

An Act

(2ND EXTRAORDINARY SESSION)
ENROLLED HOUSE
BILL NO. 1019

By: Wallace and Casey of the
House

and

David and Fields of the
Senate

An Act relating to revenue and taxation; enacting the FY 18 Budget Amendments Act; defining terms; requiring certain entities to file election with Oklahoma Tax Commission related to collection of sales or use taxes; providing for alternative procedures; requiring certain notices; requiring reporting; requiring certain permits; specifying applicability of requirements with respect to marketplace facilitators; providing for effect of election; prescribing procedures for remote sellers, marketplace facilitators and referrers; providing for effect of nonelection; requiring records; prescribing notice procedures for entities not making certain election; imposing requirements on remote sellers or marketplace facilitators; prescribing requirements for notice; imposing requirements on certain remote sellers or marketplace facilitators; requiring forms; requiring certain reports; prescribing content of reports; providing for imposition of penalty amounts; prescribing penalty amount; imposing certain limitation on penalty; providing for applicability of certain provisions of the Oklahoma Sales Tax Code and Oklahoma Use Tax Code; authorizing reduction of penalty amounts for designated period of time; providing for release of certain liability; prohibiting certain class actions; providing for effect of provisions with respect to vendor obligations for collection and remittance of sales and use taxes; amending 68 O.S. 2011, Section 1403,

as last amended by Section 2, Chapter 349, O.S.L. 2015 (68 O.S. Supp. 2017, Section 1403), which relates to use tax; modifying apportionment; providing for codification; providing for noncodification; and declaring an emergency.

SUBJECT: Revenue and taxation

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

This act shall be known and may be cited as the "FY 18 Budget Amendments Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1391 of Title 68, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Affiliated person" means a person that, with respect to another person:

- a. has a direct or indirect ownership interest of more than five percent (5%) in the other person, or
- b. is related to the other person because a third person, or group of third persons who are affiliated with each other as defined in this subsection, holds a direct or indirect ownership interest of more than five percent (5%) in the related person;

2. "Forum" means a place where sales at retail occur, whether physical or electronic. The term includes a store, a booth, a publicly accessible Internet website, a catalog or similar place;

3. "Marketplace facilitator" means a person that facilitates the sale at retail of tangible personal property. For purposes of this section, a person facilitates a sale at retail if the person or an affiliated person:

- a. lists or advertises tangible personal property for sale at retail in any forum, and
- b. either directly or indirectly through agreements or arrangements with third parties, collects the payment from the purchaser and transmits the payment to the person selling the property.

The term includes a person that may also be a vendor;

4. "Marketplace seller" means a person that has an agreement with a marketplace facilitator pursuant to which the marketplace facilitator facilitates sales for the person;

5. "Notice and reporting requirements" means the notice requirements under Section 4 of this act and the reporting requirements under Sections 5 and 6 of this act;

6. "Referral" means the transfer by a referrer of a potential purchaser to a person that advertises or lists products for sale on the referrer's platform;

7. a. "Referrer" means the person, other than a person engaging in the business of printing or publishing a newspaper, that, pursuant to an agreement or arrangement with a marketplace seller or remote seller, does the following:
 - (1) agrees to list or advertise for sale at retail one or more products of the marketplace seller or remote seller in a physical or electronic medium,
 - (2) receives consideration from the marketplace seller or remote seller from the sale offered in the listing or advertisement,
 - (3) transfers by telecommunications, Internet link or other means, a purchaser to a marketplace seller, remote seller or affiliated person to complete a sale,
 - (4) does not collect a receipt from the purchaser for the sale.

