

FLOOR AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB1019
Page 1 Section _____ Lines 18 1/2
Of the printed Bill
Of the Engrossed Bill

By inserting Sections 2 through 8 to read as follows:

(INSERT ATTACHED);

And by renumbering subsequent sections

AMEND TITLE TO CONFORM TO AMENDMENTS

Adopted: _____

Amendment submitted by: Kevin Wallace _____

Reading Clerk

1 "SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1391 of Title 68, unless there
3 is created a duplication in numbering, reads as follows:

4 As used in this act:

5 1. "Affiliated person" means a person that, with respect to
6 another person:

7 a. has a direct or indirect ownership interest of more
8 than five percent (5%) in the other person, or

9 b. is related to the other person because a third person,
10 or group of third persons who are affiliated with each
11 other as defined in this subsection, holds a direct or
12 indirect ownership interest of more than five percent
13 (5%) in the related person;

14 2. "Forum" means a place where sales at retail occur, whether
15 physical or electronic. The term includes a store, a booth, a
16 publicly accessible Internet website, a catalog or similar place;

17 3. "Marketplace facilitator" means a person that facilitates
18 the sale at retail of tangible personal property. For purposes of
19 this section, a person facilitates a sale at retail if the person or
20 an affiliated person:

21 a. lists or advertises tangible personal property for
22 sale at retail in any forum, and

23 b. either directly or indirectly through agreements or
24 arrangements with third parties, collects the payment

1 from the purchaser and transmits the payment to the
2 person selling the property.

3 The term includes a person that may also be a vendor;

4 4. "Marketplace seller" means a person that has an agreement
5 with a marketplace facilitator pursuant to which the marketplace
6 facilitator facilitates sales for the person;

7 5. "Notice and reporting requirements" means the notice
8 requirements under Section 4 of this act and the reporting
9 requirements under Sections 5 and 6 of this act;

10 6. "Referral" means the transfer by a referrer of a potential
11 purchaser to a person that advertises or lists products for sale on
12 the referrer's platform;

13 7. a. "Referrer" means the person, other than a person
14 engaging in the business of printing or publishing a
15 newspaper, that, pursuant to an agreement or
16 arrangement with a marketplace seller or remote
17 seller, does the following:

- 18 (1) agrees to list or advertise for sale at retail
19 one or more products of the marketplace seller or
20 remote seller in a physical or electronic medium,
21 (2) receives consideration from the marketplace
22 seller or remote seller from the sale offered in
23 the listing or advertisement,
24

1 (3) transfers by telecommunications, Internet link or
2 other means, a purchaser to a marketplace seller,
3 remote seller or affiliated person to complete a
4 sale,

5 (4) does not collect a receipt from the purchaser for
6 the sale.

7 b. The term does not include a person that:

8 (1) provides Internet advertising services, and

9 (2) does not provide the marketplace seller's or
10 remote seller's shipping terms or advertise
11 whether a marketplace seller or remote seller
12 collects a sales or use tax.

13 c. The term includes a person that may also be a vendor;
14 and

15 8. "Remote seller" means a person, other than a marketplace
16 facilitator, a marketplace seller or a referrer, that does not
17 maintain a place of business in this state that, through a forum,
18 sells tangible personal property at retail, the sale or use of which
19 is subject to the tax imposed by Section 1354 or 1402 of Title 68 of
20 the Oklahoma Statutes. The term does not include an employee who in
21 the ordinary scope of employment renders services to his employer in
22 exchange for wages and salaries.

1 SECTION 3. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1392 of Title 68, unless there
3 is created a duplication in numbering, reads as follows:

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

19 B. A remote seller, a marketplace facilitator or a referrer
20 that makes an election under subsection A of this section to collect
21 and remit the tax imposed under Section 1354 or 1402 of Title 68 of
22 the Oklahoma Statutes shall obtain a permit under Section 1364 or
23 1407 of Title 68 of the Oklahoma Statutes.

