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STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

HOUSE BILL 2352

By: Caldwell (Chad) of the
House

and

Bice of the Senate

AS INTRODUCED

An Act relating to revenue and taxation; 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 applicable to certain remote sellers and marketplace facilitators; eliminating references to remote sellers; modifying reference to certain time period; modifying provisions applicable to marketplace facilitator for purposes of sales or use tax; imposing certain sales and use tax collection requirements on remote sellers based upon aggregate sales amounts; providing for exclusion of certain sales in computation; modifying provisions related to duties of remote sellers with respect to certain disclosure statement; providing an effective date; and declaring an emergency.

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:

1 Section 1392. A. Subject to the provisions of subsections C
2 and D of this section, on or before July 1, 2018, and on or before
3 June 1 of each calendar year thereafter, beginning June 1, 2019, a
4 ~~remote seller,~~ a marketplace facilitator or a referrer that had
5 aggregate sales of tangible personal property within this state or
6 delivered to locations within this state subject to tax under
7 Section 1354 or 1402 of ~~Title 68 of the Oklahoma Statutes~~ this title
8 worth at least Ten Thousand Dollars (\$10,000.00) during the
9 ~~immediately preceding twelve calendar month period~~ calendar year
10 shall file an election with the Tax Commission to collect and remit
11 the tax imposed under Section 1354 or 1402 of ~~Title 68 of the~~
12 ~~Oklahoma Statutes~~ this title or to comply with the notice and
13 reporting requirements. The election shall be made on a form and in
14 a manner prescribed by the Commission and, except as provided in
15 subsection E of this section, shall apply to the next succeeding
16 fiscal year.

17 B. A ~~remote seller,~~ a marketplace facilitator or a referrer
18 that makes an election under subsection A of this section to collect
19 and remit the tax imposed under Section 1354 or 1402 of ~~Title 68 of~~
20 ~~the Oklahoma Statutes~~ this title shall obtain a permit under Section
21 1364 or 1407 of ~~Title 68 of the Oklahoma Statutes~~ this title.

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

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

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

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

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

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

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

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

20 E. An election made on or before July 1, 2018, shall be in
21 effect for the 2018-2019 fiscal year. A ~~remote seller,~~ a
22 marketplace facilitator or a referrer may change an election to
23 comply with the notice and reporting requirements to an election to
24 collect and remit the tax imposed under Section 1354 or 1402 of

1 ~~Title 68 of the Oklahoma Statutes~~ this title at any time during a
2 fiscal year by filing a new election with the Commission and
3 obtaining a permit under Section 1364 or 1407 of ~~Title 68 of the~~
4 ~~Oklahoma Statutes~~ this title. The new election shall be effective
5 thirty (30) days after the filing and shall be effective for the
6 balance of the fiscal year in which the new election was filed and
7 for the next succeeding fiscal year.

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

12 G. 1. A remote seller that had aggregate sales of tangible
13 personal property within this state or delivered to locations within
14 this state subject to tax under Section 1354 or 1402 of this title
15 worth at least One Hundred Thousand Dollars (\$100,000.00) during the
16 preceding calendar year shall collect and remit the tax imposed
17 under Section 1354 or 1402 of this title. The duty to collect and
18 remit tax shall apply to the next succeeding fiscal year.

19 2. Sales in this state by a remote seller made through a
20 marketplace forum or a referrer's platform where the tax is
21 collected and remitted by the marketplace facilitator or referrer
22 shall not be included in determining whether the remote seller has
23 met the threshold amount provided in this subsection.
24

1 H. In addition to records that may be required to be maintained
2 under other applicable provisions of ~~Title 68 of the Oklahoma~~
3 ~~Statutes~~ this title by a remote seller, a marketplace facilitator or
4 a referrer, a remote seller, a marketplace facilitator or a referrer
5 subject to this act shall also be subject to Section 1365 of ~~Title~~
6 ~~68 of the Oklahoma Statutes~~ this title relating to the keeping of
7 records and Section 248 of ~~Title 68 of the Oklahoma Statutes~~ this
8 title relating to the examination of records by the Commission and
9 agents and employees of the Commission.

