

SUBSTITUTE FOR
HOUSE BILL NO. 4541

A bill to amend 1937 PA 94, entitled
"Use tax act,"
(MCL 205.91 to 205.111) by adding section 5c.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5c. (1) Notwithstanding anything to the contrary in this
2 act, a marketplace facilitator that has nexus in this state shall
3 collect and remit the tax due under this act on all taxable sales
4 made by the marketplace facilitator or facilitated for marketplace
5 sellers to a purchaser in this state regardless of whether the
6 marketplace seller for whom sales are facilitated has nexus with
7 this state.

8 (2) A marketplace facilitator is a person liable for the tax
9 imposed under this act, regardless of whether the marketplace



1 facilitator makes only facilitated sales for marketplace sellers or
2 a combination of direct and facilitated sales and has all the
3 rights and duties of a taxpayer under this act.

4 (3) A marketplace facilitator shall report its direct sales
5 and the sales it facilitates to purchasers in this state in a
6 manner as prescribed by the department.

7 (4) A class action shall not be brought against a marketplace
8 facilitator in any court of this state on behalf of purchasers
9 arising from or in any way related to an overpayment of use tax
10 collected and remitted on sales facilitated by the marketplace
11 facilitator, regardless of whether that claim is characterized as a
12 tax refund claim. Nothing in this subsection affects a purchaser's
13 right to seek a refund as provided under section 14b.

14 (5) Nothing in this section affects the obligation of a
15 purchaser to remit the tax imposed by this act for a taxable
16 transaction on which a marketplace facilitator or marketplace
17 seller does not remit sales or use tax.

18 (6) Except as otherwise provided in this subsection, if a
19 marketplace facilitator is required to collect and remit tax under
20 subsection (1), the department shall audit only the marketplace
21 facilitator for sales made by marketplace sellers that were
22 facilitated by the marketplace facilitator. The department shall
23 not audit a marketplace seller for sales facilitated by a
24 marketplace facilitator required to collect and remit tax under
25 subsection (1) unless the marketplace seller fails to provide the
26 marketplace facilitator with sufficient information to the extent
27 that the marketplace facilitator is not liable under subsection
28 (7).

29 (7) A marketplace facilitator is relieved of liability under



1 this section for failure to collect and remit the correct amount of
 2 tax to the extent that the marketplace facilitator demonstrates, to
 3 the satisfaction of the department, that the failure was due to
 4 incorrect or insufficient information given to the marketplace
 5 facilitator by the marketplace seller. The relief under this
 6 subsection does not apply if the marketplace seller is an affiliate
 7 of the marketplace facilitator.

8 (8) A marketplace facilitator is relieved of liability under
 9 this section if the marketplace facilitator demonstrates, to the
 10 satisfaction of the department, that the tax levied under this act
 11 on a sale facilitated by the marketplace facilitator was paid to
 12 the department by the marketplace seller or provides a claim of
 13 exemption provided by the marketplace seller's purchaser.

14 (9) A marketplace seller is not liable for the tax imposed by
 15 this act on sales made through a marketplace facilitator required
 16 to collect and remit tax under subsection (1) unless the
 17 marketplace seller fails to provide the marketplace facilitator
 18 with sufficient information to the extent that the marketplace
 19 facilitator is not liable under subsection (7).

20 (10) This section applies regardless of whether the
 21 marketplace facilitator has a physical presence in this state.

22 (11) As used in this section:

23 (a) "Affiliate" means an affiliated person as that term is
 24 defined in section 5a.

25 (b) "Marketplace facilitator" means a person that meets the
 26 requirements of subparagraph (i), but does not include a person
 27 described in subparagraph (ii), (iii), or (iv):

28 (i) A person is a marketplace facilitator if the person
 29 facilitates a retail sale by a marketplace seller by listing or

1 advertising for sale by a marketplace seller in a marketplace,
 2 tangible personal property or taxable services and either directly
 3 or indirectly through agreements or arrangements with third parties
 4 or its affiliates collecting payment from the customer and
 5 transmitting that payment to the marketplace seller for
 6 consideration.

7 (ii) Marketplace facilitator does not include a person who
 8 operates a platform or forum that provides internet, print,
 9 electronic, or any other form of advertising services, including
 10 listing tangible personal property or services for sale, if the
 11 person does not also engage directly or indirectly, through 1 or
 12 more affiliates, in the activities described in subparagraph (i).

13 (iii) A person is not a marketplace facilitator with respect to
 14 the sale of or charges for rooms, lodgings, or accommodations
 15 described in section 3a if the rooms, lodgings, or accommodations
 16 are provided by a hotelkeeper, motel operator, or other person that
 17 is registered under section 5 or licensed under section 3 of the
 18 general sales tax act, 1933 PA 167, MCL 205.53.

19 (iv) A person is not a marketplace facilitator with respect to
 20 the sale of telecommunications services as described in section 3a.

21 (c) "Marketplace seller" means a person that makes retail
 22 sales through a physical or electronic marketplace operated by a
 23 marketplace facilitator.

24 Enacting section 1. As provided in section 5 of 1846 RS 1, MCL
 25 8.5, this amendatory act is severable.

26 Enacting section 2. This amendatory act takes effect January
 27 1, 2020. An obligation to collect use tax under this amendatory act
 28 does not apply retroactively.

