

An Act

ENROLLED SENATE
BILL NO. 513

By: Bice of the Senate

and

Caldwell (Chad) and
Albright of the House

An Act relating to sales and use tax; amending Sections 3, 4, 5, 6 and 7, Chapter 17, 2nd Extraordinary Session, O.S.L. 2018 (68 O.S. Supp. 2018, Sections 1392, 1393, 1394, 1395 and 1396), which relate to procedures for collection and remittance of taxes by remote sellers and marketplace facilitators or referrers; eliminating ability of remote sellers to make certain election; modifying location requirements of certain entities; requiring certain remote sellers to collect and remit taxes based on threshold sale amounts and establishing time period when amounts are due; excluding certain sales from threshold amounts; eliminating requirement that remote sellers provide specified notice; eliminating requirement that remote sellers provide specified written report; modifying contents of notice required by referrer; eliminating requirement that remote sellers submit certain report to Oklahoma Tax Commission; eliminating ability of Tax Commission to assess certain penalty against remote sellers; conforming language; updating statutory references; and providing and effective date.

SUBJECT: Sales and use tax

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

SECTION 1. AMENDATORY Section 3, Chapter 17, 2nd Extraordinary Session, O.S.L. 2018 (68 O.S. Supp. 2018, 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 remote seller,~~ a marketplace facilitator or a referrer that had 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 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 ~~Title 68 of the Oklahoma Statutes~~ 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 ~~remote seller,~~ 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 ~~Title 68 of the Oklahoma Statutes~~ this title shall obtain a permit under Section 1364 or 1407 of ~~Title 68 of the Oklahoma Statutes~~ this title.

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

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

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

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

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

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

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

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 remote seller, 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 Title 68 of the Oklahoma Statutes~~ 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 ~~Title 68 of the Oklahoma Statutes~~ 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 remote seller, 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 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 ~~Title 68 of the Oklahoma Statutes~~ this title by a remote seller, a marketplace facilitator or a referrer, a remote seller, a marketplace facilitator or a referrer subject to ~~this act~~ Sections 1391 through 1397 of this title shall also be subject to Section 1365 of ~~Title 68 of the Oklahoma Statutes~~ this title relating to the keeping of records and Section 248 of ~~Title 68 of the Oklahoma Statutes~~ this title relating to the examination of records by the Commission and agents and employees of the Commission.

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

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

B. A ~~remote seller or~~ 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 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,
- 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 ~~remote seller or marketplace facilitator~~ unless the transaction is exempt from sales and use tax pursuant to ~~Title 68 of the Oklahoma Statutes~~ 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 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 3. AMENDATORY Section 5, Chapter 17, 2nd Extraordinary Session, O.S.L. 2018 (68 O.S. Supp. 2018, Section 1394), is amended to read as follows:

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

1. A statement that the ~~remote seller or~~ marketplace facilitator did not collect sales or use tax in connection with the purchaser's transactions with the ~~remote seller or~~ marketplace

facilitator and that the purchaser may be required to remit use tax to the Tax Commission;

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

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

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

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

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

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

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

state during the immediately preceding calendar year that includes all of the following:

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

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

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

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

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

1. The purchaser's name;

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

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

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

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

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

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

D. A report required under this section shall be submitted by an officer of the ~~remote seller, the~~ marketplace facilitator or the referrer and shall include a statement, made under penalty of perjury, by the officer that the remote seller, the marketplace facilitator or the referrer made reasonable efforts to comply with the notice and reporting requirements of ~~this act~~ Sections 1391 through 1397 of this title.

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

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

B. A ~~remote seller, a~~ marketplace facilitator or a referrer that makes an election under subsection A of Section ~~3 of this act~~

1392 of this title to collect and remit the tax imposed under Section 1354 or 1402 of ~~Title 68 of the Oklahoma Statutes~~ this title shall be subject to all of the provisions of ~~Title 68 of the Oklahoma Statutes~~ this title with respect to the collection and remittance of such tax and shall be subject to all of the penalties and interest levied under ~~Title 68 of the Oklahoma Statutes~~ this title for failing to comply with the provisions of ~~this act~~ Sections 1391 through 1397 of this title except as provided in this section.

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

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

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

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

Passed the Senate the 13th day of May, 2019.

Presiding Officer of the Senate

Passed the House of Representatives the 23rd day of April, 2019.

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: _____