

1 **SENATE FLOOR VERSION**

2 April 2, 2019

3 ENGROSSED

4 HOUSE BILL NO. 2352

By: Caldwell (Chad) of the  
House

5 and

6 Bice of the Senate

7  
8  
9 [ revenue and taxation - procedures applicable to  
10 certain remote sellers and marketplace facilitators -  
sales and use tax collection requirements - ~~effective~~  
11 ~~date -~~ emergency ]

12  
13  
14 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

15 SECTION 1. AMENDATORY Section 3, Chapter 17, 2nd  
16 Extraordinary Session, O.S.L. 2018 (68 O.S. Supp. 2018, Section  
17 1392), is 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 ~~remote seller~~, a marketplace facilitator or a referrer that had  
22 aggregate sales of tangible personal property within this state or  
23 delivered to locations within this state subject to tax under  
24 Section 1354 or 1402 of ~~Title 68 of the Oklahoma Statutes~~ this title

1 worth at least Ten Thousand Dollars (\$10,000.00) during the  
2 ~~immediately preceding twelve-calendar-month period~~ calendar year  
3 shall file an election with the Tax Commission to collect and remit  
4 the tax imposed under Section 1354 or 1402 of ~~Title 68 of the~~  
5 ~~Oklahoma Statutes~~ this title or to comply with the notice and  
6 reporting requirements. The election shall be made on a form and in  
7 a manner prescribed by the Commission and, except as provided in  
8 subsection E of this section, shall apply to the next succeeding  
9 fiscal year.

10 B. A ~~remote seller,~~ a marketplace facilitator or a referrer  
11 that makes an election under subsection A of this section to collect  
12 and remit the tax imposed under Section 1354 or 1402 of ~~Title 68 of~~  
13 ~~the Oklahoma Statutes~~ this title shall obtain a permit under Section  
14 1364 or 1407 of ~~Title 68 of the Oklahoma Statutes~~ this title.

15 C. The requirement by a marketplace facilitator to make an  
16 election under subsection A of this section shall only apply to ~~the~~  
17 ~~following:~~

18 ~~1. Sales~~ sales through the marketplace facilitator's forum made  
19 by or on behalf of a marketplace seller ~~that does not maintain a~~  
20 ~~place of business in this state;~~ and

21 ~~2. Sales~~ shall not apply to sales made by a marketplace  
22 facilitator on its own behalf ~~if the marketplace facilitator does~~  
23 ~~not maintain a place of business in this state.~~

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1 D. The requirement by a referrer to make an election under  
2 subsection A of this section shall ~~only~~ apply to sales:

3 1. Directly resulting from a referral of a purchaser to a  
4 marketplace seller ~~that does not maintain a place of business in~~  
5 ~~this state;~~

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

8 3. Of the referrer's own products ~~if the referrer does not~~  
9 ~~maintain a place of business in this state.~~

10 A referrer may make an election under subsection A of this section  
11 for the sales described in paragraphs 1 and 2 of this subsection  
12 that is different from the election made for the sales described in  
13 paragraph 3 of this subsection.

14 E. An election made on or before July 1, 2018, shall be in  
15 effect for the 2018-2019 fiscal year. A ~~remote seller, a~~  
16 marketplace facilitator or a referrer may change an election to  
17 comply with the notice and reporting requirements to an election to  
18 collect and remit the tax imposed under Section 1354 or 1402 of  
19 ~~Title 68 of the Oklahoma Statutes~~ this title at any time during a  
20 fiscal year by filing a new election with the Commission and  
21 obtaining a permit under Section 1364 or 1407 of ~~Title 68 of the~~  
22 ~~Oklahoma Statutes~~ this title. The new election shall be effective  
23 thirty (30) days after the filing and shall be effective for the  
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1 balance of the fiscal year in which the new election was filed and  
2 for the next succeeding fiscal year.

3 F. A ~~remote seller~~, a marketplace facilitator or a referrer who  
4 does not submit an election under subsection A of this section or a  
5 new election under subsection E of this section shall be deemed to  
6 have elected to comply with the notice and reporting requirements.

