

The Senate Committee on Finance offered the following substitute to HB 276:

A BILL TO BE ENTITLED
AN ACT

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

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

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

12 "(M.3) Acts as a marketplace facilitator to facilitate retail sales that are taxable under
13 this chapter to be delivered, held for pickup, used, consumed, distributed, stored for use
14 or consumption, or rendered as a service within this state, if the total value of the sales
15 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 seller in exchange
19 for any form of consideration to make available or facilitate a retail sale that is taxable
20 under this chapter on behalf of such seller by directly or through any agreement or
21 arrangement with another person:

22 (A) Providing a service that makes available or facilitates such retail sale in any
23 manner, including, but not limited to, promoting, marketing, advertising, taking orders
24 or reservations for, providing the physical or electronic infrastructure that brings
25 purchasers and marketplace sellers together for, or otherwise similarly assisting the
26 seller in making such retail sale, or transmitting or otherwise similarly communicating

27 the offer and acceptance between the marketplace seller and the purchaser for, or
 28 otherwise similarly assisting the seller for such retail sale, but excluding merely
 29 processing the payments for such retail sale; and

30 (B) Collecting, charging, processing, or otherwise similarly facilitating payment for
 31 such retail sale on behalf of the marketplace seller.

32 (18.2) 'Marketplace seller' means a person that conducts a retail sale through or
 33 facilitated by any physical or electronic marketplace or platform operated directly or
 34 indirectly by a marketplace facilitator, regardless of whether such marketplace seller is
 35 required to be registered with the department pursuant to Code Section 48-8-59."

36 **SECTION 2.**

37 Said chapter is further amended in Code Section 48-8-30, relating to imposition of tax, rates,
 38 and collection, by repealing and reserving subsection (c.2) of said Code section and by
 39 adding a new subsection to read as follows:

40 "(c.3)(1) A marketplace facilitator that meets the definition of a dealer provided in
 41 subparagraph (M.3) of paragraph (8) of Code Section 48-8-2 shall constitute the dealer
 42 and retailer for each retail sale taxable under this chapter at retail that it facilitates within
 43 or outside this state on behalf of a marketplace seller if such retail sale is sourced, as
 44 provided in Code Section 48-8-77, to a location within this state, unless the taxes levied
 45 or imposed by this chapter on such retail sales are paid by the marketplace seller or other
 46 retailer or dealer.

47 (2)(A) All taxes levied or imposed by this chapter on retail sales described in
 48 paragraph (1) of this subsection shall be paid by the purchaser to the marketplace
 49 facilitator that facilitates the retail sale on behalf of a marketplace seller.

50 (B) The marketplace facilitator shall remit such taxes to the commissioner as provided
 51 in this article and, when received by the commissioner, the taxes shall be credited
 52 against the taxes imposed on the retail sale.

53 (C) Each marketplace facilitator shall be liable for the full amount of taxes levied or
 54 imposed by this chapter on all retail sales described in paragraph (1) of this subsection
 55 or the amount of tax collected by such marketplace facilitator from all purchasers on
 56 all such retail sales, whichever is greater.

57 (3) For the purposes of this subsection, it shall be prima-facie evidence that a retail sale
 58 is sourced to a location within this state if it is to be held for pickup, used, consumed,
 59 distributed, stored for use or consumption, or rendered as a service within this state.

60 (4) No retail sale that is not taxable to the purchaser at retail shall be taxable to the
 61 marketplace facilitator. Taxes collected and remitted by a marketplace facilitator
 62 pursuant to this subsection shall be subject to the credit otherwise granted by this article

63 for like taxes previously paid in another state. This subsection shall not be construed to
64 require a duplication in the payment of any tax.

65 (5) A marketplace seller shall not be obligated to collect and remit or be liable for the
66 taxes levied or imposed by this chapter on any retail sale for which its marketplace
67 facilitator is obligated and liable.

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

77 (7) No class action may be brought against a marketplace facilitator in any court of this
78 state on behalf of customers arising from or in any way related to an overpayment of sales
79 or use tax collected on sales facilitated by the marketplace facilitator, regardless of
80 whether that claim is characterized as a tax refund claim. Nothing in this subsection
81 affects a customer's right to seek a refund."

82 **SECTION 3.**

83 This Act shall become effective on January 1, 2020 and shall apply to all sales occurring on
84 or after January 1, 2020.

85 **SECTION 4.**

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