

1 ENGROSSED SENATE
2 BILL NO. 1339

By: Coleman of the Senate

3 and

4 Strom of the House

5
6 An Act relating to sales tax; amending 68 O.S. 2021,
7 Sections 1391, 1392, and 1393, which relate to
8 definitions, election requirements, and notice and
9 reporting requirements; modifying definition;
10 defining term; expanding certain products required on
11 which to report, collect, and remit tax; clarifying
12 statutory language; expanding obligation to collect
13 and remit certain taxes levied by local jurisdiction;
14 and providing an effective date.

15 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

16 SECTION 1. AMENDATORY 68 O.S. 2021, Section 1391, is
17 amended to read as follows:

18 Section 1391. As used in this act:

19 1. "Affiliated person" means a person that, with respect to
20 another person:

21 a. has a direct or indirect ownership interest of more
22 than five percent (5%) in the other person, or

23 b. is related to the other person because a third person,
24 or group of third persons who are affiliated with each
other as defined in this subsection, holds a direct or
indirect ownership interest of more than five percent
(5%) in the related person;

1 2. "Forum" means a place where sales at retail occur, whether
2 physical or electronic. The term includes a store, a booth, a
3 publicly accessible Internet website, a catalog, or similar place;

4 3. "Marketplace facilitator" means a person that facilitates
5 the sale at retail of ~~tangible personal property~~ a marketplace
6 seller's product. For purposes of this section, a person
7 facilitates a sale at retail if the person or an affiliated person:

8 a. lists or advertises ~~tangible personal property~~
9 products for sale at retail in any forum, and

10 b. either directly or indirectly through agreements or
11 arrangements with third parties, collects the payment
12 from the purchaser and transmits the payment to the
13 person selling the property.

14 The term includes a person that may also be a vendor;

15 4. "Marketplace seller" means a person that has an agreement
16 with a marketplace facilitator pursuant to which the marketplace
17 facilitator facilitates sales for the person;

18 5. "Notice and reporting requirements" means the notice
19 requirements under ~~Section 4 of this act~~ Section 1393 of this title
20 and the reporting requirements under ~~Sections 5 and 6 of this act~~
21 Sections 1394 and 1395 of this title;

22 6. "Product" means tangible personal property, services, or
23 other transactions taxable under the Oklahoma Sales Tax Code,
24 Section 1350 et seq. of this title;

1 7. "Referral" means the transfer by a referrer of a potential
2 purchaser to a person that advertises or lists products for sale on
3 the referrer's platform;

4 ~~7.~~ 8. a. "Referrer" means the person, other than a person
5 engaging in the business of printing or publishing a
6 newspaper, that, pursuant to an agreement or
7 arrangement with a marketplace seller or remote
8 seller, does the following:

9 (1) agrees to list or advertise for sale at retail
10 one or more products of the marketplace seller or
11 remote seller in a physical or electronic medium,

12 (2) receives consideration from the marketplace
13 seller or remote seller from the sale offered in
14 the listing or advertisement,

15 (3) transfers by telecommunications, Internet link,
16 or other means, a purchaser to a marketplace
17 seller, remote seller, or affiliated person to
18 complete a sale, and

19 (4) does not collect a receipt from the purchaser for
20 the sale.

21 b. The term does not include a person that:

22 (1) provides Internet advertising services, and

23 (2) does not provide the marketplace seller's or
24 remote seller's shipping terms or advertise

1 whether a marketplace seller or remote seller
2 collects a sales or use tax.

3 c. The term includes a person that may also be a vendor;
4 and

5 ~~8.~~ 9. "Remote seller" means a person, other than a marketplace
6 facilitator, a marketplace seller, or a referrer, that does not
7 maintain a place of business in this state that, through a forum,
8 sells ~~tangible personal property~~ products at retail, the sale or use
9 of which is subject to the tax imposed by Section 1354 or 1402 of
10 ~~Title 68 of the Oklahoma Statutes~~ this title. The term does not
11 include an employee who in the ordinary scope of employment renders
12 services to his employer in exchange for wages and salaries.

13 SECTION 2. AMENDATORY 68 O.S. 2021, Section 1392, is
14 amended to read as follows:

15 Section 1392. A. Subject to the provisions of subsections C
16 and D of this section, on or before July 1, 2018, and on or before
17 June 1 of each calendar year thereafter, beginning June 1, 2019, a
18 marketplace facilitator or a referrer that had aggregate sales of
19 ~~tangible personal property~~ products within this state or delivered
20 to locations within this state subject to tax under Section 1354 or
21 1402 of this title worth at least Ten Thousand Dollars (\$10,000.00)
22 during the immediately preceding twelve-calendar-month period shall
23 file an election with the Tax Commission to collect and remit the
24 tax imposed under Section 1354 or 1402 of this title or to comply

1 with the notice and reporting requirements. The election shall be
2 made on a form and in a manner prescribed by the Commission and,
3 except as provided in subsection E of this section, shall apply to
4 the next succeeding fiscal year.

5 B. A marketplace facilitator or a referrer that makes an
6 election under subsection A of this section to collect and remit the
7 tax imposed under Section 1354 or 1402 of this title shall obtain a
8 permit under Section 1364 or 1407 of this title. The collection
9 obligation of a marketplace facilitator or a referrer that elects to
10 collect and remit tax imposed under Section 1354 or 1402 of this
11 title also applies to any other taxes administered by the Tax
12 Commission which are levied by local jurisdictions pursuant to
13 Sections 1370 through 1370.9 of this title and Sections 1411 and
14 2701 of this title on a retail sale of a product.

15 C. The requirement by a marketplace facilitator to make an
16 election under subsection A of this section shall only apply to
17 sales through the marketplace facilitator's forum made by or on
18 behalf of a marketplace seller and shall not apply to sales made by
19 a marketplace facilitator on its own behalf.