- b. The term does not include a person that:
 - (1) provides Internet advertising services, and
 - (2) does not provide the marketplace seller's or remote seller's shipping terms or advertise whether a marketplace seller or remote seller collects a sales or use tax.
- c. The term includes a person that may also be a vendor; and

8. "Remote seller" means a person, other than a marketplace facilitator, a marketplace seller or a referrer, that does not maintain a place of business in this state that, through a forum, sells tangible personal property at retail, the sale or use of which is subject to the tax imposed by Section 1354 or 1402 of Title 68 of the Oklahoma Statutes. The term does not include an employee who in the ordinary scope of employment renders services to his employer in exchange for wages and salaries.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1392 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Subject to the provisions of subsections C and D of this section, on or before July 1, 2018, and on or before June 1 of each calendar year thereafter, beginning June 1, 2019, a remote seller, a marketplace facilitator or a referrer that had aggregate sales of tangible personal property within this state or delivered to locations within this state subject to tax under Section 1354 or 1402 of Title 68 of the Oklahoma Statutes worth at least Ten Thousand Dollars (\$10,000.00) during the immediately preceding twelve-calendar-month period shall file an election with the Tax Commission to collect and remit the tax imposed under Section 1354 or 1402 of Title 68 of the Oklahoma Statutes or to comply with the notice and reporting requirements. The election shall be made on a form and in a manner prescribed by the Commission and, except as provided in subsection E of this section, shall apply to the next succeeding fiscal year.

B. A remote seller, a marketplace facilitator or a referrer that makes an election under subsection A of this section to collect and remit the tax imposed under Section 1354 or 1402 of Title 68 of

the Oklahoma Statutes shall obtain a permit under Section 1364 or 1407 of Title 68 of the Oklahoma Statutes.

C. The requirement by a marketplace facilitator to make an election under subsection A of this section shall only apply to the following:

1. Sales through the marketplace facilitator's forum made by or on behalf of a marketplace seller that does not maintain a place of business in this state; and

2. Sales made by a marketplace facilitator on its own behalf if the marketplace facilitator does not maintain a place of business in this state.

D. The requirement by a referrer to make an election under subsection A of this section shall only apply to sales:

1. Directly resulting from a referral of a purchaser to a marketplace seller that does not maintain a place of business in this state;

2. Directly resulting from a referral of a purchaser to a remote seller; and

3. Of the referrer's own products if the referrer does not maintain a place of business in this state.

A referrer may make an election under subsection A of this section for the sales described in paragraphs 1 and 2 of this subsection that is different from the election made for the sales described in paragraph 3 of this subsection.

E. An election made on or before July 1, 2018, shall be in effect for the 2018-2019 fiscal year. A remote seller, a marketplace facilitator or a referrer may change an election to comply with the notice and reporting requirements to an election to collect and remit the tax imposed under Section 1354 or 1402 of Title 68 of the Oklahoma Statutes at any time during a fiscal year by filing a new election with the Commission and obtaining a permit under Section 1364 or 1407 of Title 68 of the Oklahoma Statutes. The new election shall be effective thirty (30) days after the filing and shall be effective for the balance of the fiscal year in which the new election was filed and for the next succeeding fiscal year.

F. A remote seller, a marketplace facilitator or a referrer who does not submit an election under subsection A of this section or a new election under subsection E of this section shall be deemed to have elected to comply with the notice and reporting requirements.

G. In addition to records that may be required to be maintained under other applicable provisions of Title 68 of the Oklahoma Statutes by a remote seller, a marketplace facilitator or a referrer, a remote seller, a marketplace facilitator or a referrer subject to this act shall also be subject to Section 1365 of Title 68 of the Oklahoma Statutes relating to the keeping of records and Section 248 of Title 68 of the Oklahoma Statutes relating to the examination of records by the Commission and agents and employees of the Commission.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1393 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. A remote seller, a marketplace facilitator or a referrer required to make an election under subsection A of Section 3 of this act that does not elect to collect and remit the tax imposed by Section 1354 or 1402 of Title 68 of the Oklahoma Statutes shall comply with the applicable notice requirements of this section.