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1 C. The requirement by a marketplace facilitator to make an
2 election under subsection A of this section shall only apply to the
3 following:

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

7 2. Sales made by a marketplace facilitator on its own behalf if
8 the marketplace facilitator does not maintain a place of business in
9 this state.

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

12 1. Directly resulting from a referral of a purchaser to a
13 marketplace seller that does not maintain a place of business in
14 this state;

15 2. Directly resulting from a referral of a purchaser to a
16 remote seller; and

17 3. Of the referrer's own products if the referrer does not
18 maintain a place of business in this state.

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

23 E. An election made on or before July 1, 2018, shall be in
24 effect for the 2018-2019 fiscal year. A remote seller, a

1 marketplace facilitator or a referrer may change an election to
2 comply with the notice and reporting requirements to an election to
3 collect and remit the tax imposed under Section 1354 or 1402 of
4 Title 68 of the Oklahoma Statutes at any time during a fiscal year
5 by filing a new election with the Commission and obtaining a permit
6 under Section 1364 or 1407 of Title 68 of the Oklahoma Statutes.
7 The new election shall be effective thirty (30) days after the
8 filing and shall be effective for the balance of the fiscal year in
9 which the new election was filed and for the next succeeding fiscal
10 year.

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

15 G. In addition to records that may be required to be maintained
16 under other applicable provisions of Title 68 of the Oklahoma
17 Statutes by a remote seller, a marketplace facilitator or a
18 referrer, a remote seller, a marketplace facilitator or a referrer
19 subject to this act shall also be subject to Section 1365 of Title
20 68 of the Oklahoma Statutes relating to the keeping of records and
21 Section 248 of Title 68 of the Oklahoma Statutes relating to the
22 examination of records by the Commission and agents and employees of
23 the Commission.

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1 SECTION 4. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1393 of Title 68, unless there
3 is created a duplication in numbering, reads as follows:

4 A. A remote seller, a marketplace facilitator or a referrer
5 required to make an election under subsection A of Section 3 of this
6 act that does not elect to collect and remit the tax imposed by
7 Section 1354 or 1402 of Title 68 of the Oklahoma Statutes shall
8 comply with the applicable notice requirements of this section.

9 B. A remote seller or marketplace facilitator subject to the
10 requirements of this section shall:

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

15 a. sales or use tax may be due in connection with the
16 purchase and delivery of the tangible personal
17 property,

18 b. the state requires the purchaser to file a return if
19 use tax is due in connection with the purchase and
20 delivery, and

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

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

24

- 1 a. a statement that sales or use tax is not being
- 2 collected in connection with the purchase,
- 3 b. a statement that the purchaser may be required to
- 4 remit use tax directly to the Tax Commission, and
- 5 c. instructions for obtaining additional information from
- 6 the Commission regarding whether and how to remit use
- 7 tax to the Commission.

8 C. The notice required by paragraph 2 of subsection B of this
9 section must be prominently displayed on all invoices and order
10 forms and on each sales receipt or similar document, whether in
11 paper or electronic form, provided to the purchaser. No statement
12 that sales or use tax is not imposed on a transaction may be made by
13 a remote seller or marketplace facilitator unless the transaction is
14 exempt from sales and use tax pursuant to Title 68 of the Oklahoma
15 Statutes or other applicable state law.

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

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

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

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

4 4. The notice is required by this section;

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

8 6. If the person to whom the purchaser is being referred does
9 not collect sales or use tax on a subsequent purchase by the
10 purchaser, the person may be required to provide information to the
11 purchaser and the Commission about the purchaser's potential use tax
12 liability.