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

16 2. Sales in this state by a remote seller made through a  
17 marketplace forum or a referrer's platform where the tax is  
18 collected and remitted by the marketplace facilitator or referrer  
19 shall not be included in determining whether the remote seller has  
20 met the threshold amount provided in this subsection.

21 H. In addition to records that may be required to be maintained  
22 under other applicable provisions of ~~Title 68 of the Oklahoma~~  
23 ~~Statutes~~ this title by a remote seller, a marketplace facilitator or  
24 a referrer, a remote seller, a marketplace facilitator or a referrer

1 subject to this act shall also be subject to Section 1365 of ~~Title~~  
2 ~~68 of the Oklahoma Statutes~~ this title relating to the keeping of  
3 records and Section 248 of ~~Title 68 of the Oklahoma Statutes~~ this  
4 title relating to the examination of records by the Commission and  
5 agents and employees of the Commission.

6 SECTION 2. AMENDATORY Section 4, Chapter 17, 2nd  
7 Extraordinary Session, O.S.L. 2018 (68 O.S. Supp. 2018, Section  
8 1393), is amended to read as follows:

9 Section 1393. A. A ~~remote seller,~~ a marketplace facilitator or  
10 a referrer required to make an election under subsection A of  
11 Section ~~3~~ 1392 of this ~~act~~ title that does not elect to collect and  
12 remit the tax imposed by Section 1354 or 1402 of ~~Title 68 of the~~  
13 ~~Oklahoma Statutes~~ this title shall comply with the applicable notice  
14 requirements of this section.

15 B. A ~~remote seller or~~ marketplace facilitator subject to the  
16 requirements of this section shall:

17 1. Post a conspicuous notice on its forum that informs  
18 purchasers intending to purchase tangible personal property for  
19 delivery to a location within this state that includes all of the  
20 following:

21 a. sales or use tax may be due in connection with the  
22 purchase and delivery of the tangible personal  
23 property,

24

1           b. the state requires the purchaser to file a return if  
2           use tax is due in connection with the purchase and  
3           delivery, and

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

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

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

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

11           c. instructions for obtaining additional information from  
12           the Commission regarding whether and how to remit use  
13           tax to the Commission.

14           C. The notice required by paragraph 2 of subsection B of this  
15 section must be prominently displayed on all invoices and order  
16 forms and on each sales receipt or similar document, whether in  
17 paper or electronic form, provided to the purchaser. No statement  
18 that sales or use tax is not imposed on a transaction may be made by  
19 a ~~remote seller or marketplace facilitator~~ unless the transaction is  
20 exempt from sales and use tax pursuant to ~~Title 68 of the Oklahoma~~  
21 ~~Statutes~~ this title or other applicable state law.

22           D. A referrer subject to the requirements of this section shall  
23 post a conspicuous notice on its platform that informs purchasers  
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1 intending to purchase tangible personal property for delivery to a  
2 location within this state that includes all of the following:

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

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

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

11 4. The notice is required by this section;

12 5. Instructions for obtaining additional information from the  
13 Commission regarding whether and how to remit use tax to the  
14 Commission; and

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

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

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1 SECTION 3. AMENDATORY Section 5, Chapter 17, 2nd  
2 Extraordinary Session, O.S.L. 2018 (68 O.S. Supp. 2018, Section  
3 1394), is amended to read as follows:

4 Section 1394. A. A ~~remote seller or~~ marketplace facilitator  
5 required to make an election under subsection A of Section ~~3~~ 1392 of  
6 this ~~act~~ title that does not elect to collect and remit the tax  
7 imposed by Section 1354 or 1402 of ~~Title 68 of the Oklahoma Statutes~~  
8 this title shall, no later than January 31 of each year, provide a  
9 written report to each purchaser required to receive the notice  
10 under paragraph 2 of subsection B of Section 4 1393 of this ~~act~~  
11 title during the immediately preceding calendar year that includes  
12 all of the following:

