

SUBSTITUTE FOR  
HOUSE BILL NO. 4540

A bill to amend 1933 PA 167, entitled  
"General sales tax act,"  
(MCL 205.51 to 205.78) by adding section 2d.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 2d. (1) Notwithstanding anything to the contrary in this  
2 act, a marketplace facilitator engaged in the business of making  
3 sales at retail of tangible personal property in this state shall  
4 remit the tax due under this act on all taxable sales made by the  
5 marketplace facilitator or facilitated for marketplace sellers to a  
6 purchaser in this state regardless of whether the marketplace  
7 seller for whom sales are facilitated has nexus with this state.  
8       (2) A marketplace facilitator is a person engaged in the  
9 business of making sales at retail for purposes of this act



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

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

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

15 (5) Nothing in this section affects the obligation of a  
16 purchaser to remit use tax under the use tax act, 1937 PA 94, MCL  
17 205.91 to 205.111, for a taxable transaction on which a marketplace  
18 facilitator or marketplace seller does not remit sales tax.

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

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



1 this section for failure to remit the correct amount of tax to the  
2 extent that the marketplace facilitator demonstrates, to the  
3 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 remit tax under subsection (1) unless the marketplace seller  
17 fails to provide the marketplace facilitator with sufficient  
18 information to the extent that the marketplace facilitator is not  
19 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 2b.

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):

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 and either directly or indirectly  
3 through agreements or arrangements with third parties or its  
4 affiliates collecting payment from the customer and transmitting  
5 that payment to the marketplace seller for consideration.

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

12 (c) "Marketplace seller" means a person that makes retail  
13 sales through a physical or electronic marketplace operated by a  
14 marketplace facilitator.

15 Enacting section 1. As provided in section 5 of 1846 RS 1, MCL  
16 8.5, this amendatory act is severable.

17 Enacting section 2. This amendatory act takes effect January  
18 1, 2020. An obligation to collect sales tax under this amendatory  
19 act does not apply retroactively.

