

1 (2ND EXTRAORDINARY SESSION)

ENGROSSED HOUSE

2 BILL NO. 1019

By: Wallace and Casey of the  
House

3  
4 and

5 David and Fields of the  
Senate

6  
7  
8 An Act relating to revenue and taxation; enacting the  
FY 18 Budget Amendments Act; defining terms;  
9 requiring certain entities to file election with  
Oklahoma Tax Commission related to collection of  
10 sales or use taxes; providing for alternative  
procedures; requiring certain notices; requiring  
11 reporting; requiring certain permits; specifying  
applicability of requirements with respect to  
12 marketplace facilitators; providing for effect of  
election; prescribing procedures for remote sellers,  
13 marketplace facilitators and referrers; providing for  
effect of nonelection; requiring records; prescribing  
14 notice procedures for entities not making certain  
election; imposing requirements on remote sellers or  
15 marketplace facilitators; prescribing requirements  
for notice; imposing requirements on certain remote  
16 sellers or marketplace facilitators; requiring forms;  
requiring certain reports; prescribing content of  
17 reports; providing for imposition of penalty amounts;  
prescribing penalty amount; imposing certain  
18 limitation on penalty; providing for applicability of  
certain provisions of the Oklahoma Sales Tax Code and  
19 Oklahoma Use Tax Code; authorizing reduction of  
penalty amounts for designated period of time;  
20 providing for release of certain liability;  
prohibiting certain class actions; providing for  
21 effect of provisions with respect to vendor  
obligations for collection and remittance of sales  
22 and use taxes; amending 68 O.S. 2011, Section 1403,  
as last amended by Section 2, Chapter 349, O.S.L.  
23 2015 (68 O.S. Supp. 2017, Section 1403), which  
relates to use tax; modifying apportionment;  
24

1 providing for codification; providing for  
2 noncodification; and declaring an emergency.

3  
4 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

5 SECTION 1. NEW LAW A new section of law not to be  
6 codified in the Oklahoma Statutes reads as follows:

7 This act shall be known and may be cited as the "FY 18 Budget  
8 Amendments Act".

9 SECTION 2. NEW LAW A new section of law to be codified  
10 in the Oklahoma Statutes as Section 1391 of Title 68, unless there  
11 is created a duplication in numbering, reads as follows:

12 As used in this act:

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

15 a. has a direct or indirect ownership interest of more  
16 than five percent (5%) in the other person, or

17 b. is related to the other person because a third person,  
18 or group of third persons who are affiliated with each  
19 other as defined in this subsection, holds a direct or  
20 indirect ownership interest of more than five percent  
21 (5%) in the related person;

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

1       3. "Marketplace facilitator" means a person that facilitates  
2 the sale at retail of tangible personal property. For purposes of  
3 this section, a person facilitates a sale at retail if the person or  
4 an affiliated person:

5           a. lists or advertises tangible personal property for  
6 sale at retail in any forum, and

7           b. either directly or indirectly through agreements or  
8 arrangements with third parties, collects the payment  
9 from the purchaser and transmits the payment to the  
10 person selling the property.

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

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

15       5. "Notice and reporting requirements" means the notice  
16 requirements under Section 4 of this act and the reporting  
17 requirements under Sections 5 and 6 of this act;

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

21       7.    a. "Referrer" means the person, other than a person  
22               engaging in the business of printing or publishing a  
23               newspaper, that, pursuant to an agreement or  
24

1 arrangement with a marketplace seller or remote  
2 seller, does the following:

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

15 b. The term does not include a person that:

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

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

23 8. "Remote seller" means a person, other than a marketplace  
24 facilitator, a marketplace seller or a referrer, that does not

1 maintain a place of business in this state that, through a forum,  
2 sells tangible personal property at retail, the sale or use of which  
3 is subject to the tax imposed by Section 1354 or 1402 of Title 68 of  
4 the Oklahoma Statutes. The term does not include an employee who in  
5 the ordinary scope of employment renders services to his employer in  
6 exchange for wages and salaries.

