

1                       **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2   STATE OF OKLAHOMA

3   2nd Session of the 58th Legislature (2022)

4    ENGROSSED SENATE  
5    BILL NO. 1339

  By: Coleman of the Senate

  and

  Strom of the House

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

14  
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

1 other as defined in this subsection, holds a direct or  
2 indirect ownership interest of more than five percent  
3 (5%) in the related person;

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

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

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

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

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

18 4. "Marketplace seller" means a person that has an agreement  
19 with a marketplace facilitator pursuant to which the marketplace  
20 facilitator facilitates sales for the person;

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

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

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

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

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

15               (2)   receives consideration from the marketplace  
16                   seller or remote seller from the sale offered in  
17                   the listing or advertisement,

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

22               (4)   does not collect a receipt from the purchaser for  
23                   the sale.

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

- 1 (1) provides Internet advertising services, and  
2 (2) does not provide the marketplace seller's or  
3 remote seller's shipping terms or advertise  
4 whether a marketplace seller or remote seller  
5 collects a sales or use tax.

6 c. The term includes a person that may also be a vendor;  
7 and

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

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

18 Section 1392. A. Subject to the provisions of subsections C  
19 and D of this section, on or before July 1, 2018, and on or before  
20 June 1 of each calendar year thereafter, beginning June 1, 2019, a  
21 marketplace facilitator or a referrer that had aggregate sales of  
22 ~~tangible personal property~~ products within this state or delivered  
23 to locations within this state subject to tax under Section 1354 or  
24 1402 of this title worth at least Ten Thousand Dollars (\$10,000.00)

1 during the immediately preceding twelve-calendar-month period shall  
2 file an election with the Tax Commission to collect and remit the  
3 tax imposed under Section 1354 or 1402 of this title or to comply  
4 with the notice and reporting requirements. The election shall be  
5 made on a form and in a manner prescribed by the Commission and,  
6 except as provided in subsection E of this section, shall apply to  
7 the next succeeding fiscal year.

8 B. A marketplace facilitator or a referrer that makes an  
9 election under subsection A of this section to collect and remit the  
10 tax imposed under Section 1354 or 1402 of this title shall obtain a  
11 permit under Section 1364 or 1407 of this title. The collection  
12 obligation of a marketplace facilitator or a referrer that elects to  
13 collect and remit tax imposed under Section 1354 or 1402 of this  
14 title also applies to any other taxes administered by the Tax  
15 Commission which are levied by local jurisdictions pursuant to  
16 Sections 1370 through 1370.9 of this title and Sections 1411 and  
17 2701 of this title on a retail sale of a product.

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

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

- 1        1. Directly resulting from a referral of a purchaser to a
- 2 marketplace seller;
- 3        2. Directly resulting from a referral of a purchaser to a
- 4 remote seller; and
- 5        3. Of the referrer's own products.

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

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

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

24

1 G. 1. A remote seller that had aggregate sales of ~~tangible~~  
2 ~~personal property~~ products within this state or delivered to  
3 locations within this state subject to tax under Section 1354 or  
4 1402 of this title worth at least One Hundred Thousand Dollars  
5 (\$100,000.00) during the preceding or current calendar year shall  
6 collect and remit the tax imposed under Section 1354 or 1402 of this  
7 title. The duty to collect and remit tax shall apply to the first  
8 calendar month succeeding the month when the threshold provided in  
9 this paragraph is met.

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

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

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

1 Section 1393. A. A marketplace facilitator or a referrer  
2 required to make an election under subsection A of Section 1392 of  
3 this title that does not elect to collect and remit the tax imposed  
4 by Section 1354 or 1402 of this title shall comply with the  
5 applicable notice requirements of this section.

6 B. A marketplace facilitator subject to the requirements of  
7 this section shall:

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

12 a. sales or use tax may be due in connection with the  
13 purchase and delivery of the ~~tangible personal~~  
14 ~~property~~ products,

15 b. the state requires the purchaser to file a return if  
16 use tax is due in connection with the purchase and  
17 delivery, and

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

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

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

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



1 c. instructions for obtaining additional information from  
2 the Commission regarding whether and how to remit use  
3 tax to the Commission.

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

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

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

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

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

1 4. The notice is required by this section;

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

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

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

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

15  
16 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated  
17 04/11/2022 - DO PASS.  
18  
19  
20  
21  
22  
23  
24