

1 **SENATE FLOOR VERSION**

2 February 16, 2022

3 **AS AMENDED**

4 SENATE BILL NO. 1339

By: Coleman of the Senate

and

Strom of the House

5  
6  
7  
8 **[ sales tax - report, collect, and remit tax -**  
9 **effective date ]**

10  
11 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

14 Section 1391. As used in this act:

15 1. "Affiliated person" means a person that, with respect to  
16 another person:

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

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

23  
24

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 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS  
15 February 16, 2022 - DO PASS AS AMENDED  
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