



# 129th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2019

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Legislative Document

No. 1452

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H.P. 1064

House of Representatives, April 2, 2019

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

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Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT  
Clerk

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.

1 **Be it enacted by the People of the State of Maine as follows:**

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

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

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

9 **§1951-C. Collection of sales and use tax by marketplace facilitators**

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

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

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

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

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

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

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

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

29 (a) Payment processing services;

30 (b) Fulfillment or storage services;

31 (c) Listing products for sale;

32 (d) Setting prices;

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

34 (f) Taking orders;

35 (g) Advertising or promotion; or

1                   (h) Providing customer service or accepting or assisting with returns or  
2                   exchanges.

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

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

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

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

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

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

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

22                  E. A marketplace facilitator is relieved of liability under this section for failure to  
23                  collect and remit the correct amount of tax to the extent that the error was due to  
24                  incorrect information given to the marketplace facilitator by the marketplace seller,  
25                  except that this paragraph does not apply if the marketplace facilitator and the  
26                  marketplace seller are members of an affiliated group as defined in section 5102,  
27                  subsection 1-B.

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

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

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

41                  I. Nothing in this section prohibits the State Tax Assessor from auditing marketplace  
42                  facilitators or marketplace sellers, except the assessor is prohibited from auditing:

