

HOUSE BILL 2249

By Lamberth

AN ACT to amend Tennessee Code Annotated, Title 67,
Chapter 6, relative to sales and use taxes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-6-102(23)(L), is amended by deleting the language "; or" and substituting instead the language ";".

SECTION 2. Tennessee Code Annotated, Section 67-6-102(23)(M), is amended by adding the language "or" after the semi-colon.

SECTION 3. Tennessee Code Annotated, Section 67-6-102(23), is amended by adding the following as a new subdivision (N):

(N) Acts as a marketplace facilitator;

SECTION 4. Tennessee Code Annotated, Section 67-6-102(77), is amended by adding the language "and every marketplace facilitator" after the language "this chapter".

SECTION 5. Tennessee Code Annotated, Section 67-6-102(78), is amended by adding the following as a new, appropriately designated subdivision:

() "Sale" includes any sale, as otherwise defined in this subdivision (78), made by a marketplace facilitator on behalf of a marketplace seller;

SECTION 6. Tennessee Code Annotated, Section 67-6-102, is amended by adding the following as new, appropriately designated subdivisions:

() "Marketplace" means a physical or electronic place, platform, or forum, including, but not limited to, a store, booth, internet website, catalog, or dedicated sales software application, where tangible personal property or any of the things or services taxable under this chapter are offered for sale;

()

(A) "Marketplace facilitator" means a person, including any affiliate of the person, that:

(1) For consideration, regardless of whether characterized as fees from the transaction, contracts, or otherwise agrees with a marketplace seller to facilitate the sale of the marketplace seller's tangible personal property or things or services taxable under this chapter through a physical or electronic marketplace operated, owned, or otherwise controlled by the person or the person's affiliate; and

(2) Either directly or indirectly through contracts, agreements, or other arrangements with third parties, collects the payment from the purchaser of the marketplace seller's tangible personal property or things or services taxable under this chapter and transmits payment to the marketplace seller; and

(B) "Marketplace facilitator" does not include:

(1) A person who exclusively provides advertising services, including listing products for sale, so long as the person does not also engage directly or indirectly through one (1) or more affiliated persons in the activities described in subdivision () (A);

(2) A person whose activity with respect to marketplace sales is limited to providing payment processing services between two (2) or more parties; or

(3) A derivatives clearing organization, designated contract market, or foreign board of trade or swap execution facility that is registered with the Commodity Futures Trading Commission ("CFTC registered platforms"), or any clearing members, futures commission merchants, or brokers using the services of CFTC registered platforms;

() "Marketplace seller" means a person who makes sales through any marketplace operated, owned, or controlled by a marketplace facilitator;

SECTION 7. Tennessee Code Annotated, Section 67-6-201, is amended by adding the following as a new, appropriately designated subdivision:

() Acts as a marketplace facilitator as defined in § 67-6-102;

SECTION 8. Tennessee Code Annotated, Section 67-6-501, is amended by adding the following as a new subsection:

(f) When a marketplace seller uses a marketplace facilitator to facilitate sales of tangible personal property or any of the things or services taxable under this chapter, the marketplace facilitator is liable for the taxes imposed by this chapter on the sales price of the tangible personal property or the things or services taxable under this chapter regardless of whether the marketplace seller has a sales tax certificate of registration or would have been required to collect sales or use taxes had the sale not been facilitated by the marketplace facilitator unless:

(1) The marketplace facilitator made or facilitated total sales to consumers in this state of five hundred thousand dollars (\$500,000) or less during the previous twelve-month period;

(2) The marketplace facilitator demonstrates, to the satisfaction of the commissioner, that substantially all of the marketplace sellers for whom the marketplace facilitator facilitates sales are registered dealers under this section, in which case the commissioner is authorized to waive the requirements of this subsection (f). If a waiver is granted pursuant to this subdivision (f)(2), the taxes levied under this chapter shall be collectible from the marketplace sellers; or

(3) The marketplace facilitator and the marketplace seller contractually agree that the marketplace seller will collect and remit all applicable taxes under this chapter and the marketplace seller:

(A) Has annual gross sales in the United States of over one billion dollars (\$1,000,000,000), including the gross sales of any related entities, and in the case of franchised entities, including the combined sales of all franchisees of a single franchisor;

(B) Provides evidence to the marketplace facilitator that it is registered in this state under § 67-6-601; and

(C) Notifies the commissioner in a manner prescribed by the commissioner that the marketplace seller will collect and remit all applicable taxes under this chapter on its sales through the marketplace facilitator and is liable for failure to collect or remit applicable taxes on its sales.

SECTION 9. Tennessee Code Annotated, Title 67, Chapter 6, Part 5, is amended by adding the following as a new, appropriately designated section:

67-6-5__.

(a) A marketplace facilitator that collects and remits the taxes imposed by this chapter shall collect taxes on sales through its marketplace based upon the address where the tangible personal property or things taxable under this chapter are shipped; provided, however, that taxes on services sold through its marketplace shall be collected as otherwise provided in this chapter.

(b) A marketplace facilitator shall report the sales and use taxes on sales through its marketplace separately from any sales and use taxes collected on sales made directly by the marketplace facilitator or affiliates of the marketplace facilitator.

(c) The commissioner may, in the commissioner's sole discretion, audit a marketplace facilitator for sales made by marketplace sellers and facilitated by the marketplace facilitator, except with respect to transactions that are subject to § 67-6-501(f)(1)-(3). The commissioner shall not audit or otherwise assess taxes against marketplace sellers for sales facilitated by a marketplace facilitator except to the extent the marketplace facilitator seeks relief as provided below or with respect to transactions that are subject to § 67-6-501(f)(1)-(3).

(d) A marketplace facilitator shall be relieved of liability for failure to collect and remit the correct amount of taxes to the extent that the error was due to incorrect or insufficient information regarding the nature of the product or service given to the marketplace facilitator by the marketplace seller if the marketplace facilitator demonstrates that it made a reasonable effort to obtain correct and sufficient information from the marketplace seller. This subsection (d) shall not apply if the marketplace facilitator and the marketplace seller are affiliates.

(e) No class action lawsuit may be brought against a marketplace facilitator in this state on behalf of purchasers relating to overcollection of sale or use taxes by the marketplace facilitator, regardless of whether that claim is characterized as a tax refund claim.

(f) Nothing in this section affects the obligation of any purchaser to remit sales or use taxes for any taxable transaction for which a marketplace facilitator or seller does not collect and remit sales and use taxes.

SECTION 10. Tennessee Code Annotated, Section 67-6-601, is amended by adding the following language as a new subsection:

(d) A marketplace facilitator shall be considered the seller and retailer for each sale facilitated through its marketplace for purposes of registering with the department.

SECTION 11. This act shall take effect October 1, 2020, the public welfare requiring it.