B. A remote seller or marketplace facilitator subject to the requirements of this section shall:

1. Post a conspicuous notice on its forum that informs purchasers intending to purchase tangible personal property for delivery to a location within this state that includes all of the following:

- a. sales or use tax may be due in connection with the purchase and delivery of the tangible personal property,
- b. the state requires the purchaser to file a return if use tax is due in connection with the purchase and delivery, and
- c. the notice is required by this section; and

2. Provide a written notice to each purchaser at the time of each sale that includes all of the following:

- a. a statement that sales or use tax is not being collected in connection with the purchase,
- b. a statement that the purchaser may be required to remit use tax directly to the Tax Commission, and
- c. instructions for obtaining additional information from the Commission regarding whether and how to remit use tax to the Commission.

C. The notice required by paragraph 2 of subsection B of this section must be prominently displayed on all invoices and order forms and on each sales receipt or similar document, whether in paper or electronic form, provided to the purchaser. No statement that sales or use tax is not imposed on a transaction may be made by a remote seller or marketplace facilitator unless the transaction is exempt from sales and use tax pursuant to Title 68 of the Oklahoma Statutes or other applicable state law.

D. A referrer subject to the requirements of this section shall post a conspicuous notice on its platform that informs purchasers intending to purchase tangible personal property for delivery to a location within this state that includes all of the following:

1. Sales or use tax may be due in connection with the purchase and delivery;

2. The person to which the purchaser is being referred may or may not collect and remit sales or use tax to the Commission in connection with the transaction;

3. The state requires the purchaser to file a return if use tax is due in connection with the purchase and delivery and not collected by the person;

4. The notice is required by this section;

5. Instructions for obtaining additional information from the Commission regarding whether and how to remit use tax to the Commission; and

6. If the person to whom the purchaser is being referred does not collect sales or use tax on a subsequent purchase by the purchaser, the person may be required to provide information to the purchaser and the Commission about the purchaser's potential use tax liability.

E. The notice required under subsection D of this section must be prominently displayed and may include pop-up boxes or notification by other means that appears when the referrer transfers a purchaser to another person to complete the sale.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1394 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. A remote seller or marketplace facilitator required to make an election under subsection A of Section 3 of this act that does not elect to collect and remit the tax imposed by Section 1354 or 1402 of Title 68 of the Oklahoma Statutes shall, no later than January 31 of each year, provide a written report to each purchaser required to receive the notice under paragraph 2 of subsection B of Section 4 of this act during the immediately preceding calendar year that includes all of the following:

1. A statement that the remote seller or marketplace facilitator did not collect sales or use tax in connection with the purchaser's transactions with the remote seller or marketplace facilitator and that the purchaser may be required to remit use tax to the Tax Commission;

2. A list, by date, indicating the type and purchase price of each product purchased or leased by the purchaser from the remote seller or marketplace facilitator and delivered to a location within this state;

3. Instructions for obtaining additional information from the Commission regarding whether and how to remit use tax to the Commission;

4. A statement that the remote seller or marketplace facilitator is required to submit a report to the Commission under Section 6 of this act that includes the name of the purchaser and the aggregate dollar amount of the purchaser's purchases from the remote seller or marketplace facilitator; and

5. Such additional information as the Commission may reasonably require.

B. The Commission shall prescribe the form of the report required under subsection A of this section and shall make the form available on its publicly accessible Internet website.

C. The report required under subsection A of this section shall be mailed by first-class mail in an envelope prominently marked with words indicating that important tax information is enclosed to the purchaser's billing addresses, if known, or, if unknown, to the purchaser's shipping address. If the purchaser's billing and shipping addresses are unknown, the report shall be sent electronically to the purchaser's last-known email address with a subject heading indicating that important tax information is being provided.

