

HOUSE BILL 1301

Q4

(9lr2587)

ENROLLED BILL

— *Ways and Means/Budget and Taxation* —

Introduced by **Delegate Walker**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 ~~Sales and Use Tax – Collection by Marketplace Facilitators~~
3 **Taxation of Online Sales – Marketplace Facilitators and Sellers of Other**
4 **Tobacco Products**

5 FOR the purpose of altering the distribution of certain sales and use tax revenue; altering
6 the definition of “vendor”, under the sales and use tax, to include certain marketplace
7 facilitators and marketplace sellers; requiring a marketplace facilitator, under
8 certain circumstances, to collect the sales and use tax on certain sales by a
9 marketplace seller to a buyer in this State; authorizing a refund of the sales and use
10 tax paid by a buyer under certain circumstances; requiring a marketplace facilitator
11 to report the sales and use tax collected in a certain manner; prohibiting a class
12 action from being brought against a marketplace facilitator in a court of this State
13 under certain circumstances; providing that a marketplace facilitator is not liable for
14 a failure to collect certain sales and use taxes except under certain circumstances;
15 authorizing the Comptroller, under certain circumstances, to waive the requirement

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber/conference committee amendments.



1 that certain marketplace facilitators collect the sales and use tax on certain
 2 transactions; requiring a marketplace facilitator to complete and file with the
 3 Comptroller a certain sales and use tax return within a certain period of time;
 4 specifying the contents of the return; authorizing a marketplace facilitator to file a
 5 certain consolidated return under certain circumstances; requiring a person to be
 6 licensed by the Comptroller before the person may engage in the business of a
 7 marketplace facilitator; prohibiting a person from engaging in the business of a
 8 marketplace facilitator without a certain license; ~~requiring certain out-of-state~~
 9 sellers to pay the tobacco tax on pipe tobacco or certain premium cigars under certain
 10 circumstances; defining certain terms; making certain conforming changes;
 11 providing for the construction and application of this Act; ~~prohibiting the~~
 12 Comptroller, under certain circumstances, from imposing certain penalties and
 13 interest; making the provisions of this Act severable; *making certain provisions of*
 14 *this Act subject to a certain contingency*; and generally relating to the collection of
 15 the sales and use tax and payment of the tobacco tax.

16 BY repealing and reenacting, without amendments,
 17 Article – Tax – General
 18 Section 11–101(a), 11–701(a), and 13–901(a)
 19 Annotated Code of Maryland
 20 (2016 Replacement Volume and 2018 Supplement)

21 BY adding to
 22 Article – Tax – General
 23 Section 11–101(c-2) and (c-3), 11–403.1, ~~and 11–502.1~~ 11–502.1, and 12–302(e)
 24 Annotated Code of Maryland
 25 (2016 Replacement Volume and 2018 Supplement)

26 BY repealing and reenacting, with amendments,
 27 Article – Tax – General
 28 Section ~~2–1303~~, 11–101(o), 11–501(a), 11–502(a), 11–701(d), 11–702, 11–703,
 29 11–705, 11–712, ~~12–101~~, and 13–901(g)
 30 Annotated Code of Maryland
 31 (2016 Replacement Volume and 2018 Supplement)

32 *BY repealing and reenacting, with amendments,*
 33 *Article – Tax – General*
 34 *Section 11–101(c-2)(2)*
 35 *Annotated Code of Maryland*
 36 *(2016 Replacement Volume and 2018 Supplement)*
 37 *(As enacted by Section 1 of this Act)*

38 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
 39 That the Laws of Maryland read as follows:

40 **Article – Tax – General**

1 2-1303.

2 (A) After making the distributions required under §§ 2-1301 through 2-1302.1 of
3 this subtitle, the Comptroller shall pay:

4 (1) revenues from the hotel surcharge into the Dorchester County
5 Economic Development Fund established under § 10-130 of the Economic Development
6 Article; [and]

7 (2) SUBJECT TO SUBSECTION (B) OF THIS SECTION, TO THE
8 BLUEPRINT FOR MARYLAND'S FUTURE FUND ESTABLISHED UNDER § 5-219 OF THE
9 EDUCATION ARTICLE, REVENUES COLLECTED AND REMITTED BY:

10 (I) A MARKETPLACE FACILITATOR; OR

11 (II) A PERSON THAT ENGAGES IN THE BUSINESS OF AN
12 OUT-OF-STATE VENDOR AND WHO IS REQUIRED TO COLLECT AND REMIT SALES AND
13 USE TAX AS SPECIFIED IN COMAR 03.06.01.33B(5); AND

14 (3) the remaining sales and use tax revenue into the General Fund of the
15 State.