10 SECTION 2. AMENDATORY Section 4, Chapter 17, 2nd
11 Extraordinary Session, O.S.L. 2018 (68 O.S. Supp. 2018, Section
12 1393), is amended to read as follows:

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

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

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

1 a. sales or use tax may be due in connection with the
2 purchase and delivery of the tangible personal
3 property,

4 b. the state requires the purchaser to file a return if
5 use tax is due in connection with the purchase and
6 delivery, and

7 c. the notice is required by this section; and

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

10 a. a statement that sales or use tax is not being
11 collected in connection with the purchase,

12 b. a statement that the purchaser may be required to
13 remit use tax directly to the Tax Commission, and

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

17 C. The notice required by paragraph 2 of subsection B of this
18 section must be prominently displayed on all invoices and order
19 forms and on each sales receipt or similar document, whether in
20 paper or electronic form, provided to the purchaser. No statement
21 that sales or use tax is not imposed on a transaction may be made by
22 a ~~remote seller or marketplace facilitator~~ unless the transaction is
23 exempt from sales and use tax pursuant to ~~Title 68 of the Oklahoma~~
24 ~~Statutes~~ this title or other applicable state law.

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

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

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

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

13 4. The notice is required by this section;

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

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

22 E. The notice required under subsection D of this section must
23 be prominently displayed and may include pop-up boxes or
24

1 notification by other means that appears when the referrer transfers
2 a purchaser to another person to complete the sale.

3 SECTION 3. AMENDATORY Section 5, Chapter 17, 2nd
4 Extraordinary Session, O.S.L. 2018 (68 O.S. Supp. 2018, Section
5 1394), is amended to read as follows:

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

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

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

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

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

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

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

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

23 D. A referrer required to make an election under subsection A
24 of Section ~~3~~ 1392 of this ~~act~~ title that does not elect to collect

1 and remit the tax imposed by Section 1354 or 1402 of ~~Title 68 of the~~
2 ~~Oklahoma Statutes~~ this title shall, no later than January 31 of each
3 year, provide a written notice to each remote seller to whom the
4 referrer transferred a potential purchaser located in this state
5 during the immediately preceding calendar year that includes all of
6 the following:

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

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

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

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

18 Section 1395. A. A ~~remote seller or~~ marketplace facilitator
19 required to make an election under subsection A of Section ~~3~~ 1392 of
20 this ~~act~~ title that does not elect to collect and remit the tax
21 imposed by Section 1354 or 1402 of ~~Title 68 of the Oklahoma Statutes~~
22 this title shall, no later than January 31 of each year, submit a
23 report to the Tax Commission. The report shall include, with
24 respect to each purchaser required to receive the notice under

paragraph 2 of subsection B of Section ~~4~~ 1393 of this ~~act~~ 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~~ 1392 of this ~~act~~ 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~~ 1394 of this ~~act~~ 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.

1 D. A report required under this section shall be submitted by
2 an officer of the ~~remote seller,~~ the marketplace facilitator or the
3 referrer and shall include a statement, made under penalty of
4 perjury, by the officer that the ~~remote seller,~~ the marketplace
5 facilitator or the referrer made reasonable efforts to comply with
6 the notice and reporting requirements of this act.

7 SECTION 5. AMENDATORY Section 7, Chapter 17, 2nd
8 Extraordinary Session, O.S.L. 2018 (68 O.S. Supp. 2018, Section
9 1396), is amended to read as follows:

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

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

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

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

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

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

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

2 SECTION 7. It being immediately necessary for the preservation
3 of the public peace, health or safety, an emergency is hereby
4 declared to exist, by reason whereof this act shall take effect and
5 be in full force from and after its passage and approval.

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7 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated
8 02/28/2019 - DO PASS, As Coauthored.
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