

**SUBSTITUTE FOR
HOUSE BILL NO. 4540**

A bill to amend 1933 PA 167, entitled
"General sales tax act,"
(MCL 205.51 to 205.78) by adding section 2d.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 **Sec. 2d. (1) Notwithstanding anything to the contrary in this**
2 **act, a marketplace facilitator engaged in the business of making**
3 **sales at retail of tangible personal property in this state shall**
4 **remit the tax due under this act on all taxable sales made by the**
5 **marketplace facilitator or facilitated for marketplace sellers to a**
6 **purchaser in this state regardless of whether the marketplace**
7 **seller for whom sales are facilitated has nexus with this state.**

8 **(2) A marketplace facilitator is a person engaged in the**
9 **business of making sales at retail for purposes of this act**



1 regardless of whether the marketplace facilitator makes only
2 facilitated sales for marketplace sellers or a combination of
3 direct and facilitated sales and has all the rights and duties of a
4 taxpayer under this act.

5 (3) A marketplace facilitator shall report its direct sales
6 and the sales it facilitates to purchasers in this state in a
7 manner as prescribed by the department.

8 (4) A class action shall not be brought against a marketplace
9 facilitator in any court of this state on behalf of purchasers
10 arising from or in any way related to an overpayment of sales tax
11 remitted on sales facilitated by the marketplace facilitator,
12 regardless of whether that claim is characterized as a tax refund
13 claim. Nothing in this subsection affects a purchaser's right to
14 seek a refund as provided under section 12.

15 (5) Nothing in this section affects the obligation of a
16 purchaser to remit use tax under the use tax act, 1937 PA 94, MCL
17 205.91 to 205.111, for a taxable transaction on which a marketplace
18 facilitator or marketplace seller does not remit sales tax.

19 (6) Except as otherwise provided in this subsection, if a
20 marketplace facilitator is required to remit tax under subsection
21 (1), the department shall audit only the marketplace facilitator
22 for sales made by marketplace sellers that were facilitated by the
23 marketplace facilitator. The department shall not audit a
24 marketplace seller for sales facilitated by a marketplace
25 facilitator required to remit tax under subsection (1) unless the
26 marketplace seller fails to provide the marketplace facilitator
27 with sufficient information to the extent that the marketplace
28 facilitator is not liable under subsection (7).

29 (7) A marketplace facilitator is relieved of liability under



1 this section for failure to remit the correct amount of tax to the
2 extent that the marketplace facilitator demonstrates, to the
3 satisfaction of the department, that the failure was due to
4 incorrect or insufficient information given to the marketplace
5 facilitator by the marketplace seller. The relief under this
6 subsection does not apply if the marketplace seller is an affiliate
7 of the marketplace facilitator.

8 (8) A marketplace facilitator is relieved of liability under
9 this section if the marketplace facilitator demonstrates, to the
10 satisfaction of the department, that the tax levied under this act
11 on a sale facilitated by the marketplace facilitator was paid to
12 the department by the marketplace seller or provides a claim of
13 exemption provided by the marketplace seller's purchaser.

14 (9) A marketplace seller is not liable for the tax imposed by
15 this act on sales made through a marketplace facilitator required
16 to remit tax under subsection (1) unless the marketplace seller
17 fails to provide the marketplace facilitator with sufficient
18 information to the extent that the marketplace facilitator is not
19 liable under subsection (7).

20 (10) This section applies regardless of whether the
21 marketplace facilitator has a physical presence in this state.

22 (11) As used in this section:

23 (a) "Affiliate" means an affiliated person as that term is
24 defined in section 2b.

25 (b) "Marketplace facilitator" means a person that meets the
26 requirements of subparagraph (i), but does not include a person
27 described in subparagraph (ii):

28 (i) A person is a marketplace facilitator if the person
29 facilitates a retail sale by a marketplace seller by listing or



1 advertising for sale by a marketplace seller in a marketplace,
2 tangible personal property and either directly or indirectly
3 through agreements or arrangements with third parties or its
4 affiliates collecting payment from the customer and transmitting
5 that payment to the marketplace seller for consideration.

6 (ii) Marketplace facilitator does not include a person who
7 operates a platform or forum that provides internet, print,
8 electronic, or any other form of advertising services, including
9 listing tangible personal property for sale, if the person does not
10 also engage directly or indirectly, through 1 or more affiliates,
11 in the activities described in subparagraph (i).

12 (c) "Marketplace seller" means a person that makes retail
13 sales through a physical or electronic marketplace operated by a
14 marketplace facilitator.

15 Enacting section 1. As provided in section 5 of 1846 RS 1, MCL
16 8.5, this amendatory act is severable.

17 Enacting section 2. This amendatory act takes effect January
18 1, 2020. An obligation to collect sales tax under this amendatory
19 act does not apply retroactively.

