

House Bill 276

By: Representatives Harrell of the 106th, Kelley of the 16th, Carson of the 46th, Knight of the 130th, and Williamson of the 115th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 1 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated,
2 relating to state sales and use tax, so as to modify the definition of dealer; to require the
3 collection and remittance of sales tax by certain persons that facilitate certain retail sales; to
4 define marketplace facilitators and marketplace sellers; to provide for related matters; to
5 provide for an effective date and applicability; to repeal conflicting laws; and for other
6 purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Article 1 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to state
10 sales and use tax, is amended in Code Section 48-8-2, relating to definitions, by adding a new
11 subparagraph to paragraph (8) and by adding two new paragraphs to read as follows:

12 "(M.3) Is a marketplace facilitator that facilitates retail sales that are taxable under
13 this chapter to be delivered, held for pickup, used, consumed, distributed, stored for
14 use or consumption, or rendered as a service within this state, if the total value of the
15 sales price of all such retail sales, combined across all its marketplace sellers and the
16 marketplace facilitator itself, equals or exceeds \$100,000.00 in aggregate in the
17 previous or current calendar year;"

18 "(18.1) 'Marketplace facilitator' means a person that contracts with a marketplace seller to
19 make available or facilitate retail sales that are taxable under this chapter for a marketplace
20 seller in exchange for any form of consideration, by directly, or indirectly through a related
21 member as defined in Code Section 48-7-28.3 or through any agreement or arrangement with
22 third parties:

23 (A) Providing a service that makes available or facilitates such retail sales in any manner,
24 including, but not limited to, promoting, marketing, advertising, taking orders or reservations
25 for, providing the physical or electronic infrastructure that brings purchasers and marketplace

26 sellers together, or otherwise similarly assisting the seller in making such retail sales, but
 27 excluding merely processing the payments for such retail sales; and
 28 (B) Collecting payment from a purchaser and transmitting any portion of such payment to
 29 the marketplace seller.
 30 (18.2) 'Marketplace seller' means a person that makes available or conducts a retail sale
 31 through or facilitated by any physical or electronic marketplace operated by a marketplace
 32 facilitator, regardless of whether such marketplace seller is required to be registered with the
 33 department pursuant to Code Section 48-8-59."

34 SECTION 2.

35 Said article is further amended in Code Section 48-8-30, relating to imposition of tax, rates,
 36 and collection, by revising subsection (c.1) of said Code section as follows:

37 "(c.1)(1)(A) Every purchaser of tangible personal property or services taxable under
 38 this chapter at retail within or outside this state from a dealer ~~when such property is or~~
 39 a marketplace seller which are to be delivered, held for pickup, used, consumed,
 40 distributed, ~~or~~ stored for use or consumption, or rendered as a service within in this
 41 state, shall be liable for a tax on the purchase at the rate of 4 percent of the sales price
 42 of the purchase. The tax shall be paid by the purchaser to the retailer making the sale
 43 or the marketplace facilitator that facilitates the sale for the marketplace seller, as
 44 provided in this article. The retailer or marketplace facilitator shall remit the tax to the
 45 commissioner as provided in this article, and when received by the commissioner, the
 46 tax shall be a credit against the tax imposed on the retailer.

47 (B) Every dealer who makes or marketplace facilitator that facilitates a retail sale of
 48 tangible personal property or services taxable under this chapter within or outside this
 49 state which is ~~is~~ are to be delivered electronically or physically to a location, held for
 50 pickup, used, consumed, distributed, stored for use or consumption, or rendered as a
 51 service within this state shall be liable for a tax on the sale at the rate of 4 percent of
 52 such sales price or the amount of tax as collected by such dealer ~~or marketplace~~
 53 facilitator from such purchasers ~~having their purchases delivered in this state,~~
 54 whichever is greater.

55 (C) It shall be prima-facie evidence that such property is to be held for pickup, used,
 56 consumed, distributed, ~~or~~ stored for use or consumption, or rendered as a service within
 57 in this state if that property is delivered electronically or physically to a location within
 58 this state to the purchaser or agent thereof.

59 (D) No retail sale shall be taxable to the retailer, marketplace seller, marketplace
 60 facilitator, or dealer which is not taxable to the purchaser at retail. The tax imposed by
 61 this subsection shall be subject to the credit otherwise granted by this article for like

62 taxes previously paid in another state. This paragraph shall not be construed to require
63 a duplication in the payment of the tax.

64 (E)(i) A marketplace facilitator shall be considered an agent of any marketplace seller
65 making retail sales through such marketplace facilitator's marketplace.

66 (ii) A marketplace seller is not subject to this Code section for any retail sales which
67 the marketplace facilitator must report under this Code section.

68 (2) The department may bring an action for a declaratory judgment in any superior court
69 against any person the department believes meets the definition of dealer or marketplace
70 facilitator provided in subparagraph (M.1), or (M.2), or (M.3) of paragraph (8) of Code
71 Section 48-8-2 in order to establish that the collection obligation created by this
72 subsection is applicable and valid under state and federal law with respect to such a
73 dealer. If such action presents a question for judicial determination related to the
74 constitutionality of the imposition of taxes upon such a dealer, the court shall, upon
75 motion, enjoin the state from enforcing the collection obligation against such a dealer.
76 The superior court shall act on such declaratory judgment action and issue a final decision
77 in an expeditious manner."

78 **SECTION 3.**

79 This Act shall become effective upon its approval by the Governor or upon its becoming law
80 without such approval, provided that Section 1 of this Act shall apply to all sales occurring
81 on or after January 1, 2020.

82 **SECTION 4.**

83 All laws and parts of laws in conflict with this Act are repealed.