

HOUSE BILL NO. 4540

May 02, 2019, Introduced by Reps. Afendoulis, Webber, Tate and Yancey and referred to the Committee on Tax Policy.

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 that sells or facilitates the sale
3 of tangible personal property or services subject to the tax under
4 this act for delivery into this state is presumed to be engaged in
5 the business of making sales at retail of tangible personal
6 property or taxable services in this state, is subject to the tax



1 under this act, shall include the gross proceeds from such sales in
2 the gross proceeds of its business for purposes of calculating the
3 tax due under this act subject to subsection (5), shall collect and
4 remit applicable sales tax, and shall follow all applicable
5 procedures and requirements of this act, if the marketplace
6 facilitator makes or facilitates sales of tangible personal
7 property or taxable services, on its own behalf or on behalf of 1
8 or more marketplace sellers, or both, for delivery into this state
9 exceeding \$100,000.00 or in 200 or more separate transactions in
10 the previous calendar year or the current calendar year.

11 (2) A marketplace facilitator that is presumed to be engaged
12 in the business of making sales at retail of tangible personal
13 property or taxable services in this state under subsection (1) is
14 required to collect and remit the tax due under this act on all
15 taxable sales made by the marketplace facilitator or facilitated
16 for marketplace sellers to a purchaser in this state regardless of
17 whether the marketplace seller for whom sales are facilitated has
18 or is required to have a license under section 3 or would have been
19 required to collect or remit sales tax had the sale not been
20 facilitated by the marketplace facilitator. Nothing in this section
21 shall be construed to interfere with the ability of a marketplace
22 facilitator and a marketplace seller to enter into agreements with
23 each other regarding the fulfillment of the requirements of this
24 act.

25 (3) The department may grant a waiver from the requirements of
26 this section if either of the following requirements is met:

27 (a) A marketplace facilitator demonstrates, to the
28 satisfaction of the department, that substantially all of its
29 marketplace sellers have a current and valid license under section

1 3.

2 (b) A marketplace seller has sufficient nexus with this state
3 to require licensure under section 3 and the department determines
4 that collection of sales tax by the marketplace seller with regard
5 to transactions facilitated by the marketplace facilitator would
6 result in the appropriate and efficient collection of tax under
7 this act.

8 (4) If the department grants a waiver under subsection (3),
9 the tax levied under this act on sales that are facilitated by a
10 marketplace facilitator for a marketplace seller must be collected
11 from the marketplace seller and the marketplace seller must include
12 the gross proceeds from such sales in the gross proceeds of its
13 business for purposes of calculating the tax due under this act.
14 The department shall promulgate rules that establish the criteria
15 for obtaining a waiver under subsection (3), the process and
16 procedure for a marketplace facilitator or a marketplace seller to
17 apply for a waiver, and the process for notifying an affected
18 marketplace facilitator and marketplace seller of a waiver obtained
19 under subsection (3).

20 (5) A marketplace facilitator shall report the sales it
21 facilitates separately from the sales made directly by the
22 marketplace facilitator, or affiliates of the marketplace
23 facilitator, to purchasers in this state by filing a separate
24 marketplace facilitator return on a form prescribed by the
25 department.

26 (6) A class action shall not be brought against a marketplace
27 facilitator in any court of this state on behalf of purchasers
28 arising from or in any way related to an overpayment of sales tax
29 collected on sales facilitated by the marketplace facilitator,

1 regardless of whether that claim is characterized as a tax refund
2 claim. Nothing in this subsection affects a purchaser's right to
3 seek a refund as provided under section 12.

4 (7) Nothing in this section affects the obligation of a
5 purchaser to remit use tax under the use tax act, 1937 PA 94, MCL
6 205.91 to 205.111, for a taxable transaction on which a marketplace
7 facilitator or seller does not collect and remit sales tax.

8 (8) Except as otherwise provided in this subsection, if a
9 marketplace facilitator is presumed to be engaged in the business
10 of making sales at retail of tangible personal property or taxable
11 services in this state under subsection (1), the department shall
12 solely audit the marketplace facilitator for sales made by
13 marketplace sellers that were facilitated by the marketplace
14 facilitator. The department shall not audit a marketplace seller
15 for sales facilitated by a marketplace facilitator unless a waiver
16 is granted under subsection (3) and the tax levied under this act
17 must be collected from the marketplace seller under subsection (4)
18 or to the extent that the marketplace facilitator seeks relief
19 under subsection (9).

20 (9) A marketplace facilitator is relieved of liability under
21 this section for failure to collect and remit the correct amount of
22 tax to the extent that the failure was due to incorrect or
23 insufficient information given to the marketplace facilitator by
24 the marketplace seller. The relief under this subsection does not
25 apply if the marketplace seller is an affiliate of the marketplace
26 facilitator.

27 (10) A marketplace facilitator is relieved of liability under
28 this section if the marketplace facilitator demonstrates, to the
29 satisfaction of the department, that the tax levied under this act

1 on a sale facilitated by the marketplace facilitator was paid to
2 the department by the marketplace seller.

3 (11) This section applies regardless of whether the
4 marketplace facilitator has a physical presence in this state.

5 (12) As used in this section:

6 (a) "Affiliate" means an affiliated person as that term is
7 defined in section 2b.

8 (b) "Marketplace facilitator" means a person that meets the
9 requirements of subparagraph (i), but does not include a person
10 described in subparagraph (ii) or (iii):

11 (i) A person is a marketplace facilitator if the person does
12 all of the following:

13 (A) Contracts with a marketplace seller to facilitate for
14 consideration, regardless of whether deducted as fees from the
15 transaction, the sale of the marketplace seller's products through
16 a physical or electronic marketplace operated by the person.

17 (B) Engages directly or indirectly, through 1 or more
18 affiliates, in transmitting or otherwise communicating the offer
19 and acceptance between a purchaser and the marketplace seller.

20 (C) Either directly or indirectly through agreements or
21 arrangements with third parties collects the payment from a
22 purchaser and transmits the payment to the marketplace seller.

23 (ii) Marketplace facilitator does not include a person who
24 operates a platform or forum that provides internet advertising
25 services, including listing products for sale, if the person does
26 not also engage directly or indirectly, through 1 or more
27 affiliates, in the activities described in subparagraph (i).

28 (iii) A person is not a marketplace facilitator with respect to
29 the sale of or charges for rooms, lodgings, or accommodations



1 described in section 3a of the use tax act, 1937 PA 94, MCL
2 205.93a, if the rooms, lodgings, or accommodations are provided by
3 a hotel keeper, motel operator, or other person that is registered
4 under section 5 of the use tax act, 1937 PA 94, MCL 205.95, or
5 licensed under section 3 and the hotel keeper, motel operator, or
6 other person provides the rooms, lodgings, or accommodations for
7 occupancy under a brand belonging to the hotel keeper, motel
8 operator, or other person.

9 (c) "Marketplace seller" means a person that makes retail
10 sales through a physical or electronic marketplace operated by a
11 marketplace facilitator.

12 Enacting section 1. As provided in section 5 of 1846 RS 1, MCL
13 8.5, this amendatory act is severable.

14 Enacting section 2. This amendatory act takes effect 90 days
15 after the date it is enacted into law. An obligation to collect
16 sales tax under this amendatory act does not apply retroactively.