D. A referrer required to make an election under subsection A of Section 3 of this act that does not elect to collect and remit the tax imposed by Section 1354 or 1402 of Title 68 of the Oklahoma Statutes shall, no later than January 31 of each year, provide a written notice to each remote seller to whom the referrer transferred a potential purchaser located in this state during the immediately preceding calendar year that includes all of the following:

1. A statement that a sales or use tax may be imposed by the state on the transaction;

2. A statement that the remote seller may be required to make the election required by subsection A of Section 3 of this act; and

3. Instructions for obtaining additional information regarding sales and use tax from the Commission.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1395 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. A remote seller or marketplace facilitator required to make an election under subsection A of Section 3 of this act that does not elect to collect and remit the tax imposed by Section 1354 or 1402 of Title 68 of the Oklahoma Statutes shall, no later than January 31 of each year, submit a report to the Tax Commission. The report shall include, with respect to each purchaser required to

receive the notice under paragraph 2 of subsection B of Section 4 of this act during the immediately preceding calendar year, the following:

1. The purchaser's name;
2. The purchaser's billing address and, if different, the purchaser's last-known mailing address;
3. The address within this state to which products were delivered to the purchaser;
4. The aggregate dollar amount of the purchaser's purchases from the remote seller or marketplace facilitator; and
5. The name and address of the remote seller, marketplace facilitator or marketplace seller that made the sales to the purchaser.

B. A referrer required to make an election under subsection A of Section 3 of this act that does not elect to collect and remit the tax imposed by Section 1354 or 1402 of Title 68 of the Oklahoma Statutes shall, no later than January 31 of each year, submit a report to the Commission. The report shall include a list of persons who received the notice required under subsection D of Section 5 of this act.

C. The Commission shall prescribe the forms of the reports required under this section and shall make them available on its publicly accessible Internet website. The reports shall be submitted electronically in such manner as the Commission shall require.

D. A report required under this section shall be submitted by an officer of the remote seller, the marketplace facilitator or the referrer and shall include a statement, made under penalty of perjury, by the officer that the remote seller, the marketplace facilitator or the referrer made reasonable efforts to comply with the notice and reporting requirements of this act.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1396 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. The Commission shall assess a penalty in the amount of Twenty Thousand Dollars (\$20,000.00) or twenty percent (20%) of total sales in Oklahoma during the previous twelve (12) months, whichever is less, against a remote seller, a marketplace facilitator or a referrer that makes an election under subsection A of Section 3 of this act to comply with the notice and reporting requirements, or is deemed to have made such election under subsection F of Section 3 of this act, and fails to comply with the requirements under Section 5 or 6 of this act. The penalty shall be assessed separately for each violation but may only be assessed once in a calendar year.

B. A remote seller, a marketplace facilitator or a referrer that makes an election under subsection A of Section 3 of this act to collect and remit the tax imposed under Section 1354 or 1402 of Title 68 of the Oklahoma Statutes shall be subject to all of the provisions of Title 68 of the Oklahoma Statutes with respect to the collection and remittance of such tax and shall be subject to all of the penalties and interest levied under Title 68 of the Oklahoma Statutes for failing to comply with the provisions of this act except as provided in this section.

C. For a period of five (5) years after the effective date of this section, the Tax Commission may abate or reduce any penalty or interest imposed under subsection B of this section due to hardship or for good cause shown.

D. A marketplace facilitator or a referrer is relieved of liability under subsection B of this section if the marketplace facilitator or the referrer can show to the satisfaction of the Commission that the failure to collect the correct amount of tax was due to incorrect information given to the marketplace facilitator or the referrer by a marketplace seller or remote seller.

E. A class action may not be brought against a marketplace facilitator or a referrer on behalf of purchasers arising from or in any way related to an overpayment of sales or use tax collected by the marketplace facilitator or the referrer, regardless of whether such action is characterized as a tax refund claim. Nothing in this subsection shall affect a purchaser's right to seek a refund from the Commission under other provisions of Title 68 of the Oklahoma Statutes.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1397 of Title 68, unless there is created a duplication in numbering, reads as follows:

Nothing in this act affects the obligations of a vendor to register with the Tax Commission and to collect and remit sales tax or use tax.

