

House Bill 276 (AS PASSED HOUSE AND SENATE)

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 taxes, 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 facilitator and marketplace seller; to prohibit certain class action suits; to provide for
5 limitations and exceptions; to provide for related matters; to provide for an effective date and
6 applicability; to repeal conflicting laws; 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
10 taxes, 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) 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 adding a new subsection to read as follows:

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

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

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

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

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

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

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

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

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

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

83 (9) A marketplace facilitator is relieved of liability for failure to collect and remit the
84 correct amount of tax imposed by this chapter to the extent that the marketplace facilitator
85 demonstrates to the satisfaction of the department that the error was due to insufficient
86 or incorrect information given to the marketplace facilitator by the marketplace seller and
87 the marketplace facilitator made a reasonable effort to obtain correct and sufficient
88 information from the marketplace seller; provided, however, that this paragraph shall not
89 apply if the marketplace facilitator and the marketplace seller are related members as
90 defined in Code Section 48-7-28.3. Where a marketplace facilitator is relieved of liability
91 under this paragraph, the marketplace seller is solely liable for the amount of uncollected
92 tax.

93 (10) A person that is a franchisor as such term is defined by 16 C.F.R. 436.1 shall not be
94 a marketplace facilitator with respect to any dealer that is its franchisee, as such term is
95 defined by 16 C.F.R. 436.1, and that would otherwise be a marketplace seller of such
96 franchisor, provided that:

97 (A) In the prior calendar year, such franchisor and all of its franchisees combined made
98 annual gross sales in the United States of at least \$500 million in aggregate;

99 (B) Such franchisee maintains a valid certificate of registration as required by Code
 100 Section 48-8-59; and

101 (C) Such franchisee and franchisor maintain a valid contract providing that the
 102 franchisee will collect and remit all applicable taxes and fees that the franchisor would
 103 otherwise be required to collect and remit as a marketplace facilitator for such
 104 franchisee.

105 (11) A person shall not be a marketplace facilitator with respect to any dealer that would
 106 otherwise be its marketplace seller if:

107 (A) In the prior calendar year, such dealer made annual gross sales in Georgia of at
 108 least \$500 million;

109 (B) Such dealer maintains a valid certificate of registration as required by Code Section
 110 48-8-59; and

111 (C) Such dealer and person that would otherwise be the marketplace facilitator
 112 maintain a valid contract providing that the dealer will collect and remit all applicable
 113 taxes and fees that such person would otherwise be required to collect and remit as a
 114 marketplace facilitator for such dealer.

115 (12) A dealer shall return and report retail sales for which the dealer acted as a
 116 marketplace facilitator to the department as otherwise required by this chapter; provided,
 117 however, that such dealer may elect to return and report such retail sales either:

118 (A) Separately from retail sales made directly by such dealer using a separate
 119 marketplace facilitator return that shall be published by the department for such
 120 purposes; or

121 (B) Together with all other retail sales made directly by such dealer."

122 **SECTION 3.**

123 This Act shall become effective on April 1, 2020, and shall apply to all sales occurring on
 124 or after April 1, 2020.

125 **SECTION 4.**

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