

By: Meyer

H.B. No. 2398

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the administration and collection of sales and use
3 taxes and certain fees applicable to sales involving marketplace
4 providers.

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

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

8 (2-a) "Marketplace provider" has the meaning assigned
9 by Section 151.0242(a), Tax Code.

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

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

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

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

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

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

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

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

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

13 (e) A marketplace provider, as defined by Section
14 [151.0242](#)(a), Tax Code, shall:

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

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

21 SECTION 4. Section [151.0242](#), Tax Code, is amended by adding
22 Subsection (1) to read as follows:

23 (1) A marketplace seller who places a ticket or other
24 admission document for sale through a marketplace must certify to
25 the marketplace provider that the taxes imposed by this chapter on
26 the original purchase of the ticket or admission document were
27 paid. A marketplace provider who in good faith accepts a

1 marketplace seller's certification under this subsection may take
2 the deduction provided by Section 151.432 on behalf of the
3 marketplace seller.

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

6 (h) This section does not apply to the sale of a taxable item
7 made by a marketplace seller through a marketplace, as those terms
8 are defined by Section 151.0242(a).

9 SECTION 6. Section 321.203(e-1), Tax Code, is amended to
10 read as follows:

11 (e-1) Except as otherwise provided by Subsection (f), (g),
12 (g-1), (g-2), (g-3), (h), (i), (j), (k), (m), or (n)
13 ~~[Notwithstanding any other provision of this section]~~, a sale of a
14 taxable item made by a marketplace seller through a marketplace as
15 provided by Section 151.0242 is consummated at the location in this
16 state to which the item is shipped or delivered or at which
17 possession is taken by the purchaser.

18 SECTION 7. Section 323.203(e-1), Tax Code, is amended to
19 read as follows:

20 (e-1) Except as otherwise provided by Subsection (f), (g),
21 (g-1), (g-2), (g-3), (h), (i), (j), (k), or (m) ~~[Notwithstanding~~
22 ~~any other provision of this section]~~, a sale of a taxable item made
23 by a marketplace seller through a marketplace as provided by
24 Section 151.0242 is consummated at the location in this state to
25 which the item is shipped or delivered or at which possession is
26 taken by the purchaser.

27 SECTION 8. The changes in law made by this Act do not affect

1 tax liability accruing before the effective date of this Act. That
2 liability continues in effect as if this Act had not been enacted,
3 and the former law is continued in effect for the collection of
4 taxes due and for civil and criminal enforcement of the liability
5 for those taxes.

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