SECTION 9. AMENDATORY 68 O.S. 2011, Section 1403, as last amended by Section 2, Chapter 349, O.S.L. 2015 (68 O.S. Supp. 2017, Section 1403), is amended to read as follows:

Section 1403. A. It is hereby declared to be the purpose of Section 1401 et seq. of this title to provide for the support of the functions of the state and local government of Oklahoma; and for this purpose and to this end, it is hereby expressly provided that the revenues derived hereunder, subject to the apportionment provided in subsection B of this section and to the apportionment requirements for the Oklahoma Tax Commission and Office of Management and Enterprise Services Joint Computer Enhancement Fund provided by Section 265 of this title, are hereby apportioned as follows:

1. a. the following amounts shall be paid by the Tax Commission to the State Treasurer and placed to the credit of the General Revenue Fund to be paid out pursuant to direct appropriation by the Legislature:

Fiscal Year	Amount
FY 2004	85.35%
FY 2005	85.14%
FY 2006	85.54%
FY 2007	85.04%
FY 2008 and each fiscal year thereafter	83.61%

- b. in the event that additional monies are necessary pursuant to paragraph 6 of this section, such additional monies shall be deducted in the proportion determined by the State Board of Equalization pursuant

to paragraph 3 of Section 2355.1B of this title from the monies apportioned to the General Revenue Fund;

2. Ten and forty-six one-hundredths percent (10.46%) shall be paid to the State Treasurer to be placed to the credit of the Education Reform Revolving Fund of the State Department of Education;

3. The following amounts shall be paid to the State Treasurer to be placed to the credit of the Teachers' Retirement System Dedicated Revenue Revolving Fund:

Fiscal Year	Amount
FY 2003 and FY 2004	3.54%
FY 2005	3.75%
FY 2006	4.0%
FY 2007	4.5%
FY 2008 and each fiscal year thereafter	5.0%

4. a. except as otherwise provided in subparagraph b of this paragraph, for the fiscal year beginning July 1, 2015, and for each fiscal year thereafter, eighty-seven one-hundredths percent (0.87%) shall be paid to the State Treasurer to be further apportioned as follows:

(1) thirty-six percent (36%) shall be placed to the credit of the Oklahoma Tourism Promotion Revolving Fund, but in no event shall such apportionment exceed the total amount apportioned pursuant to this division for the fiscal year ending on June 30, 2015, and

(2) sixty-four percent (64%) shall be placed to the credit of the Oklahoma Tourism Capital Improvement Revolving Fund, but in no event shall such apportionment exceed the total amount apportioned pursuant to this division for the fiscal year ending on June 30, 2015, and

- b. any amounts which exceed the limitations of subparagraph a of this paragraph shall be placed to the credit of the General Revenue Fund;

5. For the fiscal year beginning July 1, 2015, and for each fiscal year thereafter, six one-hundredths percent (0.06%) shall be placed to the credit of the Oklahoma Historical Society Capital Improvement and Operations Revolving Fund, but in no event shall such apportionment exceed the total amount apportioned pursuant to this paragraph for the fiscal year ending on June 30, 2015. Any amounts which exceed the limitations of this paragraph shall be placed to the credit of the General Revenue Fund; and

6. During the first fiscal year after the State Board of Equalization has made a determination as provided in Section 2355.1B of this title, regarding a baseline amount of revenue apportioned pursuant to paragraph 3 of this section, and for each fiscal year thereafter, in no event shall monies apportioned pursuant to paragraph 3 of this section, paragraph 3 of Section 1353 of this title and subparagraph c of paragraph 1 of Section 2352 of this title be less than such baseline amount.

B. Prior to the apportionments otherwise provided in this section, there shall be apportioned to the Education Reform Revolving Fund of the State Department of Education the following amounts in the following state fiscal years:

<u>FY 2019</u>	<u>\$19,600,000.00; and</u>
<u>FY 2020 and each year thereafter</u>	<u>\$20,500,000.00.</u>

SECTION 10. It being immediately necessary for the preservation of the public peace, health or safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 4th day of April, 2018.

Presiding Officer of the House
of Representatives

Passed the Senate the 6th day of April, 2018.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____
day of _____, 20_____, at _____ o'clock _____ M.
By: _____

Approved by the Governor of the State of Oklahoma this _____
day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____
day of _____, 20_____, at _____ o'clock _____ M.
By: _____