

The Senate Committee on Rules 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 exempt transportation and completed or cancelled
5 journeys from sales and use taxes; to prohibit certain class action suits; to provide for related
6 matters; to provide for an effective date and applicability; to repeal conflicting laws; and for
7 other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 SECTION 1.

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

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

19 "(18.1) 'Marketplace facilitator' means a person that contracts with a seller in exchange
20 for any form of consideration to make available or facilitate a retail sale that is taxable
21 under this chapter on behalf of such seller by directly or through any agreement or
22 arrangement with another person:

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

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

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

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

37 **SECTION 2.**

38 Said chapter is further amended in Code Section 48-8-3, relating to exemptions from sales
 39 and use taxes, by revising paragraph (25) as follows:

40 "(25) ~~Reserved~~ Transportation or any completed journey that is provided by a limousine
 41 carrier, ride share driver, ride share network service, taxi service, transportation referral
 42 service, or transportation referral service provider as such terms are defined in Code
 43 Section 40-1-190, or any request for such journey for which a customer is charged,
 44 whether the journey is completed or not;"

45 **SECTION 3.**

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

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

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

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

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

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

69 (4) No retail sale that is not taxable to the purchaser at retail shall be taxable to the
70 marketplace facilitator. Taxes collected and remitted by a marketplace facilitator
71 pursuant to this subsection shall be subject to the credit otherwise granted by this article
72 for like taxes previously paid in another state. This subsection shall not be construed to
73 require a duplication in the payment of any tax.

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

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

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

91 (8) The department shall solely audit the marketplace facilitator for sales made by
92 marketplace sellers but facilitated by the marketplace facilitator. The department will not
93 audit marketplace sellers for sales facilitated by a marketplace facilitator except to the
94 extent the marketplace facilitator seeks relief under paragraph (9) of this subsection.

95 (9) A marketplace facilitator shall be relieved of liability under subparagraph (C) of
96 paragraph (2) of this subsection for failure to collect and remit sales and use tax on sales
97 facilitated for marketplace sellers under the following circumstances and up to the
98 amounts permitted under the following circumstances:

99 (A) A marketplace facilitator is relieved of liability for failure to collect and remit the
100 correct amount of tax to the extent that the marketplace facilitator demonstrates to the
101 satisfaction of the department that the error was due to insufficient or incorrect
102 information given to the marketplace facilitator by the marketplace seller; provided,
103 however, that this paragraph shall not apply if the marketplace facilitator and the
104 marketplace seller are related members as defined in Code Section 48-7-28.3. Where
105 a marketplace facilitator is relieved of liability under this paragraph, the marketplace
106 seller is solely liable for the amount of uncollected tax; and
107 (B) A marketplace facilitator is relieved of liability to the extent that the marketplace
108 facilitator demonstrates to the satisfaction of the department that:
109 (i) The marketplace facilitator is not the seller and that the marketplace facilitator and
110 the marketplace seller are not affiliates;
111 (ii) The sale was facilitated for a marketplace seller through a marketplace operated
112 by the marketplace facilitator; and
113 (iii) The failure to collect sales and use tax was due to an error other than an error in
114 sourcing the sale."

115 **SECTION 4.**

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

118 **SECTION 5.**

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