13 1. A statement that the ~~remote seller or~~ marketplace  
14 facilitator did not collect sales or use tax in connection with the  
15 purchaser's transactions with the ~~remote seller or~~ marketplace  
16 facilitator and that the purchaser may be required to remit use tax  
17 to the Tax Commission;

18 2. A list, by date, indicating the type and purchase price of  
19 each product purchased or leased by the purchaser from the ~~remote~~  
20 ~~seller or~~ marketplace facilitator and delivered to a location within  
21 this state;

22 3. Instructions for obtaining additional information from the  
23 Commission regarding whether and how to remit use tax to the  
24 Commission;



1 4. A statement that the ~~remote seller or marketplace~~  
2 facilitator is required to submit a report to the Commission under  
3 Section ~~6~~ 1395 of this ~~act~~ title that includes the name of the  
4 purchaser and the aggregate dollar amount of the purchaser's  
5 purchases from the ~~remote seller or marketplace~~ facilitator; and

6 5. Such additional information as the Commission may reasonably  
7 require.

8 B. The Commission shall prescribe the form of the report  
9 required under subsection A of this section and shall make the form  
10 available on its publicly accessible Internet website.

11 C. The report required under subsection A of this section shall  
12 be mailed by first-class mail in an envelope prominently marked with  
13 words indicating that important tax information is enclosed to the  
14 purchaser's billing addresses, if known, or, if unknown, to the  
15 purchaser's shipping address. If the purchaser's billing and  
16 shipping addresses are unknown, the report shall be sent  
17 electronically to the purchaser's last-known email address with a  
18 subject heading indicating that important tax information is being  
19 provided.

20 D. A referrer required to make an election under subsection A  
21 of Section ~~3~~ 1392 of this ~~act~~ title that does not elect to collect  
22 and remit the tax imposed by Section 1354 or 1402 of ~~Title 68 of the~~  
23 ~~Oklahoma Statutes~~ this title shall, no later than January 31 of each  
24 year, provide a written notice to each remote seller to whom the

1 referrer transferred a potential purchaser located in this state  
2 during the immediately preceding calendar year that includes all of  
3 the following:

4 1. A statement that a sales or use tax may be imposed by the  
5 state on the transaction;

6 2. A statement that the remote seller may be required to ~~make~~  
7 ~~the election required by subsection A of Section 3 of this act~~  
8 collect the tax as required under subsection G of Section 1392 of  
9 this title; and

10 3. Instructions for obtaining additional information regarding  
11 sales and use tax from the Commission.

12 SECTION 4. AMENDATORY Section 6, Chapter 17, 2nd  
13 Extraordinary Session, O.S.L. 2018 (68 O.S. Supp. 2018, Section  
14 1395), is amended to read as follows:

15 Section 1395. A. A ~~remote seller or~~ marketplace facilitator  
16 required to make an election under subsection A of Section ~~3~~ 1392 of  
17 this ~~act~~ title that does not elect to collect and remit the tax  
18 imposed by Section 1354 or 1402 of ~~Title 68 of the Oklahoma Statutes~~  
19 this title shall, no later than January 31 of each year, submit a  
20 report to the Tax Commission. The report shall include, with  
21 respect to each purchaser required to receive the notice under  
22 paragraph 2 of subsection B of Section 4 1393 of this ~~act~~ title  
23 during the immediately preceding calendar year, the following:

24 1. The purchaser's name;

1           2. The purchaser's billing address and, if different, the  
2 purchaser's last-known mailing address;

3           3. The address within this state to which products were  
4 delivered to the purchaser;

5           4. The aggregate dollar amount of the purchaser's purchases  
6 from the ~~remote seller or~~ marketplace facilitator; and

7           5. The name and address of the ~~remote seller,~~ marketplace  
8 facilitator or marketplace seller that made the sales to the  
9 purchaser.

10          B. A referrer required to make an election under subsection A  
11 of Section ~~3~~ 1392 of this ~~act~~ title that does not elect to collect  
12 and remit the tax imposed by Section 1354 or 1402 of ~~Title 68 of the~~  
13 ~~Oklahoma Statutes~~ this title shall, no later than January 31 of each  
14 year, submit a report to the Commission. The report shall include a  
15 list of persons who received the notice required under subsection D  
16 of Section ~~5~~ 1394 of this ~~act~~ title.