16 (B) FOR EACH FISCAL YEAR, THE COMPTROLLER SHALL PAY INTO THE
17 GENERAL FUND OF THE STATE THE FIRST \$100,000,000 OF REVENUES COLLECTED
18 AND REMITTED BY:

19 (1) A MARKETPLACE FACILITATOR; OR

20 (2) A PERSON THAT ENGAGES IN THE BUSINESS OF AN OUT-OF-STATE
21 VENDOR AND WHO IS REQUIRED TO COLLECT AND REMIT SALES AND USE TAX AS
22 SPECIFIED IN COMAR 03.06.01.33B(5).

23 11-101.

24 (a) In this title the following words have the meanings indicated.

25 ~~(C-2) "MARKETPLACE FACILITATOR" MEANS A PERSON THAT:~~

26 ~~(1) FACILITATES FOR CONSIDERATION, REGARDLESS OF WHETHER~~
27 ~~THE CONSIDERATION IS DEDUCTED AS FEES FROM THE TRANSACTION, THE SALE OF~~
28 ~~A VENDOR'S PRODUCTS THROUGH A PHYSICAL OR ELECTRONIC MARKETPLACE~~
29 ~~OPERATED BY THE PERSON;~~

30 ~~(2) ENGAGES, DIRECTLY OR INDIRECTLY, THROUGH ONE OR MORE~~
31 ~~AFFILIATES OF THE PERSON, IN ANY OF THE FOLLOWING ACTIVITIES:~~

1 ~~(I) TRANSMITTING OR OTHERWISE COMMUNICATING THE~~
 2 ~~OFFER OR ACCEPTANCE BETWEEN A BUYER AND VENDOR;~~

3 ~~(H) OWNING, RENTING, LICENSING, LEASING, MAKING~~
 4 ~~AVAILABLE, OR OPERATING ANY ELECTRONIC OR PHYSICAL INFRASTRUCTURE OR~~
 5 ~~ANY PROPERTY, PROCESS, METHOD, COPYRIGHT, TRADEMARK, OR PATENT THAT~~
 6 ~~CONNECTS MARKETPLACE SELLERS TO PURCHASERS FOR THE PURPOSE OF MAKING~~
 7 ~~RETAIL SALES;~~

8 ~~(III) PROVIDING A VIRTUAL CURRENCY THAT BUYERS ARE~~
 9 ~~ALLOWED OR REQUIRED TO USE TO PURCHASE PRODUCTS FROM THE~~
 10 ~~MARKETPLACE SELLER; OR~~

11 ~~(IV) PROVIDING SOFTWARE DEVELOPMENT, RESEARCH, OR~~
 12 ~~DEVELOPMENT ACTIVITIES RELATED TO ANY OF THE ACTIVITIES DESCRIBED UNDER~~
 13 ~~ITEMS (I) THROUGH (III) OF THIS ITEM, IF THE ACTIVITIES ARE DIRECTLY RELATED~~
 14 ~~TO A PHYSICAL OR ELECTRONIC MARKETPLACE OPERATED BY THE PERSON OR AN~~
 15 ~~AFFILIATED PERSON; AND~~

