

**STATE OF MICHIGAN
100TH LEGISLATURE
REGULAR SESSION OF 2019**

Introduced by Reps. Afendoulis, Webber, Tate and Yancey

ENROLLED HOUSE BILL No. 4540

AN ACT to amend 1933 PA 167, entitled "An act to provide for the raising of additional public revenue by prescribing certain specific taxes, fees, and charges to be paid to the state for the privilege of engaging in certain business activities; to provide, incident to the enforcement thereof, for the issuance of licenses to engage in such occupations; to provide for the ascertainment, assessment and collection thereof; to appropriate the proceeds thereof; and to prescribe penalties for violations of the provisions of this act," (MCL 205.51 to 205.78) by adding section 2d.

The People of the State of Michigan enact:

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

(2) A marketplace facilitator is a person engaged in the business of making sales at retail for purposes of this act regardless of whether the marketplace facilitator makes only facilitated sales for marketplace sellers or a combination of direct and facilitated sales and has all the rights and duties of a taxpayer under this act.

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

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

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

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

(7) A marketplace facilitator is relieved of liability under this section for failure to remit the correct amount of tax to the extent that the marketplace facilitator demonstrates, to the satisfaction of the department, that the failure was due to incorrect or insufficient information given to the marketplace facilitator by the marketplace

seller. The relief under this subsection does not apply if the marketplace seller is an affiliate of the marketplace facilitator.

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

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

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

(11) As used in this section:

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

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

(i) A person is a marketplace facilitator if the person facilitates a retail sale by a marketplace seller by listing or advertising for sale by a marketplace seller in a marketplace, tangible personal property and either directly or indirectly through agreements or arrangements with third parties or its affiliates collecting payment from the customer and transmitting that payment to the marketplace seller for consideration.

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

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

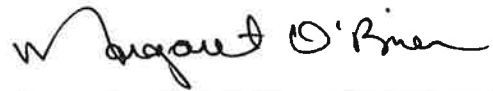
Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this amendatory act is severable.

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

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor

**STATE OF MICHIGAN
100TH LEGISLATURE
REGULAR SESSION OF 2019**

Introduced by Reps. Tate, Webber, Afendoulis and Yancey

ENROLLED HOUSE BILL No. 4541

AN ACT to amend 1937 PA 94, entitled "An act to provide for the levy, assessment, and collection of a specific excise tax on the storage, use, or consumption in this state of tangible personal property and certain services; to appropriate the proceeds of that tax; to prescribe penalties; and to make appropriations," (MCL 205.91 to 205.111) by adding section 5c.

The People of the State of Michigan enact:

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

(2) A marketplace facilitator is a person liable for the tax imposed under this act, regardless of whether the marketplace facilitator makes only facilitated sales for marketplace sellers or a combination of direct and facilitated sales and has all the rights and duties of a taxpayer under this act.

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

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

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

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

(7) A marketplace facilitator is relieved of liability under this section for failure to collect and remit the correct amount of tax to the extent that the marketplace facilitator demonstrates, to the satisfaction of the department, that the failure was due to incorrect or insufficient information given to the marketplace facilitator by the marketplace seller. The relief under this subsection does not apply if the marketplace seller is an affiliate of the marketplace facilitator.

(8) A marketplace facilitator is relieved of liability under this section if the marketplace facilitator demonstrates, to the satisfaction of the department, that the tax levied under this act on a sale facilitated by the

marketplace facilitator was paid to the department by the marketplace seller or provides a claim of exemption provided by the marketplace seller's purchaser.

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

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

(11) As used in this section:

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

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

(i) A person is a marketplace facilitator if the person facilitates a retail sale by a marketplace seller by listing or advertising for sale by a marketplace seller in a marketplace, tangible personal property or taxable services and either directly or indirectly through agreements or arrangements with third parties or its affiliates collecting payment from the customer and transmitting that payment to the marketplace seller for consideration.

