State of South Dakota

Revenue Draft #2 - Marketplace provider

NINETY-THIRD SPECIAL SESSION
LEGISLATIVE ASSEMBLY, 2018s

400C0002

SENATE BILL NO. _____

Introduced by: _____

FOR AN ACT ENTITLED, An Act to provide for the collection and remittance of certain taxes by certain marketplace providers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That the code be amended by adding a NEW SECTION to read:

For the purposes of this Act, a marketplace is any means by which any marketplace seller sells or offers for sale tangible personal property, products transferred electronically, or services for delivery into this state, regardless of whether the marketplace seller has a physical presence in this state.

Section 2. That the code be amended by adding a NEW SECTION to read:

For the purposes of this Act, a marketplace provider is any person that facilitates a sale for a marketplace seller through a marketplace by:

(1) Offering for sale by the marketplace seller, by any means, tangible personal property, products transferred electronically, or services for delivery into this state; and

(2) Directly, or indirectly through any agreement or arrangement with third parties, collecting payment from a purchaser and transmitting the payment to the marketplace seller, regardless of whether the person receives compensation or other consideration

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Insertions into existing statutes are indicated by underscores.
Deletions from existing statutes are indicated by ~~overstrikes~~.

in exchange for facilitating the sale or providing any other service.

Section 3. That the code be amended by adding a NEW SECTION to read:

For the purposes of this Act, a marketplace seller is a retailer that sells or offers for sale tangible personal property, products transferred electronically, or services for delivery into this state, through a marketplace that is owned, operated, or controlled by a marketplace provider.

Section 4. That the code be amended by adding a NEW SECTION to read:

Terms used in this Act mean:

(1) "Person," the same as the term is defined under § 10-45-1; and

(2) "Retailer," the same as the term is defined under § 10-45-1.

Section 5. That the code be amended by adding a NEW SECTION to read:

Notwithstanding any other provision of law, a marketplace provider is subject to chapters 10-45 and 10-52 and shall collect and remit sales tax on all sales of tangible personal property, products transferred electronically, or services for delivery into this state, that the marketplace provider makes or facilitates for a marketplace seller if the marketplace provider:

(1) Is a seller subject to § 10-64-2;

(2) Facilitates the sales of at least one marketplace seller that is subject to § 10-64-2; or

(3) Facilitates the sales of two or more marketplace sellers that, when the sales are combined, are subject to § 10-64-2, even if the marketplace sellers are not separately or individually subject to § 10-64-2.

Section 6. That the code be amended by adding a NEW SECTION to read:

A marketplace provider that fails to collect or remit sales tax under section 5 of this Act may be relieved of liability if the failure was due to incorrect or insufficient information provided to the marketplace provider by a marketplace seller. The relief provided by this section may not exceed five percent of the total sales tax due on all sales into this state that are facilitated by a

marketplace provider for marketplace sellers in a calendar year.

The provisions of this section do not apply to any sales where the marketplace provider is affiliated with the marketplace seller. A marketplace provider and a marketplace seller are affiliated if:

(1) Either owns more than five percent of the other; or

(2) Both are subject to the control of a common entity that owns more than five percent of each.

This section is repealed on June 30, 2024.

Section 7. That chapter 10-64 be amended by adding a NEW SECTION to read:

No marketplace provider is required to collect or remit sales tax under this Act on any sale made before March 1, 2019.