16 ~~(3) ENGAGES IN ANY OF THE FOLLOWING ACTIVITIES WITH RESPECT~~
 17 ~~TO THE MARKETPLACE SELLER'S PRODUCTS:~~

18 ~~(I) PAYMENT PROCESSING SERVICES;~~

19 ~~(II) FULFILLMENT OR STORAGE ACTIVITIES;~~

20 ~~(III) LISTING PRODUCTS FOR SALE;~~

21 ~~(IV) SETTING PRICES;~~

22 ~~(V) BRANDING SALES AS THOSE OF THE MARKETPLACE~~
 23 ~~FACILITATOR;~~

24 ~~(VI) ORDER TAKING;~~

25 ~~(VII) ADVERTISING OR PROMOTION; OR~~

26 ~~(VIII) PROVIDING CUSTOMER SERVICE OR ACCEPTING OR~~
 27 ~~ASSISTING WITH RETURNS OR EXCHANGES.~~

28 (C-2) (1) "MARKETPLACE FACILITATOR" MEANS A PERSON THAT:

1 **(I) FACILITATES A RETAIL SALE BY A MARKETPLACE SELLER BY**
2 **LISTING OR ADVERTISING FOR SALE IN A MARKETPLACE TANGIBLE PERSONAL**
3 **PROPERTY; AND**

4 **(II) REGARDLESS OF WHETHER THE PERSON RECEIVES**
5 **COMPENSATION OR OTHER CONSIDERATION IN EXCHANGE FOR THE PERSON'S**
6 **SERVICES, DIRECTLY OR INDIRECTLY THROUGH AGREEMENTS WITH THIRD**
7 **PARTIES, COLLECTS PAYMENT FROM A BUYER AND TRANSMITS THE PAYMENT TO**
8 **THE MARKETPLACE SELLER.**

9 **(2) "MARKETPLACE FACILITATOR" DOES NOT INCLUDE:**

10 **(I) A PLATFORM OR FORUM THAT EXCLUSIVELY PROVIDES**
11 **INTERNET ADVERTISING SERVICES, INCLUDING LISTING PRODUCTS FOR SALE, IF**
12 **THE PLATFORM OR FORUM DOES NOT ALSO ENGAGE, DIRECTLY OR INDIRECTLY, IN**
13 **COLLECTING PAYMENT FROM A BUYER AND TRANSMITTING THAT PAYMENT TO THE**
14 **VENDOR;**

15 **(II) A PAYMENT PROCESSOR BUSINESS APPOINTED BY A**
16 **VENDOR TO HANDLE PAYMENT TRANSACTIONS FROM CLIENTS, INCLUDING CREDIT**
17 **CARDS AND DEBIT CARDS, WHOSE ONLY ACTIVITY WITH RESPECT TO MARKETPLACE**
18 **SALES IS TO HANDLE TRANSACTIONS BETWEEN TWO PARTIES;**

19 **(III) A PEER-TO-PEER CAR SHARING PROGRAM, AS DEFINED IN §**
20 **19-520 OF THE INSURANCE ARTICLE; OR**

21 **(IV) A DELIVERY SERVICE COMPANY THAT DELIVERS TANGIBLE**
22 **PERSONAL PROPERTY ON BEHALF OF A MARKETPLACE SELLER THAT IS ENGAGED**
23 **IN THE BUSINESS OF A RETAIL VENDOR AND HOLDS A LICENSE ISSUED UNDER**
24 **SUBTITLE 7 OF THIS TITLE.**

25 **(C-3) "MARKETPLACE SELLER" MEANS A PERSON THAT MAKES A RETAIL SALE**
26 **OR SALE FOR USE THROUGH A PHYSICAL OR ELECTRONIC MARKETPLACE OPERATED**
27 **BY A MARKETPLACE FACILITATOR.**

28 (o) (1) "Vendor" means a person who:

29 (i) engages in the business of an out-of-state vendor, as defined in
30 § 11-701 of this title;

31 (ii) engages in the business of a retail vendor, as defined in § 11-701
32 of this title;

33 (iii) holds a special license issued under § 11-707 of this title; [or]

1 (iv) is an accommodations intermediary;

2 (v) ENGAGES IN THE BUSINESS OF A MARKETPLACE
3 FACILITATOR; OR

4 (vi) ENGAGES IN THE BUSINESS OF A MARKETPLACE SELLER.

5 (2) "Vendor" includes, for an out-of-state vendor, a salesman,
6 representative, peddler, or canvasser whom the Comptroller, for the efficient
7 administration of this title, elects to treat as an agent jointly responsible with the dealer,
8 distributor, employer, or supervisor:

9 (i) under whom the agent operates; or

10 (ii) from whom the agent obtains the tangible personal property or
11 taxable service for sale.