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

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


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

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

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

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

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor

**STATE OF MICHIGAN
100TH LEGISLATURE
REGULAR SESSION OF 2019**

Introduced by Reps. Webber, Afendoulis, Tate and Yancey

ENROLLED HOUSE BILL No. 4542

AN ACT to amend 1933 PA 167, entitled "An act to provide for the raising of additional public revenue by prescribing certain specific taxes, fees, and charges to be paid to the state for the privilege of engaging in certain business activities; to provide, incident to the enforcement thereof, for the issuance of licenses to engage in such occupations; to provide for the ascertainment, assessment and collection thereof; to appropriate the proceeds thereof; and to prescribe penalties for violations of the provisions of this act," (MCL 205.51 to 205.78) by adding section 2c.

The People of the State of Michigan enact:

Sec. 2c. (1) A seller of tangible personal property is engaged in the business of making sales at retail in this state if the seller meets either of the following conditions:

(a) The seller's gross receipts from sales to purchasers in this state exceed \$100,000.00 in the previous calendar year.

(b) The seller has 200 or more separate transactions into this state in the previous calendar year.

(2) This section applies regardless of whether the seller has a physical presence in this state or is presumed to be engaged in the business of making sales at retail in this state under section 2b. This section does not eliminate or alter the obligation of a seller that has a physical presence in this state or is presumed to be engaged in the business of making sales at retail in this state under section 2b to remit the tax levied under this act.

(3) This section applies to transactions occurring on or after October 1, 2018.

(4) A person that is a marketplace facilitator under section 2d shall include sales by marketplace sellers on its marketplace and its direct sales in determining its gross receipts under subsection (1)(a) or its number of transactions under subsection (1)(b).

(5) A person that is a marketplace seller under section 2d shall include its sales through a marketplace facilitator and its direct sales in determining its gross receipts under subsection (1)(a) or its number of transactions under subsection (1)(b).

(6) Notwithstanding anything else in this section, a seller that makes no sales at retail is not required to obtain a license under this act or file returns. A seller that makes both sales at retail and sales for purposes of resale shall obtain a license under this act, file required returns, and remit tax as required by this act.

(7) As used in this section:

(a) "Marketplace facilitator" means that term as defined in section 2d.

(b) "Marketplace seller" means that term as defined in section 2d.

**STATE OF MICHIGAN
100TH LEGISLATURE
REGULAR SESSION OF 2019**

Introduced by Reps. Yancey, Webber, Tate and Afendoulis

ENROLLED HOUSE BILL No. 4543

AN ACT to amend 1937 PA 94, entitled "An act to provide for the levy, assessment, and collection of a specific excise tax on the storage, use, or consumption in this state of tangible personal property and certain services; to appropriate the proceeds of that tax; to prescribe penalties; and to make appropriations," (MCL 205.91 to 205.111) by adding section 5b.

The People of the State of Michigan enact:

Sec. 5b. (1) A seller of tangible personal property or services subject to the tax under this act has nexus in this state and shall register with the department and collect and remit the tax levied under this act if the seller meets either of the following conditions:

(a) The seller's gross receipts from sales for storage, use, or consumption in this state to purchasers in this state exceed \$100,000.00 in the previous calendar year.

(b) The seller has 200 or more separate transactions into this state in the previous calendar year.

(2) This section applies regardless of whether the seller has a physical presence in this state or has nexus in this state under section 5a. This section does not eliminate or alter the obligation of a seller that has a physical presence in this state or nexus in this state under section 5a to collect and remit the tax levied under this act.

(3) This section applies to transactions occurring on or after October 1, 2018.

(4) A person that is a marketplace facilitator under section 5c shall include sales by marketplace sellers on its marketplace and its direct sales in determining its gross receipts under subsection (1)(a) or its number of transactions under subsection (1)(b).

(5) A person that is a marketplace seller under section 5c shall include its sales through a marketplace facilitator and its direct sales in determining its gross receipts under subsection (1)(a) or its number of transactions under subsection (1)(b).

(6) Notwithstanding anything else in this section, a seller that only makes sales for purposes of resale is not required to register for the tax imposed by this act. A seller that makes both sales that it is required to collect and remit tax on under this act and sales for purposes of resale shall register under this act, file required returns, and remit tax as required by this act.

(7) As used in this section:

(a) "Marketplace facilitator" means that term as defined in section 5c.

(b) "Marketplace seller" means that term as defined in section 5c.