

HOUSE BILL NO. 5745

May 23, 2024, Introduced by Reps. Farhat, Wilson, Filler and Martus and referred to the Committee on Tax Policy.

A bill to amend 1933 PA 167, entitled
"General sales tax act,"
by amending section 2d (MCL 205.52d), as added by 2019 PA 143.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2d. (1) Notwithstanding anything to the contrary in this
2 act, a marketplace facilitator engaged in the business of making
3 sales at retail of tangible personal property in this state shall
4 remit the tax due under this act on all taxable sales made by the
5 marketplace facilitator or facilitated for marketplace sellers to a
6 purchaser in this state regardless of whether the marketplace
7 seller for whom sales are facilitated has nexus with this state.

1 (2) A marketplace facilitator is a person engaged in the
2 business of making sales at retail for purposes of this act
3 regardless of whether the marketplace facilitator makes only
4 facilitated sales for marketplace sellers or a combination of
5 direct and facilitated sales and has all the rights and duties of a
6 taxpayer under this act.

7 (3) A marketplace facilitator shall report its direct sales
8 and the sales it facilitates to purchasers in this state in a
9 manner as prescribed by the department.

10 (4) A class action shall not be brought against a marketplace
11 facilitator in any court of this state on behalf of purchasers
12 arising from or in any way related to an overpayment of sales tax
13 remitted on sales facilitated by the marketplace facilitator,
14 regardless of whether that claim is characterized as a tax refund
15 claim. Nothing in this subsection affects a purchaser's right to
16 seek a refund as provided under section 12.

17 (5) Nothing in this section affects the obligation of a
18 purchaser to remit use tax under the use tax act, 1937 PA 94, MCL
19 205.91 to 205.111, for a taxable transaction on which a marketplace
20 facilitator or marketplace seller does not remit sales tax.

21 (6) Except as otherwise provided in this subsection **or**
22 **subsection (10)**, if a marketplace facilitator is required to remit
23 tax under subsection (1), the department shall audit only the
24 marketplace facilitator for sales made by marketplace sellers that
25 were facilitated by the marketplace facilitator. ~~The~~ **Except as**
26 **otherwise provided in subsection (10)**, the department shall not
27 audit a marketplace seller for sales facilitated by a marketplace
28 facilitator required to remit tax under subsection (1) unless the
29 marketplace seller fails to provide the marketplace facilitator

1 with sufficient information to the extent that the marketplace
2 facilitator is not liable under subsection (7).

3 (7) A marketplace facilitator is relieved of liability under
4 this section for failure to remit the correct amount of tax to the
5 extent that the marketplace facilitator demonstrates, to the
6 satisfaction of the department, that the failure was due to
7 incorrect or insufficient information given to the marketplace
8 facilitator by the marketplace seller. The relief under this
9 subsection does not apply if the marketplace seller is an affiliate
10 of the marketplace facilitator.

11 (8) A marketplace facilitator is relieved of liability under
12 this section if the marketplace facilitator demonstrates, to the
13 satisfaction of the department, that the tax levied under this act
14 on a sale facilitated by the marketplace facilitator was paid to
15 the department by the marketplace seller or provides a claim of
16 exemption provided by the marketplace seller's purchaser.

17 (9) ~~A~~**Except as otherwise provided in subsection (10), a**
18 marketplace seller is not liable for the tax imposed by this act on
19 sales made through a marketplace facilitator required to remit tax
20 under subsection (1) unless the marketplace seller fails to provide
21 the marketplace facilitator with sufficient information to the
22 extent that the marketplace facilitator is not liable under
23 subsection (7).

24 **(10) Notwithstanding anything to the contrary in this section,**
25 **all of the following apply regarding a qualified delivery network**
26 **sale:**

27 (a) **The marketplace seller is liable for the tax imposed by**
28 **this act on the qualified delivery network sale.**

29 (b) **The department may audit the marketplace seller for the**

1 qualified delivery network sale.

2 (c) Subject to both of the following provisions, a delivery
3 network company may, in the form and manner prescribed by the
4 department, deduct or exclude from its tax liability under this
5 section the amount of tax under this act that the delivery network
6 company paid to the marketplace seller in connection with the
7 qualified delivery network sale:

8 (i) The delivery network company may not claim a deduction or
9 exclusion under this subdivision if the marketplace seller did not
10 charge the delivery network company for the tax imposed under this
11 act on the qualified delivery network sale.

12 (ii) The amount of the deduction or exclusion under this
13 subdivision may not exceed the amount of tax under this act that
14 was charged by the marketplace seller to the delivery network
15 company in connection with the qualified delivery network sale.

16 (11) ~~(10)~~—This section applies regardless of whether the
17 marketplace facilitator has a physical presence in this state.

18 (12) ~~(11)~~—As used in this section:

19 (a) "Affiliate" means an affiliated person as that term is
20 defined in section 2b.

21 (b) "Delivery network company" means a marketplace facilitator
22 that maintains a website or mobile application used to facilitate
23 delivery services that are performed or otherwise conducted by a
24 delivery network courier.

25 (c) "Delivery network courier" means, except as otherwise
26 provided in subdivision (d), an individual who provides delivery
27 services through a delivery network company by doing any of the
28 following:

29 (i) Using a personal means of transportation, such as a motor

1 vehicle, bicycle, scooter, or other similar modes of
 2 transportation. As used in this subparagraph, "bicycle" and "motor
 3 vehicle" mean those terms as defined in sections 4 and 33 of the
 4 Michigan vehicle code, 1949 PA 300, MCL 257.4 and 257.33,
 5 respectively.

6 (ii) Using public transportation.

7 (iii) Walking.

8 (d) Delivery network courier does not include a common carrier
 9 or a motor carrier as that term is defined in section 1 of the
 10 motor carrier fuel tax act, 1980 PA 119, MCL 207.211.

11 (e) "Delivery services" means the pickup and delivery of
 12 tangible personal property, by a delivery network courier, from a
 13 marketplace seller located in this state to a customer located in
 14 this state, which may include the selection, collection, and
 15 purchase of the tangible personal property in connection with the
 16 delivery. Delivery services does not include a delivery requiring
 17 more than 75 miles of travel from the marketplace seller to the
 18 customer.

19 (f) ~~(b)~~—"Marketplace facilitator" means a person that meets
 20 the requirements of subparagraph (i), but does not include a person
 21 described in subparagraph (ii):

22 (i) A person is a marketplace facilitator if the person
 23 facilitates a retail sale by a marketplace seller by listing or
 24 advertising for sale by a marketplace seller in a marketplace,
 25 tangible personal property and either directly or indirectly
 26 through agreements or arrangements with third parties or its
 27 affiliates collecting payment from the customer and transmitting
 28 that payment to the marketplace seller for consideration.

29 (ii) Marketplace facilitator does not include a person ~~who~~ that

1 operates a platform or forum that provides internet, print,
2 electronic, or any other form of advertising services, including
3 listing tangible personal property for sale, if the person does not
4 also engage directly or indirectly, through 1 or more affiliates,
5 in the activities described in subparagraph (i).

6 **(g)** ~~(e)~~—"Marketplace seller" means a person that makes retail
7 sales through a physical or electronic marketplace operated by a
8 marketplace facilitator.

9 **(h)** "Qualified delivery network sale" means a sale that meets
10 all of the following requirements:

11 **(i)** The sale is made as part of delivery services facilitated
12 by a delivery network company.

13 **(ii)** The sale is sourced to this state under section 19(1)(b).

14 **(iii)** The tax imposed by this act on the sale is paid by the
15 delivery network company to the marketplace seller in connection
16 with the delivery services.