7       SECTION 3.       NEW LAW       A new section of law to be codified  
8 in the Oklahoma Statutes as Section 1392 of Title 68, unless there  
9 is created a duplication in numbering, reads as follows:

10       A. Subject to the provisions of subsections C and D of this  
11 section, on or before July 1, 2018, and on or before June 1 of each  
12 calendar year thereafter, beginning June 1, 2019, a remote seller, a  
13 marketplace facilitator or a referrer that had aggregate sales of  
14 tangible personal property within this state or delivered to  
15 locations within this state subject to tax under Section 1354 or  
16 1402 of Title 68 of the Oklahoma Statutes worth at least Ten  
17 Thousand Dollars (\$10,000.00) during the immediately preceding  
18 twelve-calendar-month period shall file an election with the Tax  
19 Commission to collect and remit the tax imposed under Section 1354  
20 or 1402 of Title 68 of the Oklahoma Statutes or to comply with the  
21 notice and reporting requirements. The election shall be made on a  
22 form and in a manner prescribed by the Commission and, except as  
23 provided in subsection E of this section, shall apply to the next  
24 succeeding fiscal year.

1       B. A remote seller, a marketplace facilitator or a referrer  
2 that makes an election under subsection A of this section to collect  
3 and remit the tax imposed under Section 1354 or 1402 of Title 68 of  
4 the Oklahoma Statutes shall obtain a permit under Section 1364 or  
5 1407 of Title 68 of the Oklahoma Statutes.

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

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

12       2. Sales made by a marketplace facilitator on its own behalf if  
13 the marketplace facilitator does not maintain a place of business in  
14 this state.

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

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

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

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

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

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

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

21 G. In addition to records that may be required to be maintained  
22 under other applicable provisions of Title 68 of the Oklahoma  
23 Statutes by a remote seller, a marketplace facilitator or a  
24 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 relating to the keeping of records and  
3 Section 248 of Title 68 of the Oklahoma Statutes relating to the  
4 examination of records by the Commission and agents and employees of  
5 the Commission.

6 SECTION 4. NEW LAW A new section of law to be codified  
7 in the Oklahoma Statutes as Section 1393 of Title 68, unless there  
8 is created a duplication in numbering, reads as follows:

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

1       SECTION 5.       NEW LAW       A new section of law to be codified  
2 in the Oklahoma Statutes as Section 1394 of Title 68, unless there  
3 is created a duplication in numbering, reads as follows:

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

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

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

21       3. Instructions for obtaining additional information from the  
22 Commission regarding whether and how to remit use tax to the  
23 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 that includes the name of the purchaser and  
4 the aggregate dollar amount of the purchaser's purchases from the  
5 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 that does not elect to collect and remit  
22 the tax imposed by Section 1354 or 1402 of Title 68 of the Oklahoma  
23 Statutes shall, no later than January 31 of each year, provide a  
24 written notice to each remote seller to whom the referrer

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

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

10 SECTION 6. NEW LAW A new section of law to be codified  
11 in the Oklahoma Statutes as Section 1395 of Title 68, unless there  
12 is created a duplication in numbering, reads as follows:

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

22 1. The purchaser's name;

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

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

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

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

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

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

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

1 facilitator or the referrer made reasonable efforts to comply with  
2 the notice and reporting requirements of this act.

3 SECTION 7. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 1396 of Title 68, unless there  
5 is created a duplication in numbering, reads as follows:

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

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

1 Statutes for failing to comply with the provisions of this act  
2 except as provided in this section.

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

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

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

21 SECTION 8. NEW LAW A new section of law to be codified  
22 in the Oklahoma Statutes as Section 1397 of Title 68, unless there  
23 is created a duplication in numbering, reads as follows:

24



1 Nothing in this act affects the obligations of a vendor to  
2 register with the Tax Commission and to collect and remit sales tax  
3 or use tax.

4 SECTION 9. AMENDATORY 68 O.S. 2011, Section 1403, as  
5 last amended by Section 2, Chapter 349, O.S.L. 2015 (68 O.S. Supp.  
6 2017, Section 1403), is amended to read as follows:

7 Section 1403. A. It is hereby declared to be the purpose of  
8 Section 1401 et seq. of this title to provide for the support of the  
9 functions of the state and local government of Oklahoma; and for  
10 this purpose and to this end, it is hereby expressly provided that  
11 the revenues derived hereunder, subject to the apportionment  
12 provided in subsection B of this section and to the apportionment  
13 requirements for the Oklahoma Tax Commission and Office of  
14 Management and Enterprise Services Joint Computer Enhancement Fund  
15 provided by Section 265 of this title, are hereby apportioned as  
16 follows:

- 17 1. a. the following amounts shall be paid by the Tax  
18 Commission to the State Treasurer and placed to the  
19 credit of the General Revenue Fund to be paid out  
20 pursuant to direct appropriation by the Legislature:

Fiscal Year	Amount
FY 2004	85.35%
FY 2005	85.14%
FY 2006	85.54%

1	FY 2007	85.04%
2	FY 2008 and each fiscal	
3	year thereafter	83.61%
4	b. in the event that additional monies are necessary	
5	pursuant to paragraph 6 of this section, such	
6	additional monies shall be deducted in the proportion	
7	determined by the State Board of Equalization pursuant	
8	to paragraph 3 of Section 2355.1B of this title from	
9	the monies apportioned to the General Revenue Fund;	
10	2. Ten and forty-six one-hundredths percent (10.46%) shall be	
11	paid to the State Treasurer to be placed to the credit of the	
12	Education Reform Revolving Fund of the State Department of	
13	Education;	
14	3. The following amounts shall be paid to the State Treasurer	
15	to be placed to the credit of the Teachers' Retirement System	
16	Dedicated Revenue Revolving Fund:	
17	Fiscal Year	Amount
18	FY 2003 and FY 2004	3.54%
19	FY 2005	3.75%
20	FY 2006	4.0%
21	FY 2007	4.5%
22	FY 2008 and each fiscal	
23	year thereafter	5.0%
24		

1       4.    a.    except as otherwise provided in subparagraph b of this  
2               paragraph, for the fiscal year beginning July 1, 2015,  
3               and for each fiscal year thereafter, eighty-seven one-  
4               hundredths percent (0.87%) shall be paid to the State  
5               Treasurer to be further apportioned as follows:

6               (1)   thirty-six percent (36%) shall be placed to the  
7                       credit of the Oklahoma Tourism Promotion  
8                       Revolving Fund, but in no event shall such  
9                       apportionment exceed the total amount apportioned  
10                      pursuant to this division for the fiscal year  
11                      ending on June 30, 2015, and

12              (2)   sixty-four percent (64%) shall be placed to the  
13                      credit of the Oklahoma Tourism Capital  
14                      Improvement Revolving Fund, but in no event shall  
15                      such apportionment exceed the total amount  
16                      apportioned pursuant to this division for the  
17                      fiscal year ending on June 30, 2015, and

18              b.    any amounts which exceed the limitations of  
19                      subparagraph a of this paragraph shall be placed to  
20                      the credit of the General Revenue Fund;

21       5.    For the fiscal year beginning July 1, 2015, and for each  
22   fiscal year thereafter, six one-hundredths percent (0.06%) shall be  
23   placed to the credit of the Oklahoma Historical Society Capital  
24   Improvement and Operations Revolving Fund, but in no event shall

1 such apportionment exceed the total amount apportioned pursuant to  
2 this paragraph for the fiscal year ending on June 30, 2015. Any  
3 amounts which exceed the limitations of this paragraph shall be  
4 placed to the credit of the General Revenue Fund; and

5 6. During the first fiscal year after the State Board of  
6 Equalization has made a determination as provided in Section 2355.1B  
7 of this title, regarding a baseline amount of revenue apportioned  
8 pursuant to paragraph 3 of this section, and for each fiscal year  
9 thereafter, in no event shall monies apportioned pursuant to  
10 paragraph 3 of this section, paragraph 3 of Section 1353 of this  
11 title and subparagraph c of paragraph 1 of Section 2352 of this  
12 title be less than such baseline amount.

13 B. Prior to the apportionments otherwise provided in this  
14 section, there shall be apportioned to the Education Reform  
15 Revolving Fund of the State Department of Education the following  
16 amounts in the following state fiscal years:

17 FY 2019 \$19,600,000.00; and

18 FY 2020 and each year thereafter \$20,500,000.00.

19 SECTION 10. It being immediately necessary for the preservation  
20 of the public peace, health or safety, an emergency is hereby  
21 declared to exist, by reason whereof this act shall take effect and  
22 be in full force from and after its passage and approval.  
23  
24

1 Passed the House of Representatives the 4th day of April, 2018.

2  
3  
4 Presiding Officer of the House  
of Representatives

5 Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 2018.

6  
7  
8 Presiding Officer of the Senate