

BILL ANALYSIS

Senate Research Center

S.B. 477
By: Nelson
Finance
5/31/2021
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In the 86th Legislative Session, in response to decisions by the Supreme Court, the legislature required marketplace providers to collect and remit Texas's state and local sales and use tax on all taxable orders delivered in Texas. Minor changes are necessary to provide clarity to marketplace providers as it relates to certain exemptions and the collection of certain fees and to align the Tax Code so that collection requirements for marketplace providers are in line with those applicable to other types of sellers.

(Original Author's / Sponsor's Statement of Intent)

S.B. 477 amends current law relating to the administration and collection of sales and use taxes and certain fees applicable to sales involving marketplace providers.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 361.138(a), Health and Safety Code, effective July 1, 2022, by adding Subdivision (2-a), to define "marketplace provider."

SECTION 2. Amends Sections 361.138(b), (c), and (i), Health and Safety Code, effective July 1, 2022, to include marketplace providers who process sales of or payments for lead-acid batteries not for resale among the entities required to collect certain fees.

SECTION 3. Amends Section 771.0712, Health and Safety Code, effective July 1, 2022, by adding Subsection (e), as follows:

(e) Requires a marketplace provider, as defined by Section 151.0242(a) (relating to defining "marketplace," "marketplace provider," and "marketplace seller"), Tax Code, to:

(1) collect on behalf of the seller the fee imposed by Section 771.0712 (Prepaid 9-1-1 Emergency Service Fee) on a sale made through the marketplace; and

(2) after making the deduction authorized to be made by a seller under Subsection (a) (relating to a two percent deduction by a seller of prepaid wireless telecommunications service to offset the costs of administering the prepaid wireless 9-1-1 emergency services fee), remit the fee to the Comptroller of Public Accounts of the State of Texas (comptroller) in the same manner a seller remits collected fees under this section.

SECTION 4. Amends Section 151.0242, Tax Code, by adding Subsection (l), as follows:

(l) Requires a marketplace seller who places a ticket or other admission document for sale through a marketplace to certify to the marketplace provider that the taxes imposed by Chapter 151 (Limited Sales, Excise, and Use Tax) on the original purchase of the

ticket or admission document were paid. Authorizes a marketplace provider who in good faith accepts a marketplace seller's certification under this subsection to take the deduction provided by Section 151.432 (Deductions of Tax on Ticket or Admission Document to Amusement Service) on behalf of the marketplace seller.

SECTION 5. Amends Section 151.304, Tax Code, by adding Subsection (h), to provide that Section 151.304 (Occasional Sales) does not apply to the sale of a taxable item made by a marketplace seller through a marketplace, as those terms are defined by Section 151.0242(a).

SECTION 6. Amends Section 321.203(e-1), Tax Code, as follows:

(e-1) Provides that except as otherwise provided by Subsection (f) (relating to sales of natural gas and electricity), (g) (relating to sales of mobile telecommunications services), (g-1) (relating to sales of certain telecommunications services), (g-2) (relating to sales of certain telecommunications services), (g-3) (relating to sales of post-paid calling services), (h) (relating to sales of amusement services), (i) (relating to certain taxable items stored or kept at the time of or just before the use or consumption), (j) (relating to sales of services delivered through a cable system), (k) (relating to sales of certain solid waste collection or removal services), (m) (relating to sales consummated at a place of business as determined by the comptroller), or (n) (relating to certain sales of nonresidential real property services at the location of the job site), a sale of an item subject to municipal sales and use taxation made by a marketplace seller through a marketplace as provided by Section 151.0242 (Marketplace Providers and Marketplace Sellers) is consummated at the location in Texas to which the item is shipped or delivered or at which possession is taken by the purchaser. Deletes existing text providing that the application of Section 321.203 (Consummation of Sale) is notwithstanding any other provision of this section.

SECTION 7. Amends Section 323.203(e-1), Tax Code, as follows:

(e-1) Provides that except as otherwise provided by Subsection (f) (relating to sales of natural gas and electricity), (g) (relating to sales of mobile telecommunications services), (g-1) (relating to sales of certain telecommunications services), (g-2) (relating to sales of certain telecommunications services), (g-3) (relating to sales of post-paid calling services), (h) (relating to sales of amusement services), (i) (relating to certain taxable items stored or kept at the time of or just before the use or consumption), (j) (relating to sales of services delivered through a cable system), (k) (relating to sales of certain solid waste collection or removal services), (m) (relating to sales consummated at a place of business as determined by the comptroller), or (n) (relating to certain sales of nonresidential real property services at the location of the job site), a sale of an item subject to county sales and use taxation made by a marketplace seller through a marketplace as provided by Section 151.0242 is consummated at the location in Texas to which the item is shipped or delivered or at which possession is taken by the purchaser. Deletes existing text providing that the application of Section 323.203 (Consummation of Sale) is notwithstanding any other provision of this section.

SECTION 8. Makes application of this Act prospective.

SECTION 9. Effective date, except as otherwise provided by this Act: October 1, 2021.