12 **11-403.1.**

13 (A) (1) A MARKETPLACE FACILITATOR SHALL COLLECT THE APPLICABLE
14 SALES AND USE TAX DUE ON A RETAIL SALE OR SALE FOR USE BY A MARKETPLACE
15 SELLER TO A BUYER IN THIS STATE.

16 (2) A MARKETPLACE SELLER IS NOT REQUIRED TO COLLECT THE
17 APPLICABLE SALES AND USE TAX UNDER PARAGRAPH (1) OF THIS SUBSECTION TO
18 THE EXTENT THAT THE MARKETPLACE FACILITATOR COLLECTS THE APPLICABLE
19 SALES AND USE TAX.

20 (B) EXCEPT AS OTHERWISE PROVIDED IN THIS TITLE, UNLESS A BUYER IS
21 OTHERWISE REQUIRED BY REGULATION TO PAY THE SALES AND USE TAX DIRECTLY
22 TO THE COMPTROLLER, THE BUYER SHALL PAY THE SALES AND USE TAX TO THE
23 MARKETPLACE FACILITATOR AT THE TIME OF THE TAXABLE SALE DESCRIBED
24 UNDER SUBSECTION (A) OF THIS SECTION.

25 (C) A MARKETPLACE FACILITATOR, OR OTHER APPROPRIATE PARTY,
26 SHALL REFUND TO A BUYER THE PROPORTIONATE AMOUNT OF SALES AND USE TAX
27 THAT THE BUYER HAS PAID IF:

28 (1) (I) A SALE IS RESCINDED OR CANCELED; OR

29 (II) THE PROPERTY SOLD IS RETURNED TO THE MARKETPLACE
30 FACILITATOR OR MARKETPLACE SELLER; AND

1 (2) THE PURCHASE PRICE IS WHOLLY OR PARTIALLY REPAID OR
2 CREDITED.

3 (D) A MARKETPLACE FACILITATOR SHALL REPORT THE SALES AND USE TAX
4 COLLECTED UNDER THIS SECTION SEPARATELY FROM THE SALES AND USE TAX
5 COLLECTED BY THE MARKETPLACE FACILITATOR ON TAXABLE SALES MADE
6 DIRECTLY BY THE MARKETPLACE FACILITATOR, OR AN AFFILIATE OF THE
7 MARKETPLACE FACILITATOR, TO BUYERS IN THIS STATE.

8 (E) (1) A CLASS ACTION MAY NOT BE BROUGHT AGAINST A MARKETPLACE
9 FACILITATOR IN A COURT OF THIS STATE ON BEHALF OF BUYERS ARISING FROM OR
10 IN ANY WAY RELATED TO AN OVERPAYMENT OF SALES OR USE TAX COLLECTED ON
11 SALES FACILITATED BY THE MARKETPLACE FACILITATOR, REGARDLESS OF
12 WHETHER THAT CLAIM IS CHARACTERIZED AS A TAX REFUND CLAIM.

13 (2) PARAGRAPH (1) OF THIS SUBSECTION MAY NOT BE CONSTRUED
14 TO AFFECT A BUYER'S RIGHT TO SEEK A REFUND UNDER SUBSECTION (C) OF THIS
15 SECTION OR TITLE 13, SUBTITLE 9 OF THIS ARTICLE.

16 (F) (1) THIS SUBSECTION DOES NOT APPLY IF A MARKETPLACE
17 FACILITATOR AND A MARKETPLACE SELLER ARE RELATED ENTITIES.

18 (2) A MARKETPLACE FACILITATOR IS NOT LIABLE FOR A FAILURE TO
19 COLLECT THE CORRECT AMOUNT OF SALES AND USE TAX DUE UNDER THIS SECTION
20 IF THE MARKETPLACE FACILITATOR DEMONSTRATES TO THE SATISFACTION OF THE
21 COMPTROLLER THAT THE FAILURE WAS THE RESULT OF INSUFFICIENT OR
22 INCORRECT INFORMATION PROVIDED BY THE MARKETPLACE SELLER.

