

STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

SENATE BILL 513

By: Bice

AS INTRODUCED

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.

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 shall file an
10 election with the Tax Commission to collect and remit the tax
11 imposed under Section 1354 or 1402 of ~~Title 68 of the Oklahoma~~
12 ~~Statutes~~ this title or to comply with the notice and reporting
13 requirements. The election shall be made on a form and in a manner
14 prescribed by the Commission and, except as provided in subsection E
15 of this section, shall apply to the next succeeding fiscal year.

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

21 C. The requirement by a marketplace facilitator to make an
22 election under subsection A of this section shall only apply to ~~the~~
23 ~~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 the referrer's own products ~~if the referrer does not~~
15 ~~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 or current calendar year shall collect and remit the tax
17 imposed under Section 1354 or 1402 of this title. The duty to
18 collect and remit tax shall apply to the first calendar month
19 succeeding the month when the threshold provided in this paragraph
20 is met.

21 2. Sales in this state by a remote seller made through a
22 marketplace forum or a referrer's platform where the tax is
23 collected and remitted by the marketplace facilitator or referrer
24

1 shall not be included in determining whether the remote seller has
2 met the threshold amount provided in this subsection.

3 H. In addition to records that may be required to be maintained
4 under other applicable provisions of ~~Title 68 of the Oklahoma~~
5 ~~Statutes~~ this title by a remote seller, a marketplace facilitator or
6 a referrer, a remote seller, a marketplace facilitator or a referrer
7 subject to ~~this act~~ Sections 1391 through 1397 of this title shall
8 also be subject to Section 1365 of ~~Title 68 of the Oklahoma Statutes~~
9 this title relating to the keeping of records and Section 248 of
10 ~~Title 68 of the Oklahoma Statutes~~ this title relating to the
11 examination of records by the Commission and agents and employees of
12 the Commission.

13 SECTION 2. AMENDATORY Section 4, Chapter 17, 2nd
14 Extraordinary Session, O.S.L. 2018 (68 O.S. Supp. 2018, Section
15 1393), is amended to read as follows:

16 Section 1393. A. A ~~remote seller, a~~ marketplace facilitator or
17 a referrer required to make an election under subsection A of
18 ~~Section 3 of this act~~ 1392 of this title that does not elect to
19 collect and remit the tax imposed by Section 1354 or 1402 of ~~Title~~
20 ~~68 of the Oklahoma Statutes~~ this title shall comply with the
21 applicable notice requirements of this section.

22 B. A ~~remote seller or~~ marketplace facilitator subject to the
23 requirements of this section shall:
24

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

- 5 a. sales or use tax may be due in connection with the
6 purchase and delivery of the tangible personal
7 property,
- 8 b. the state requires the purchaser to file a return if
9 use tax is due in connection with the purchase and
10 delivery, and
- 11 c. the notice is required by this section; and

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

- 14 a. a statement that sales or use tax is not being
15 collected in connection with the purchase,
- 16 b. a statement that the purchaser may be required to
17 remit use tax directly to the Tax Commission, and
- 18 c. instructions for obtaining additional information from
19 the Commission regarding whether and how to remit use
20 tax to the Commission.

21 C. The notice required by paragraph 2 of subsection B of this
22 section must be prominently displayed on all invoices and order
23 forms and on each sales receipt or similar document, whether in
24 paper or electronic form, provided to the purchaser. No statement

1 that sales or use tax is not imposed on a transaction may be made by
2 ~~a remote seller or marketplace facilitator~~ unless the transaction is
3 exempt from sales and use tax pursuant to ~~Title 68 of the Oklahoma~~
4 ~~Statutes~~ this title or other applicable state law.

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

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

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

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

17 4. The notice is required by this section;

18 5. Instructions for obtaining additional information from the
19 Commission regarding whether and how to remit use tax to the
20 Commission; and

21 6. If the person to whom the purchaser is being referred does
22 not collect sales or use tax on a subsequent purchase by the
23 purchaser, the person may be required to provide information to the
24

1 purchaser and the Commission about the purchaser's potential use tax
2 liability.

3 E. The notice required under subsection D of this section must
4 be prominently displayed and may include pop-up boxes or
5 notification by other means that appears when the referrer transfers
6 a purchaser to another person to complete the sale.

