By:  Nelson S.B. No. 477

(In the Senate - Filed January 27, 2021; March 9, 2021, read first time and referred to Committee on Finance; March 30, 2021, reported favorably by the following vote: Yeas 15, Nays 0; March 30, 2021, sent to printer.)

COMMITTEE VOTE

                    Yea Nay Absent  PNV

Nelson               X

Lucio                X

Bettencourt          X

Buckingham           X

Campbell             X

Creighton            X

Hancock              X

Huffman              X

Kolkhorst            X

Nichols              X

Perry                X

Schwertner           X

Taylor               X

West                 X

Whitmire             X

A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1.  Section 361.138(a), Health and Safety Code, is amended by adding Subdivision (2-a) to read as follows:

(2-a) "Marketplace provider" has the meaning assigned by Section 151.0242(a), Tax Code.

SECTION 2.  Sections 361.138(b), (c), and (i), Health and Safety Code, are amended to read as follows:

(b)  A wholesale or retail battery dealer who sells or offers to sell, or a marketplace provider who processes sales of or payments for, lead-acid batteries not for resale shall collect at the time and place of sale a fee for each nonexempt lead-acid battery sold, according to the following schedule:

(1)  for a lead-acid battery with a capacity of less than 12 volts, a fee of $2;

(2)  for a lead-acid battery with a capacity of 12 or more volts, a fee of $3.

(c)  A dealer or marketplace provider required to collect a fee under this section:

(1)  shall list as a separate item on an invoice a fee due under this section; and

(2)  except as provided by Subsection (d), on or before the 20th day of the month following the end of each calendar month and on a form and in the manner prescribed by the comptroller, shall file a report with and shall remit to the comptroller the amount of fees collected during the preceding calendar month.

(i)  A dealer or marketplace provider required to collect a fee under this section may retain 2-1/2 cents from each fee the person [~~dealer~~] collects. A dealer or marketplace provider shall account for amounts retained under this subsection in the manner prescribed by the comptroller.

SECTION 3.  Section 771.0712, Health and Safety Code, is amended by adding Subsection (e) to read as follows:

(e)  A marketplace provider, as defined by Section 151.0242(a), Tax Code, shall:

(1)  collect on behalf of the seller the fee imposed by this section on a sale made through the marketplace; and

(2)  after making the deduction authorized to be made by a seller under Subsection (a), remit the fee to the comptroller in the same manner a seller remits collected fees under this section.

SECTION 4.  Section 151.0242, Tax Code, is amended by adding Subsection (l) to read as follows:

(l)  A marketplace seller who places a ticket or other admission document for sale through a marketplace must certify to the marketplace provider that the taxes imposed by this chapter on the original purchase of the ticket or admission document were paid. A marketplace provider who in good faith accepts a marketplace seller's certification under this subsection may take the deduction provided by Section 151.432 on behalf of the marketplace seller.

SECTION 5.  Section 151.304, Tax Code, is amended by adding Subsection (h) to read as follows:

(h)  This section 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.  Section 321.203(e-1), Tax Code, is amended to read as follows:

(e-1)  Except as otherwise provided by Subsection (f), (g), (g-1), (g-2), (g-3), (h), (i), (j), (k), (m), or (n) [~~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 7.  Section 323.203(e-1), Tax Code, is amended to read as follows:

(e-1)  Except as otherwise provided by Subsection (f), (g), (g-1), (g-2), (g-3), (h), (i), (j), (k), or (m) [~~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 8.  The changes in law made by this Act do not affect tax liability accruing before the effective date of this Act. That liability continues in effect as if this Act had not been enacted, and the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability for those taxes.

SECTION 9.  This Act takes effect October 1, 2021.

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