

1 ENGROSSED SENATE  
BILL NO. 513

By: Bice of the Senate

2  
3 and

4 Caldwell (Chad) of the  
House

5  
6 [ sales and use tax - procedures for collection and  
7 remittance of taxes by remote sellers and marketplace  
8 facilitators or referrers - certain election -  
9 location requirements - sales - notice - specified  
written report - contents of notice -report to  
Oklahoma Tax Commission - penalty against remote  
sellers - effective date ]

10

11

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

13 SECTION 1. AMENDATORY Section 3, Chapter 17, 2nd

14 Extraordinary Session, O.S.L. 2018 (68 O.S. Supp. 2018, Section  
15 1392), is amended to read as follows:

16 Section 1392. A. Subject to the provisions of subsections C  
17 and D of this section, on or before July 1, 2018, and on or before  
18 June 1 of each calendar year thereafter, beginning June 1, 2019, a  
19 ~~remote seller,~~ a marketplace facilitator or a referrer that had  
20 aggregate sales of tangible personal property within this state or  
21 delivered to locations within this state subject to tax under  
22 Section 1354 or 1402 of ~~Title 68 of the Oklahoma Statutes~~ this title  
23 worth at least Ten Thousand Dollars (\$10,000.00) during the  
24 immediately preceding twelve-calendar-month period shall file an

1 election with the Tax Commission to collect and remit the tax  
2 imposed under Section 1354 or 1402 of ~~Title 68 of the Oklahoma~~  
3 ~~Statutes~~ this title or to comply with the notice and reporting  
4 requirements. The election shall be made on a form and in a manner  
5 prescribed by the Commission and, except as provided in subsection E  
6 of this section, shall apply to the next succeeding fiscal year.

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

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

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

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

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

23

24

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.

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,  
23  
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  
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.

24

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.

24

