum price including the utility sales price
24 and the amount of the tax imposed by this chapter.

25 (e) [~~e~~] An offense under this section is a misdemeanor
26 punishable by a fine of not more than \$500.

27 SECTION 4. Section 321.203, Tax Code, is amended by adding

1 Subsection (e-1) to read as follows:

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

7 SECTION 5. Section 323.203, Tax Code, is amended by adding
8 Subsection (e-1) to read as follows:

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

14 SECTION 6. The changes in law made by this Act do not affect
15 tax liability accruing before the effective date of this Act. That
16 liability continues in effect as if this Act had not been enacted,
17 and the former law is continued in effect for the collection of
18 taxes due and for civil and criminal enforcement of the liability
19 for those taxes.

20 SECTION 7. The change in law made by this Act applies only
21 to an offense committed on or after the effective date of this Act.
22 An offense committed before the effective date of this Act is
23 governed by the law in effect on the date the offense was committed,
24 and the former law is continued in effect for that purpose. For
25 purposes of this section, an offense was committed before the
26 effective date of this Act if any element of the offense occurred
27 before that date.

1 SECTION 8. This Act takes effect October 1, 2019.