7 SECTION 3. AMENDATORY Section 5, Chapter 17, 2nd
8 Extraordinary Session, O.S.L. 2018 (68 O.S. Supp. 2018, Section
9 1394), is amended to read as follows:

10 Section 1394. A. A ~~remote seller or~~ marketplace facilitator
11 required to make an election under subsection A of Section ~~3 of this~~
12 ~~act~~ 1392 of this title that does not elect to collect and remit the
13 tax imposed by Section 1354 or 1402 of ~~Title 68 of the Oklahoma~~
14 ~~Statutes~~ this title shall, no later than January 31 of each year,
15 provide a written report to each purchaser required to receive the
16 notice under paragraph 2 of subsection B of Section ~~4 of this act~~
17 1393 of this title during the immediately preceding calendar year
18 that includes all of the following:

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

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

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

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

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

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

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

1 subject heading indicating that important tax information is being
2 provided.

3 D. A referrer required to make an election under subsection A
4 of Section ~~3 of this act~~ 1392 of this title that does not elect to
5 collect and remit the tax imposed by Section 1354 or 1402 of ~~Title~~
6 ~~68 of the Oklahoma Statutes~~ this title shall, no later than January
7 31 of each year, provide a written notice to each remote seller to
8 whom the referrer transferred a potential purchaser located in this
9 state during the immediately preceding calendar year that includes
10 all of the following:

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

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

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

19 SECTION 4. AMENDATORY Section 6, Chapter 17, 2nd
20 Extraordinary Session, O.S.L. 2018 (68 O.S. Supp. 2018, Section
21 1395), is amended to read as follows:

22 Section 1395. A. A ~~remote seller or~~ marketplace facilitator
23 required to make an election under subsection A of Section ~~3 of this~~
24 ~~act~~ 1392 of this title that does not elect to collect and remit the

1 tax imposed by Section 1354 or 1402 of ~~Title 68 of the Oklahoma~~
2 ~~Statutes~~ this title shall, no later than January 31 of each year,
3 submit a report to the Tax Commission. The report shall include,
4 with respect to each purchaser required to receive the notice under
5 paragraph 2 of subsection B of Section ~~4 of this act~~ 1393 of this
6 title during the immediately preceding calendar year, the following:

- 7 1. The purchaser's name;
- 8 2. The purchaser's billing address and, if different, the
9 purchaser's last-known mailing address;
- 10 3. The address within this state to which products were
11 delivered to the purchaser;
- 12 4. The aggregate dollar amount of the purchaser's purchases
13 from the ~~remote seller or~~ marketplace facilitator; and
- 14 5. The name and address of the ~~remote seller,~~ marketplace
15 facilitator or marketplace seller that made the sales to the
16 purchaser.

17 B. A referrer required to make an election under subsection A
18 of Section ~~3 of this act~~ 1392 of this title that does not elect to
19 collect and remit the tax imposed by Section 1354 or 1402 of ~~Title~~
20 ~~68 of the Oklahoma Statutes~~ this title shall, no later than January
21 31 of each year, submit a report to the Commission. The report
22 shall include a list of persons who received the notice required
23 under subsection D of Section ~~5 of this act~~ 1394 of this title.

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

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

13 SECTION 5. AMENDATORY Section 7, Chapter 17, 2nd
14 Extraordinary Session, O.S.L. 2018 (68 O.S. Supp. 2018, Section
15 1396), is amended to read as follows:

16 Section 1396. A. The Commission shall assess a penalty in the
17 amount of Twenty Thousand Dollars (\$20,000.00) or twenty percent
18 (20%) of total sales in Oklahoma during the previous twelve (12)
19 months, whichever is less, against a ~~remote seller,~~ a marketplace
20 facilitator or a referrer that makes an election under subsection A
21 of Section ~~3 of this act~~ 1392 of this title to comply with the
22 notice and reporting requirements, or is deemed to have made such
23 election under subsection F of Section ~~3 of this act~~ 1392 of this
24 title, and fails to comply with the requirements under Section ~~5 or~~

1 ~~6 of this act~~ 1394 or 1395 of this title. The penalty shall be
2 assessed separately for each violation but may only be assessed once
3 in a calendar year.

4 B. A ~~remote seller,~~ a marketplace facilitator or a referrer
5 that makes an election under subsection A of Section ~~3 of this act~~
6 1392 of this title to collect and remit the tax imposed under
7 Section 1354 or 1402 of ~~Title 68 of the Oklahoma Statutes~~ this title
8 shall be subject to all of the provisions of ~~Title 68 of the~~
9 ~~Oklahoma Statutes~~ this title with respect to the collection and
10 remittance of such tax and shall be subject to all of the penalties
11 and interest levied under ~~Title 68 of the Oklahoma Statutes~~ this
12 title for failing to comply with the provisions of ~~this act~~ Sections
13 1391 through 1397 of this title except as provided in this section.

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

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

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

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

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