An Act Regarding the Collection of the Sales and Use Tax by Marketplace Facilitators

Reference to the Committee on Taxation suggested and ordered printed.

Presented by Representative TIPPING of Orono.
Cosponsored by Senator CHIPMAN of Cumberland and Representatives: BERRY of Bowdoinham, BICKFORD of Auburn, MAREAN of Hollis, STANLEY of Medway, Senator: DOW of Lincoln.
Be it enacted by the People of the State of Maine as follows:

1. Sec. 1. 36 MRSA §1754-B, sub-§1, ¶G, as amended by PL 2013, c. 200, §3, is further amended to read:

G. Every seller of tangible personal property or taxable services and every marketplace facilitator, as defined in section 1951-C, subsection 1, paragraph A, that has a substantial physical presence in this State sufficient to satisfy the requirements of the due process and commerce clauses of the United States Constitution.

2. Sec. 2. 36 MRSA §1951-C is enacted to read:

§1951-C. Collection of sales and use tax by marketplace facilitators

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Marketplace facilitator" means a person that contracts with sellers to facilitate for consideration, regardless of whether deducted as fees from the transaction, the sale of a seller's products through a physical or electronic marketplace operated by the person and that engages:

(1) Directly or indirectly, through one or more affiliated persons in any of the following:

(a) Transmitting or otherwise communicating the offer or acceptance between a buyer and seller;

(b) Owning or operating the infrastructure, physical or electronic, or technology that brings buyers and sellers together;

(c) Providing a virtual currency that buyers are allowed or required to use to purchase products from the seller; or

(d) Software development or research and development activities related to any of the activities described in subparagraph (2), if such activities are directly related to a physical or electronic marketplace operated by the person or an affiliated person; and

(2) In any of the following activities with respect to the seller's products:

(a) Payment processing services;

(b) Fulfillment or storage services;

(c) Listing products for sale;

(d) Setting prices;

(e) Branding sales as those of the marketplace facilitator;

(f) Taking orders;

(g) Advertising or promotion; or
(h) Providing customer service or accepting or assisting with returns or exchanges.

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

C. "Seller" has the same meaning as in section 1754-B, subsection 1-A, paragraph A, subparagraph (3).

2. Sales made through a marketplace facilitator. The following provisions govern a marketplace facilitator facilitating sales to buyers in the State.

A. Except as provided in paragraph B, a marketplace facilitator facilitating sales to buyers in the State shall collect and remit the sales or use tax on all taxable sales to buyers in the State.

B. A marketplace facilitator is not required to collect and remit sales or use tax on a sale from a marketplace seller to a buyer in the State if the marketplace facilitator requests and maintains a copy of the marketplace seller's registration certificate to collect sales and use tax in the State issued under section 1754-B, subsection 2.

C. Nothing in this section may be construed to interfere with the ability of a marketplace facilitator and a marketplace seller to enter into agreements with each other regarding fulfillment of the requirements of this chapter.

D. A marketplace facilitator is relieved of liability under this section for failure to collect and remit tax to the extent the marketplace seller or the buyer has remitted the sales or use tax at issue.

E. 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 error was due to incorrect information given to the marketplace facilitator by the marketplace seller, except that this paragraph does not apply if the marketplace facilitator and the marketplace seller are members of an affiliated group as defined in section 5102, subsection 1-B.

F. A marketplace facilitator shall report the sales and use tax collected and remitted under this section separately from any sales or use tax collected on taxable retail sales made directly by the marketplace facilitator or affiliates of the marketplace facilitator to buyers in the State using a separate marketplace facilitator form to be provided by the State Tax Assessor.

G. No class action may be brought against a marketplace facilitator in any court of the State on behalf of buyers arising from or in any way related to an overpayment of sales or use tax collected on sales facilitated by the marketplace facilitator, regardless of whether that claim is characterized as a tax refund claim. Nothing in this paragraph affects a buyer's right to seek a refund as provided under section 2011.

H. Nothing in this section affects the obligation of a buyer to remit sales or use tax for any taxable transaction for which a marketplace facilitator or marketplace seller does not collect and remit sales or use tax.

I. Nothing in this section prohibits the State Tax Assessor from auditing marketplace facilitators or marketplace sellers, except the assessor is prohibited from auditing:
(1) Marketplace facilitators to the extent that the marketplace seller collected and remitted sales and use tax and was audited with respect to the relevant sales; or

(2) Marketplace sellers to the extent that the marketplace facilitator collected and remitted sales and use tax and was audited with respect to the relevant sales unless the marketplace facilitator is seeking relief of liability under paragraph E.

J. If a marketplace facilitator pays sales or use tax on a retail sale facilitated for a marketplace seller as a result of an audit or otherwise, the marketplace facilitator may recover the tax and any associated interest and penalties from the marketplace seller within the applicable statutory period following the date of payment by the marketplace facilitator.

K. The State Tax Assessor shall waive penalties and interest if a marketplace facilitator seeks liability relief and the assessor determines that a reasonable cause exists.

Sec. 3. Application. This Act applies to sales occurring on or after November 1, 2019.

SUMMARY

This bill ensures that persons making sales through physical or electronic marketplaces of tangible personal property and taxable services subject to the sales and use tax are subject to the same sales and use tax collection and remittance responsibilities as other sellers.