

House Bill 276 (COMMITTEE SUBSTITUTE)

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 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 provide for related matters; to provide for an effective
5 date and applicability; to repeal conflicting laws; and for other purposes.

6 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

7 **SECTION 1.**

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

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

17 "(18.1) 'Marketplace facilitator' means a person that contracts with a seller in exchange
18 for any form of consideration to make available or facilitate a retail sale that is taxable
19 under this chapter on behalf of such seller by directly or through any agreement or
20 arrangement with another person:"

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

otherwise similarly assisting the seller for such retail sale, but excluding merely processing the payments for such retail sale; and

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

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

SECTION 2.

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

"(c.3)(1) A marketplace facilitator that meets the definition of a dealer provided in subparagraph (M.3) of paragraph (8) of Code Section 48-8-2 shall constitute the dealer and retailer for each retail sale taxable under this chapter at retail that it facilitates within or outside this state on behalf of a marketplace seller if such retail sale is sourced, as provided in Code Section 48-8-77, to a location within this state.

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

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

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

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

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

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

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

SECTION 3.

75 This Act shall become effective on July 1, 2019, and shall apply to all sales occurring on or
76 after July 1, 2019.

SECTION 4.

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