23 ~~(F)~~ (G) NOTHING IN THIS SECTION AFFECTS THE OBLIGATION OF A
24 BUYER TO REMIT THE APPLICABLE SALES AND USE TAX FOR ANY TAXABLE SALE FOR
25 WHICH A MARKETPLACE FACILITATOR FAILS TO COLLECT AND REMIT THE
26 APPLICABLE SALES AND USE TAX.

27 (H) (1) A MARKETPLACE FACILITATOR AND MARKETPLACE SELLER MAY
28 APPLY TO THE COMPTROLLER FOR A WAIVER OF THE COLLECTION REQUIREMENT
29 UNDER THIS SECTION IF:

30 (I) THE MARKETPLACE SELLER IS A COMMUNICATIONS
31 COMPANY THAT IS PUBLICLY TRADED OR IS CONTROLLED, DIRECTLY OR
32 INDIRECTLY, BY A COMPANY THAT IS PUBLICLY TRADED;

33 (II) THE MARKETPLACE FACILITATOR AND MARKETPLACE
34 SELLER ENTER INTO AN AGREEMENT THAT THE MARKETPLACE SELLER WILL

1 COLLECT AND REMIT ALL APPLICABLE SALES AND USE TAXES IMPOSED UNDER THIS
2 TITLE; AND

3 (III) THE MARKETPLACE SELLER PROVIDES EVIDENCE TO THE
4 MARKETPLACE FACILITATOR THAT THE MARKETPLACE SELLER IS LICENSED UNDER
5 § 11-702 OF THIS TITLE TO ENGAGE IN THE BUSINESS OF AN OUT-OF-STATE VENDOR
6 IN THE STATE OR A RETAIL VENDOR IN THE STATE.

7 (2) IF THE WAIVER UNDER PARAGRAPH (1) OF THIS SUBSECTION IS
8 AUTHORIZED:

9 (I) THE MARKETPLACE SELLER SUBJECT TO THE AGREEMENT
10 UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL COLLECT AND REMIT THE
11 SALES AND USE TAX IMPOSED UNDER THIS TITLE;

12 (II) THE MARKETPLACE FACILITATOR IS NOT REQUIRED TO
13 COLLECT OR REMIT THE SALES AND USE TAX IMPOSED UNDER THIS TITLE; AND

14 (III) THE MARKETPLACE FACILITATOR IS NOT LIABLE FOR THE
15 FAILURE OF A MARKETPLACE SELLER TO COLLECT AND REMIT ANY SALES AND USE
16 TAX IMPOSED UNDER THIS TITLE.

17 (3) THE COMPTROLLER SHALL ADOPT REGULATIONS THAT
18 ESTABLISH:

19 (I) THE CRITERIA FOR OBTAINING A WAIVER UNDER THIS
20 SUBSECTION; AND

21 (II) THE PROCESS AND PROCEDURE TO APPLY FOR A WAIVER.

22 (I) (1) IF THE COMPTROLLER CONDUCTS AN AUDIT FOR COMPLIANCE
23 WITH THIS SECTION, THE COMPTROLLER MAY AUDIT ONLY THE MARKETPLACE
24 FACILITATOR FOR SALES MADE BY A MARKETPLACE SELLER THAT ARE FACILITATED
25 BY THE MARKETPLACE FACILITATOR.

26 (2) THE COMPTROLLER MAY NOT AUDIT THE MARKETPLACE SELLER
27 FOR SALES FACILITATED BY THE MARKETPLACE FACILITATOR FOR WHICH THE
28 MARKETPLACE FACILITATOR COLLECTED OR SHOULD HAVE COLLECTED THE SALES
29 AND USE TAX DUE.

30 11-501.

31 (a) A buyer who fails to pay the sales and use tax on a purchase or use subject to
32 the tax to the vendor as required in § 11-403 of this title OR TO A MARKETPLACE

1 **FACILITATOR AS REQUIRED IN § 11-403.1 OF THIS TITLE** or who is required by
2 regulation to file a return for a purchase or use subject to the tax shall complete, under
3 oath, and file with the Comptroller a sales and use tax return:

4 (1) on or before the 20th day of the month that follows the month in which
5 the buyer makes that purchase or use; and

6 (2) for other periods and on other dates that the Comptroller specifies, by
7 regulation, including periods in which the buyer does not make any purchase or use subject
8 to the sales and use tax.

