

HOUSE BILL NO. HB0069

Collection of sales tax by marketplace facilitators.

Sponsored by: Joint Revenue Interim Committee

A BILL

for

1 AN ACT relating to sales tax; requiring marketplace
2 facilitators to collect and remit sales taxes as specified;
3 specifying relief for failure to collect and remit the tax;
4 providing immunity for facilitators collecting the tax;
5 providing definitions; specifying applicability; and
6 providing for an effective date.

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8 *Be It Enacted by the Legislature of the State of Wyoming:*

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10 **Section 1.** W.S. 39-15-502 is created to read:

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12 **39-15-502. Marketplace facilitators.**

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14 (a) A marketplace facilitator shall be considered the
15 vendor for each sale that the facilitator facilitates on its

1 marketplace for a marketplace seller. Each marketplace
2 facilitator shall:

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4 (i) Be responsible for all obligations imposed
5 under chapters 15 and 16 of this title;

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7 (ii) Keep records and information as may be
8 required by the department to ensure proper collection and
9 remittance of sales tax.

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11 (b) Subject to the limitations in W.S. 39-15-501(a), a
12 marketplace facilitator shall collect and remit sales tax on
13 all sales:

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15 (i) The marketplace facilitator makes on its own
16 behalf; and

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18 (ii) The marketplace facilitator facilitates on
19 behalf of all marketplace sellers to customers in Wyoming.
20 The marketplace facilitator shall collect and remit sales tax
21 on sales facilitated by the marketplace facilitator and sold
22 into Wyoming regardless of whether the marketplace seller has
23 a sales tax permit or otherwise would have been required to

1 collect sales tax if the sale had not been facilitated by the
2 marketplace facilitator.

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4 (c) If a marketplace facilitator fails to collect or
5 remit sales tax under subsection (b) of this section due to
6 incorrect or insufficient information provided by the
7 marketplace seller, the marketplace facilitator shall be
8 relieved of liability for that failure to collect or remit
9 the tax provided that the relief under this subsection shall
10 not exceed five percent (5%) of the total sales tax due from
11 sales made or facilitated in this state by the marketplace
12 facilitator. If a marketplace facilitator is relieved of
13 liability under this subsection, the marketplace seller or
14 the purchaser shall be liable for any amount of uncollected,
15 unpaid or unremitted tax due.

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17 (d) No relief under subsection (c) of this section
18 shall be authorized for sales made by a marketplace seller
19 who is affiliated with the marketplace facilitator. Entities
20 are affiliated under this subsection if:

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22 (i) One (1) entity owns more than five percent
23 (5%) of the other entity; or

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2 (ii) Both entities are subject to the control of
3 a common entity that owns more than five percent (5%) of each
4 of the entities.

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6 (e) The department shall solely audit the marketplace
7 facilitator for sales made by marketplace sellers but
8 facilitated by the marketplace facilitator. The department
9 shall not audit marketplace sellers except to the extent the
10 marketplace facilitator seeks relief under subsection (c) of
11 this section.

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13 (f) A class action shall not be maintained against a
14 marketplace facilitator by or on behalf of purchasers arising
15 from or in any way related to an overpayment of sales or use
16 tax collected by the marketplace facilitator under this
17 section, regardless of whether the action is characterized as
18 a tax refund claim.

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20 (g) As used in this section:

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22 (i) "Marketplace" means any method through which
23 a marketplace seller may sell or offer for sale tangible

1 personal property, admissions or services which are subject
2 to taxation under chapter 15 or 16 of this title for delivery
3 into this state regardless of whether the marketplace seller
4 has a physical presence in this state;

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6 (ii) "Marketplace facilitator" means any person
7 that facilitates a sale for a marketplace seller through a
8 marketplace by:

9

10 (A) Offering for sale by a marketplace
11 seller, by any means, tangible personal property, admissions
12 or services which are subject to taxation under chapter 15 or
13 16 of this title for delivery into this state; and

14

15 (B) Directly, or indirectly through any
16 agreement or arrangement with one (1) or more third parties,
17 collecting payment from a purchaser and transmitting the
18 payment to the marketplace seller, regardless of whether the
19 person receives compensation or other consideration in
20 exchange for facilitating the sale or providing any other
21 service.

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1 (iii) "Marketplace seller" means a vendor who
2 sells or offers for sale tangible personal property,
3 admissions or services which are subject to taxation under
4 chapter 15 or 16 of this title for delivery into this state
5 through a marketplace that is owned, operated or controlled
6 by a marketplace facilitator.

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8 **Section 2.** W.S. 39-15-101(a)(xv) is amended to read:

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10 **39-15-101. Definitions.**

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12 (a) As used in this article:

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14 (xv) "Vendor" means any person engaged in the
15 business of selling at retail or wholesale tangible personal
16 property, admissions or services which are subject to
17 taxation under this article. "Vendor" includes a vehicle
18 dealer as defined by W.S. 31-16-101(a)(xviii), ~~and~~ a remote
19 seller to the extent provided by W.S. 39-15-501 and a
20 marketplace facilitator to the extent provided by W.S.
21 39-15-502;

22

1 **Section 3.** No marketplace facilitator shall be required
2 to collect or remit sales tax as provided in W.S. 39-15-502
3 on any sale made prior to the effective date of this act.
4 Nothing in this section shall be deemed to apply to any taxes
5 that are required to be collected or remitted under W.S.
6 39-15-501 prior to the effective date of this act.

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8 **Section 4.** This act is effective July 1, 2019.

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(END)