

1 **SENATE FLOOR VERSION**

2 February 12, 2019

3 **AS AMENDED**

4 SENATE BILL NO. 513

5 By: Bice of the Senate

6 and

7 Caldwell (Chad) of the
8 House

9 [sales and use tax - procedures for collection and
10 remittance of taxes by remote sellers and marketplace
11 facilitators or referrers - certain election -
12 location requirements - sales - notice - specified
13 written report - contents of notice -report to
14 Oklahoma Tax Commission - penalty against remote
15 sellers - effective date]

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

17 SECTION 1. AMENDATORY Section 3, Chapter 17, 2nd
18 Extraordinary Session, O.S.L. 2018 (68 O.S. Supp. 2018, Section
19 1392), is amended to read as follows:

20 Section 1392. A. Subject to the provisions of subsections C
21 and D of this section, on or before July 1, 2018, and on or before
22 June 1 of each calendar year thereafter, beginning June 1, 2019, a
23 ~~remote seller~~, a marketplace facilitator or a referrer that had
24 aggregate sales of tangible personal property within this state or
delivered to locations within this state subject to tax under
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 shall file an
3 election with the Tax Commission to collect and remit the tax
4 imposed under Section 1354 or 1402 of ~~Title 68 of the Oklahoma~~
5 ~~Statutes~~ this title or to comply with the notice and reporting
6 requirements. The election shall be made on a form and in a manner
7 prescribed by the Commission and, except as provided in subsection E
8 of this section, shall apply to the next succeeding fiscal year.

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

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

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

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

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

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

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

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

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

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

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

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

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

19 H. In addition to records that may be required to be maintained
20 under other applicable provisions of ~~Title 68 of the Oklahoma~~
21 ~~Statutes~~ this title by a remote seller, a marketplace facilitator or
22 a referrer, a remote seller, a marketplace facilitator or a referrer
23 subject to ~~this act~~ Sections 1391 through 1397 of this title shall
24 also be subject to Section 1365 of ~~Title 68 of the Oklahoma Statutes~~

1 this title relating to the keeping of records and Section 248 of
2 ~~Title 68 of the Oklahoma Statutes~~ this title relating to the
3 examination of records by the Commission and agents and employees of
4 the Commission.

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

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

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

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

20 a. sales or use tax may be due in connection with the
21 purchase and delivery of the tangible personal
22 property,
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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
24

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 of this~~
6 ~~act~~ 1392 of this title that does not elect to collect and remit the
7 tax imposed by Section 1354 or 1402 of ~~Title 68 of the Oklahoma~~
8 ~~Statutes~~ this title shall, no later than January 31 of each year,
9 provide a written report to each purchaser required to receive the
10 notice under paragraph 2 of subsection B of Section ~~4 of this act~~
11 1393 of this title during the immediately preceding calendar year
12 that includes 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 of this act~~ 1395 of this title that includes the name of
4 the 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 of this act~~ 1392 of this title that does not elect to
22 collect and remit the tax imposed by Section 1354 or 1402 of ~~Title~~
23 ~~68 of the Oklahoma Statutes~~ this title shall, no later than January
24 31 of each year, provide a written notice to each remote seller to

1 whom the referrer transferred a potential purchaser located in this
2 state during the immediately preceding calendar year that includes
3 all of 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 by subsection G of Section 1392 of this
9 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 of this~~
17 ~~act~~ 1392 of this title that does not elect to collect and remit the
18 tax imposed by Section 1354 or 1402 of ~~Title 68 of the Oklahoma~~
19 ~~Statutes~~ this title shall, no later than January 31 of each year,
20 submit a report to the Tax Commission. The report shall include,
21 with respect to each purchaser required to receive the notice under
22 paragraph 2 of subsection B of Section ~~4 of this act~~ 1393 of this
23 title 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 of this act~~ 1392 of this title that does not elect to
12 collect and remit the tax imposed by Section 1354 or 1402 of ~~Title~~
13 ~~68 of the Oklahoma Statutes~~ this title shall, no later than January
14 31 of each year, submit a report to the Commission. The report
15 shall include a list of persons who received the notice required
16 under subsection D of Section ~~5 of this act~~ 1394 of this 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~~ Sections 1391
4 through 1397 of this title.

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

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

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

1 ~~Oklahoma Statutes~~ this title with respect to the collection and
2 remittance of such tax and shall be subject to all of the penalties
3 and interest levied under ~~Title 68 of the Oklahoma Statutes~~ this
4 title for failing to comply with the provisions of ~~this act~~ Sections
5 1391 through 1397 of this title except as provided in this section.

6 C. For a period of five (5) years after ~~the effective date of~~
7 ~~this section~~ April 10, 2018, the Tax Commission may abate or reduce
8 any penalty or interest imposed under subsection B of this section
9 due to hardship or for good cause shown.

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

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

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1 SECTION 6. This act shall become effective November 1, 2019.

2 COMMITTEE REPORT BY: COMMITTEE ON FINANCE
3 February 12, 2019 - DO PASS AS AMENDED
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