17          C. The Commission shall prescribe the forms of the reports  
18 required under this section and shall make them available on its  
19 publicly accessible Internet website. The reports shall be  
20 submitted electronically in such manner as the Commission shall  
21 require.

22          D. A report required under this section shall be submitted by  
23 an officer of the ~~remote seller,~~ the marketplace facilitator or the  
24 referrer and shall include a statement, made under penalty of

1 perjury, by the officer that the ~~remote seller,~~ the marketplace  
2 facilitator or the referrer made reasonable efforts to comply with  
3 the notice and reporting requirements of this act.

4 SECTION 5. AMENDATORY Section 7, Chapter 17, 2nd  
5 Extraordinary Session, O.S.L. 2018 (68 O.S. Supp. 2018, Section  
6 1396), is amended to read as follows:

7 Section 1396. A. The Commission shall assess a penalty in the  
8 amount of Twenty Thousand Dollars (\$20,000.00) or twenty percent  
9 (20%) of total sales in Oklahoma during the previous twelve (12)  
10 months, whichever is less, against a ~~remote seller,~~ a marketplace  
11 facilitator or a referrer that makes an election under subsection A  
12 of Section ~~3~~ 1392 of this ~~act~~ title to comply with the notice and  
13 reporting requirements, or is deemed to have made such election  
14 under subsection F of Section ~~3~~ 1392 of this ~~act~~ title, and fails to  
15 comply with the requirements under Section ~~5~~ 1394 or ~~6~~ 1395 of this  
16 ~~act~~ title. The penalty shall be assessed separately for each  
17 violation but may only be assessed once in a calendar year.

18 B. A ~~remote seller,~~ a marketplace facilitator or a referrer  
19 that makes an election under subsection A of Section ~~3~~ 1392 of this  
20 ~~act~~ title to collect and remit the tax imposed under Section 1354 or  
21 1402 of ~~Title 68 of the Oklahoma Statutes~~ this title shall be  
22 subject to all of the provisions of ~~Title 68 of the Oklahoma~~  
23 ~~Statutes~~ this title with respect to the collection and remittance of  
24 such tax and shall be subject to all of the penalties and interest

1 levied under ~~Title 68 of the Oklahoma Statutes~~ this title for  
2 failing to comply with the provisions of this act except as provided  
3 in this section.

4 C. For a period of five (5) years after the effective date of  
5 this section, the Tax Commission may abate or reduce any penalty or  
6 interest imposed under subsection B of this section due to hardship  
7 or for good cause shown.

8 D. A marketplace facilitator or a referrer is relieved of  
9 liability under subsection B of this section if the marketplace  
10 facilitator or the referrer can show to the satisfaction of the  
11 Commission that the failure to collect the correct amount of tax was  
12 due to incorrect information given to the marketplace facilitator or  
13 the referrer by a marketplace seller or remote seller.

14 E. A class action may not be brought against a marketplace  
15 facilitator or a referrer on behalf of purchasers arising from or in  
16 any way related to an overpayment of sales or use tax collected by  
17 the marketplace facilitator or the referrer, regardless of whether  
18 such action is characterized as a tax refund claim. Nothing in this  
19 subsection shall affect a purchaser's right to seek a refund from  
20 the Commission under other provisions of ~~Title 68 of the Oklahoma~~  
21 ~~Statutes~~ this title.

22 ~~SECTION 6. This act shall become effective July 1, 2019.~~

23 ~~SECTION 7. It being immediately necessary for the preservation~~  
24 ~~of the public peace, health or safety, an emergency is hereby~~

1 ~~declared to exist, by reason whereof this act shall take effect and~~  
2 ~~be in full force from and after its passage and approval.~~

3 COMMITTEE REPORT BY: COMMITTEE ON FINANCE  
4 April 2, 2019 - DO PASS AS AMENDED  
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