

# An Act

ENROLLED SENATE  
BILL NO. 1339

By: Coleman of the Senate

and

Strom of the House

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

SUBJECT: Tax remittance

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

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

Section 1391. As used in this act:

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

- a. has a direct or indirect ownership interest of more than five percent (5%) in the other person, or
- b. is related to the other person because a third person, 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;

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

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

- a. lists or advertises ~~tangible personal property~~ products for sale at retail in any forum, and
- b. either directly or indirectly through agreements or arrangements with third parties, collects the payment from the purchaser and transmits the payment to the person selling the property.

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

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

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

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

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

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

- (1) agrees to list or advertise for sale at retail one or more products of the marketplace seller or remote seller in a physical or electronic medium,
- (2) receives consideration from the marketplace seller or remote seller from the sale offered in the listing or advertisement,
- (3) transfers by telecommunications, Internet link, or other means, a purchaser to a marketplace seller, remote seller, or affiliated person to complete a sale, and
- (4) does not collect a receipt from the purchaser for the sale.

b. The term does not include a person that:

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

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

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

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

Section 1392. A. Subject to the provisions of subsections C and D of this section, on or before July 1, 2018, and on or before June 1 of each calendar year thereafter, beginning June 1, 2019, a marketplace facilitator or a referrer that had aggregate sales of ~~tangible personal property~~ products within this state or delivered to locations within this state subject to tax under Section 1354 or 1402 of this title worth at least Ten Thousand Dollars (\$10,000.00) during the immediately preceding twelve-calendar-month period shall file an election with the Tax Commission to collect and remit the tax imposed under Section 1354 or 1402 of this title or to comply with the notice and reporting requirements. The election shall be made on a form and in a manner prescribed by the Commission and, except as provided in subsection E of this section, shall apply to the next succeeding fiscal year.

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

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

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

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

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

3. Of the referrer's own products.

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

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

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

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

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

H. In addition to records that may be required to be maintained under other applicable provisions of this title by a remote seller, a marketplace facilitator or a referrer, a remote seller, a marketplace facilitator, or a referrer subject to Sections 1391

through 1397 of this title shall also be subject to Section 1365 of this title relating to the keeping of records and Section 248 of this title relating to the examination of records by the Commission and agents and employees of the Commission.

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

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

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

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

- a. sales or use tax may be due in connection with the purchase and delivery of the ~~tangible personal property~~ products,
- b. the state requires the purchaser to file a return if use tax is due in connection with the purchase and delivery, and
- c. the notice is required by this section; and

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

- a. a statement that sales or use tax is not being collected in connection with the purchase,
- b. a statement that the purchaser may be required to remit use tax directly to the Tax Commission, and

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

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

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

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

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

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

4. The notice is required by this section;

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

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

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

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



Passed the Senate the 20th day of May, 2022.

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Presiding Officer of the Senate

Passed the House of Representatives the 20th day of May, 2022.

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Presiding Officer of the House  
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_

Approved by the Governor of the State of Oklahoma this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_