

HOUSE BILL NO. 5746

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

A bill to amend 1937 PA 94, entitled
"Use tax act,"
by amending section 5c (MCL 205.95c), as added by 2019 PA 144.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5c. (1) Notwithstanding anything to the contrary in this
2 act, a marketplace facilitator that has nexus in this state shall
3 collect and remit the tax due under this act on all taxable sales
4 made by the marketplace facilitator or facilitated for marketplace
5 sellers to a purchaser in this state regardless of whether the

1 marketplace seller for whom sales are facilitated has nexus with
2 this state.

3 (2) A marketplace facilitator is a person liable for the tax
4 imposed under this act, regardless of whether the marketplace
5 facilitator makes only facilitated sales for marketplace sellers or
6 a combination of direct and facilitated sales and has all the
7 rights and duties of a taxpayer under this act.

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

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

18 (5) Nothing in this section affects the obligation of a
19 purchaser to remit the tax imposed by this act for a taxable
20 transaction on which a marketplace facilitator or marketplace
21 seller does not remit sales or use tax.

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

1 remit tax under subsection (1) unless the marketplace seller fails
2 to provide the marketplace facilitator with sufficient information
3 to the extent that the marketplace facilitator is not liable under
4 subsection (7).

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

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

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

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

29 **(a) The marketplace seller is liable for the tax imposed by**

1 this act on the qualified delivery network sale.

2 (b) The department may audit the marketplace seller for the
3 qualified delivery network sale.

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

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

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

18 (11) ~~(10)~~—This section applies regardless of whether the
19 marketplace facilitator has a physical presence in this state.

20 (12) ~~(11)~~—As used in this section:

21 (a) "Affiliate" means an affiliated person as that term is
22 defined in section 5a.

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

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

1 following:

2 (i) Using a personal means of transportation, such as a motor
3 vehicle, bicycle, scooter, or other similar modes of
4 transportation. As used in this subparagraph, "bicycle" and "motor
5 vehicle" mean those terms as defined in sections 4 and 33 of the
6 Michigan vehicle code, 1949 PA 300, MCL 257.4 and 257.33,
7 respectively.

8 (ii) Using public transportation.

9 (iii) Walking.

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

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

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

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

1 transmitting that payment to the marketplace seller for
2 consideration.

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

9 (iii) A person is not a marketplace facilitator with respect to
10 the sale of or charges for rooms, lodgings, or accommodations
11 described in section 3a if the rooms, lodgings, or accommodations
12 are provided by a hotelkeeper, motel operator, or other person that
13 is registered under section 5 or licensed under section 3 of the
14 general sales tax act, 1933 PA 167, MCL 205.53.

15 (iv) A person is not a marketplace facilitator with respect to
16 the sale of telecommunications services as described in section 3a.

17 (g) ~~(e)~~ "Marketplace seller" means a person that makes retail
18 sales through a physical or electronic marketplace operated by a
19 marketplace facilitator.

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

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

24 (ii) **The sale is sourced to this state under section 20(1)(b).**

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