9 11-502.

10 (a) **[Each] EXCEPT AS PROVIDED IN § 11-403.1(A) OF THIS TITLE AND §**
11 **11-502.1 OF THIS SUBTITLE, EACH** vendor shall complete, under oath, and file with the
12 Comptroller a sales and use tax return:

13 (1) on or before the 20th day of the month that follows the month in which
14 the vendor makes any retail sale or sale for use; and

15 (2) for other periods and on other dates that the Comptroller specifies by
16 regulation, including periods in which the vendor does not make any retail sale or sale for
17 use.

18 **11-502.1.**

19 **(A) EACH MARKETPLACE FACILITATOR SHALL COMPLETE, UNDER OATH,**
20 **AND FILE WITH THE COMPTROLLER A SALES AND USE TAX RETURN:**

21 **(1) ON OR BEFORE THE 20TH DAY OF THE MONTH THAT FOLLOWS THE**
22 **MONTH IN WHICH A MARKETPLACE SELLER MAKES ANY RETAIL SALE OR SALE FOR**
23 **USE THROUGH THE MARKETPLACE FACILITATOR; AND**

24 **(2) FOR OTHER PERIODS AND ON OTHER DATES THAT THE**
25 **COMPTROLLER SPECIFIES BY REGULATION, INCLUDING PERIODS IN WHICH A**
26 **MARKETPLACE SELLER DOES NOT MAKE ANY RETAIL SALE OR SALE FOR USE**
27 **THROUGH THE MARKETPLACE FACILITATOR.**

28 **(B) A RETURN SHALL STATE, FOR THE PERIOD THAT THE RETURN COVERS:**

29 **(1) FOR A MARKETPLACE FACILITATOR FACILITATING A RETAIL SALE**
30 **OR A SALE FOR USE:**

1 **(I) THE MARKETPLACE FACILITATOR’S GROSS REVENUES**
2 **FROM THE SALES OF MARKETPLACE SELLERS THAT THE MARKETPLACE**
3 **FACILITATOR HAS FACILITATED AND DELIVERED IN THE STATE;**

4 **(II) THE TAXABLE PRICE OF SALES OF THOSE MARKETPLACE**
5 **SELLERS ON WHICH THE SALES AND USE TAX IS COMPUTED; AND**

6 **(III) THE SALES AND USE TAX DUE; AND**

7 **(2) FOR A MARKETPLACE FACILITATOR FACILITATING A SALE FOR**
8 **USE:**

9 **(I) THE TOTAL VALUE OF THE TANGIBLE PERSONAL PROPERTY**
10 **OR TAXABLE SERVICE SOLD BY MARKETPLACE SELLERS THE USE OF WHICH BECAME**
11 **SUBJECT TO THE SALES AND USE TAX; AND**

12 **(II) THE SALES AND USE TAX DUE.**

13 **(C) IF THE COMPTROLLER APPROVES, A MARKETPLACE FACILITATOR**
14 **ENGAGING IN MORE THAN ONE BUSINESS IN WHICH THE MARKETPLACE**
15 **FACILITATOR FACILITATES RETAIL SALES OR SALES FOR USE MAY FILE A**
16 **CONSOLIDATED RETURN COVERING THE ACTIVITIES OF THE BUSINESSES.**

17 11–701.

18 (a) In this subtitle the following words have the meanings indicated.

19 (d) (1) “License” means a license issued by the Comptroller:

20 (i) to engage in the business of an out-of-state vendor; [or]

21 (ii) to engage in the business of a retail vendor; **OR**

22 **(III) TO ENGAGE IN THE BUSINESS OF A MARKETPLACE**
23 **FACILITATOR.**

24 (2) “License” includes a special license issued under § 11–707 of this
25 subtitle.

26 11–702.