20 D. The requirement by a referrer to make an election under
21 subsection A of this section shall apply to sales:

22 1. Directly resulting from a referral of a purchaser to a
23 marketplace seller;

24

1 2. Directly resulting from a referral of a purchaser to a
2 remote seller; and

3 3. Of the referrer's own products.

4 A referrer may make an election under subsection A of this section
5 for the sales described in paragraphs 1 and 2 of this subsection
6 that is different from the election made for the sales described in
7 paragraph 3 of this subsection.

8 E. An election made on or before July 1, 2018, shall be in
9 effect for the 2018-2019 fiscal year. A marketplace facilitator or
10 a referrer may change an election to comply with the notice and
11 reporting requirements to an election to collect and remit the tax
12 imposed under Section 1354 or 1402 of this title at any time during
13 a fiscal year by filing a new election with the Commission and
14 obtaining a permit under Section 1364 or 1407 of this title. The
15 new election shall be effective thirty (30) days after the filing
16 and shall be effective for the balance of the fiscal year in which
17 the new election was filed and for the next succeeding fiscal year.

18 F. A marketplace facilitator or a referrer who does not submit
19 an election under subsection A of this section or a new election
20 under subsection E of this section shall be deemed to have elected
21 to comply with the notice and reporting requirements.

22 G. 1. A remote seller that had aggregate sales of ~~tangible~~
23 ~~personal property~~ products within this state or delivered to
24 locations within this state subject to tax under Section 1354 or

1 1402 of this title worth at least One Hundred Thousand Dollars
2 (\$100,000.00) during the preceding or current calendar year shall
3 collect and remit the tax imposed under Section 1354 or 1402 of this
4 title. The duty to collect and remit tax shall apply to the first
5 calendar month succeeding the month when the threshold provided in
6 this paragraph is met.

7 2. Sales in this state by a remote seller made through a
8 marketplace forum or a referrer's platform where the tax is
9 collected and remitted by the marketplace facilitator or referrer
10 shall not be included in determining whether the remote seller has
11 met the threshold amount provided in this subsection.

12 H. In addition to records that may be required to be maintained
13 under other applicable provisions of this title by a remote seller,
14 a marketplace facilitator or a referrer, a remote seller, a
15 marketplace facilitator, or a referrer subject to Sections 1391
16 through 1397 of this title shall also be subject to Section 1365 of
17 this title relating to the keeping of records and Section 248 of
18 this title relating to the examination of records by the Commission
19 and agents and employees of the Commission.

20 SECTION 3. AMENDATORY 68 O.S. 2021, Section 1393, is
21 amended to read as follows:

22 Section 1393. A. A marketplace facilitator or a referrer
23 required to make an election under subsection A of Section 1392 of
24 this title that does not elect to collect and remit the tax imposed

1 by Section 1354 or 1402 of this title shall comply with the
2 applicable notice requirements of this section.

3 B. A marketplace facilitator subject to the requirements of
4 this section shall:

5 1. Post a conspicuous notice on its forum that informs
6 purchasers intending to purchase ~~tangible personal property~~ products
7 for delivery to a location within this state that includes all of
8 the following:

9 a. sales or use tax may be due in connection with the
10 purchase and delivery of the ~~tangible personal~~
11 ~~property~~ products,

12 b. the state requires the purchaser to file a return if
13 use tax is due in connection with the purchase and
14 delivery, and

15 c. the notice is required by this section; and

16 2. Provide a written notice to each purchaser at the time of
17 each sale that includes all of the following:

18 a. a statement that sales or use tax is not being
19 collected in connection with the purchase,

20 b. a statement that the purchaser may be required to
21 remit use tax directly to the Tax Commission, and

22 c. instructions for obtaining additional information from
23 the Commission regarding whether and how to remit use
24 tax to the Commission.

1 C. The notice required by paragraph 2 of subsection B of this
2 section must be prominently displayed on all invoices and order
3 forms and on each sales receipt or similar document, whether in
4 paper or electronic form, provided to the purchaser. No statement
5 that sales or use tax is not imposed on a transaction may be made by
6 a marketplace facilitator unless the transaction is exempt from
7 sales and use tax pursuant to this title or other applicable state
8 law.

9 D. A referrer subject to the requirements of this section shall
10 post a conspicuous notice on its platform that informs purchasers
11 intending to purchase ~~tangible personal property~~ products for
12 delivery to a location within this state that includes all of the
13 following:

14 1. Sales or use tax may be due in connection with the purchase
15 and delivery;

16 2. The person to which the purchaser is being referred may or
17 may not collect and remit sales or use tax to the Commission in
18 connection with the transaction;

19 3. The state requires the purchaser to file a return if use tax
20 is due in connection with the purchase and delivery and not
21 collected by the person;

22 4. The notice is required by this section;

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1 5. Instructions for obtaining additional information from the
2 Commission regarding whether and how to remit use tax to the
3 Commission; and

4 6. If the person to whom the purchaser is being referred does
5 not collect sales or use tax on a subsequent purchase by the
6 purchaser, the person may be required to provide information to the
7 purchaser and the Commission about the purchaser's potential use tax
8 liability.

9 E. The notice required under subsection D of this section must
10 be prominently displayed and may include pop-up boxes or
11 notification by other means that appears when the referrer transfers
12 a purchaser to another person to complete the sale.

13 SECTION 4. This act shall become effective January 1, 2023.

14 Passed the Senate the 14th day of March, 2022.

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Presiding Officer of the Senate

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18 Passed the House of Representatives the ____ day of _____,
19 2022.

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Presiding Officer of the House
of Representatives

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