27 A person shall be licensed by the Comptroller before the person may:

28 (1) engage in the business of an out-of-state vendor in the State; [or]

1 (2) engage in the business of a retail vendor in the State; **OR**

2 (3) **ENGAGE IN THE BUSINESS OF A MARKETPLACE FACILITATOR.**

3 11-703.

4 An applicant for a license to engage in the business of an out-of-state vendor [or],
5 to engage in the business of a retail vendor, **OR TO ENGAGE IN THE BUSINESS OF A**
6 **MARKETPLACE FACILITATOR** shall submit an application to the Comptroller:

7 (1) for each place of business in the State where the applicant sells tangible
8 personal property or a taxable service;

9 (2) if the applicant has no fixed place of business and sells from 1 or more
10 vehicles, for each vehicle; or

11 (3) if the applicant has no fixed place of business and does not sell from a
12 vehicle, for the place designated as the address to which notices are to be mailed.

13 11-705.

14 While it is effective, and except as provided under § 11-707(b) of this subtitle, a
15 license authorizes the licensee:

16 (1) to engage in the business of an out-of-state vendor; [or]

17 (2) to engage in the business of a retail vendor; **OR**

18 (3) **TO ENGAGE IN THE BUSINESS OF A MARKETPLACE FACILITATOR.**

19 11-712.

20 A person may not engage in the business of a retail vendor [or], engage in the
21 business of an out-of-state vendor, **OR ENGAGE IN THE BUSINESS OF A MARKETPLACE**
22 **FACILITATOR** without a license issued by the Comptroller under this subtitle.

23 12-101.

24 (a) In this title the following words have the meanings indicated.

25 (b) “Cigarette” means any size or shaped roll for smoking that is made of tobacco
26 or tobacco mixed with another ingredient and wrapped in paper or in any other material
27 except tobacco.

1 (c) “Manufacturer” means a person who acts as a manufacturer as defined in §
2 16–201 of the Business Regulation Article or as an other tobacco products manufacturer as
3 defined in § 16.5–101 of the Business Regulation Article.

4 (d) “Other tobacco product” means:

5 (1) any cigar or roll for smoking, other than a cigarette, made in whole or
6 in part of tobacco; or

7 (2) any other tobacco or product made primarily from tobacco, other than a
8 cigarette, that is intended for consumption by smoking or chewing or as snuff.

9 (e) “Other tobacco products retailer” means a person authorized under §
10 16.5–205(b) of the Business Regulation Article to purchase other tobacco products on which
11 the tobacco tax has not been paid.

12 (F) **“OUT-OF-STATE SELLER” MEANS A PERSON LOCATED OUTSIDE THE**
13 **STATE THAT SELLS, HOLDS FOR SALE, SHIPS, OR DELIVERS PREMIUM CIGARS OR**
14 **PIPE TOBACCO TO CONSUMERS IN THE STATE IF, DURING THE PREVIOUS CALENDAR**
15 **YEAR OR THE CURRENT CALENDAR YEAR:**

16 (1) **THE PERSON’S GROSS REVENUE FROM THE SALE OF PREMIUM**
17 **CIGARS OR PIPE TOBACCO IN THE STATE EXCEEDS \$100,000; OR**

18 (2) **THE PERSON SOLD PREMIUM CIGARS OR PIPE TOBACCO INTO THE**
19 **STATE IN 200 OR MORE SEPARATE TRANSACTIONS.**

20 (G) **“PIPE TOBACCO” HAS THE MEANING STATED IN § 16.5–101 OF THE**
21 **BUSINESS REGULATION ARTICLE.**

22 (H) **“PREMIUM CIGARS” HAS THE MEANING STATED IN § 16.5–101 OF THE**
23 **BUSINESS REGULATION ARTICLE.**

24 [(f)] (I) “Sell” means to exchange or transfer, or to make an agreement to
25 exchange or transfer, title or possession of property, in any manner or by any means, for
26 consideration.

27 [(g)] (J) “Tax stamp” means a device in the design and denomination that the
28 Comptroller authorizes by regulation for the purpose of being affixed to a package of
29 cigarettes as evidence that the tobacco tax is paid.

30 [(h)] (K) “Tobacconist” means a person authorized under § 16.5–205(e) of the
31 Business Regulation Article to purchase other tobacco products on which the tobacco tax
32 has not been paid.

1 **[(i)] (L)** “Unstamped cigarettes” means a package of cigarettes to which tax
2 stamps are not affixed in the amount and manner required in § 12–304 of this title.

3 **[(i)] (M)** “Wholesale price” means the price for which a wholesaler buys other
4 tobacco products, exclusive of any discount, trade allowance, rebate, or other reduction.

5 **[(k)] (N)** “Wholesaler” means, unless the context requires otherwise, a person
6 who acts as a wholesaler as defined in § 16–201 of the Business Regulation Article or as an
7 other tobacco products wholesaler as defined in § 16.5–101 of the Business Regulation
8 Article.

9 12–302.

10 **(E) AN OUT-OF-STATE SELLER SHALL PAY THE TOBACCO TAX ON PIPE**
11 **TOBACCO OR PREMIUM CIGARS ON WHICH THE TOBACCO TAX HAS NOT BEEN PAID.**

12 13–901.

13 (a) A claim for refund may be filed with the tax collector who collects the tax, fee,
14 or charge by a claimant who:

15 (1) erroneously pays to the State a greater amount of tax, fee, charge,
16 interest, or penalty than is properly and legally payable;

17 (2) pays to the State a tax, fee, charge, interest, or penalty that is
18 erroneously, illegally, or wrongfully assessed or collected in any manner; or

19 (3) pays a tax qualifying for refund under subsections (b) through (h) of this
20 section.

21 (g) A claim for refund of sales and use tax may be filed by a claimant who:

22 (1) pays the tax on a sale exempt under § 11–216 of this article;

23 (2) refunds the tax to a buyer in a canceled or rescinded sale under §
24 11–403(c) **OR § 11–403.1(C)** of this article;

25 (3) pays the tax in a canceled or rescinded sale for which the vendor **OR**
26 **MARKETPLACE FACILITATOR** refuses to refund the tax as required under § 11–403(c) **OR**
27 **§ 11–403.1(C)** of this article; or

28 (4) pays the tax under § 11–408(c) of this article on a cash sale or sale for
29 use that is not a retail sale.

30 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read
31 as follows:

Article – Tax – General

11-101.

(c-2) (2) “Marketplace facilitator” does not include:

(i) a platform or forum that exclusively provides Internet advertising services, including listing products for sale, if the platform or forum does not also engage, directly or indirectly, in collecting payment from a buyer and transmitting that payment to the vendor;

(ii) a payment processor business appointed by a vendor to handle payment transactions from clients, including credit cards and debit cards, whose only activity with respect to marketplace sales is to handle transactions between two parties; OR

(iii) [a peer-to-peer car sharing program, as defined in § 19-520 of the Insurance Article; or

(iv)] a delivery service company that delivers tangible personal property on behalf of a marketplace seller that is engaged in the business of a retail vendor and holds a license issued under Subtitle 7 of this title.

SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any sales of tangible personal property or taxable services for delivery in the State before the effective date of this Act.

SECTION ~~3~~ 4. AND BE IT FURTHER ENACTED, That:

(a) The Comptroller may not impose any penalty or interest on a marketplace facilitator that fails to collect and remit the sales and use tax as required by this Act if the marketplace facilitator demonstrates, to the satisfaction of the Comptroller, a hardship implementing the computer programs necessary to collect the sales and use tax.

(b) This section applies only to transactions completed on or before January 1, 2020.

SECTION ~~4~~ 5. AND BE IT FURTHER ENACTED, That, if any provision of this Act or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Act that can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are declared severable.

SECTION 6. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take effect July 1, 2020, contingent on the termination of Section 3 of Chapter 852 of the Acts of

1 the General Assembly of 2018, and if Section 3 of Chapter 852 does not terminate on June
2 30, 2020, Section 2 of this Act, with no further action required by the General Assembly,
3 shall be null and void.

4 SECTION ~~2~~ ~~5~~ 7. AND BE IT FURTHER ENACTED, That, subject to Section ~~2~~ ~~3~~ of
5 this Act and except as provided in Section 6 of this Act, this Act shall take effect ~~July~~ October
6 1, 2019.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.