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

17 SECTION 5. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 1394 of Title 68, unless there
19 is created a duplication in numbering, reads as follows:

20 A. A remote seller or marketplace facilitator required to make
21 an election under subsection A of Section 3 of this act that does
22 not elect to collect and remit the tax imposed by Section 1354 or
23 1402 of Title 68 of the Oklahoma Statutes shall, no later than
24 January 31 of each year, provide a written report to each purchaser

1 required to receive the notice under paragraph 2 of subsection B of
2 Section 4 of this act during the immediately preceding calendar year
3 that includes all of the following:

4 1. A statement that the remote seller or marketplace
5 facilitator did not collect sales or use tax in connection with the
6 purchaser's transactions with the remote seller or marketplace
7 facilitator and that the purchaser may be required to remit use tax
8 to the Tax Commission;

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

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

16 4. A statement that the remote seller or marketplace
17 facilitator is required to submit a report to the Commission under
18 Section 6 of this act that includes the name of the purchaser and
19 the aggregate dollar amount of the purchaser's purchases from the
20 remote seller or marketplace facilitator; and

21 5. Such additional information as the Commission may reasonably
22 require.

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

4 C. The report required under subsection A of this section shall
5 be mailed by first class mail in an envelope prominently marked with
6 words indicating that important tax information is enclosed to the
7 purchaser's billing addresses, if known, or, if unknown, to the
8 purchaser's shipping address. If the purchaser's billing and
9 shipping addresses are unknown, the report shall be sent
10 electronically to the purchaser's last known email address with a
11 subject heading indicating that important tax information is being
12 provided.

13 D. A referrer required to make an election under subsection A
14 of Section 3 of this act that does not elect to collect and remit
15 the tax imposed by Section 1354 or 1402 of Title 68 of the Oklahoma
16 Statutes shall, no later than January 31 of each year, provide a
17 written notice to each remote seller to whom the referrer
18 transferred a potential purchaser located in this state during the
19 immediately preceding calendar year that includes all of the
20 following:

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

23 2. A statement that the remote seller may be required to make
24 the election required by subsection A of Section 3 of this act; and

1 3. Instructions for obtaining additional information regarding
2 sales and use tax from the Commission.

3 SECTION 6. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1395 of Title 68, unless there
5 is created a duplication in numbering, reads as follows:

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

15 1. The purchaser's name;

16 2. The purchaser's billing address and, if different, the
17 purchaser's last known mailing address;

18 3. The address within this state to which products were
19 delivered to the purchaser;

20 4. The aggregate dollar amount of the purchaser's purchases
21 from the remote seller or marketplace facilitator; and

22 5. The name and address of the remote seller, marketplace
23 facilitator or marketplace seller that made the sales to the
24 purchaser.

1 B. A referrer required to make an election under subsection A
2 of Section 3 of this act that does not elect to collect and remit
3 the tax imposed by Section 1354 or 1402 of Title 68 of the Oklahoma
4 Statutes shall, no later than January 31 of each year, submit a
5 report to the Commission. The report shall include a list of
6 persons who received the notice required under subsection D of
7 Section 5 of this act.

8 C. The Commission shall prescribe the forms of the reports
9 required under this section and shall make them available on its
10 publicly accessible Internet website. The reports shall be
11 submitted electronically in such manner as the Commission shall
12 require.

13 D. A report required under this section shall be submitted by
14 an officer of the remote seller, the marketplace facilitator or the
15 referrer and shall include a statement, made under penalty of
16 perjury, by the officer that the remote seller, the marketplace
17 facilitator or the referrer made reasonable efforts to comply with
18 the notice and reporting requirements of this act.

19 SECTION 7. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 1396 of Title 68, unless there
21 is created a duplication in numbering, reads as follows:

22 A. The Commission shall assess a penalty in the amount of
23 Twenty Thousand Dollars (\$20,000.00) or twenty percent (20%) of
24 total sales in Oklahoma during the previous twelve (12) months,

1 whichever is less, against a remote seller, a marketplace
2 facilitator or a referrer that makes an election under subsection A
3 of Section 3 of this act to comply with the notice and reporting
4 requirements, or is deemed to have made such election under
5 subsection F of Section 3 of this act, and fails to comply with the
6 requirements under Section 5 or 6 of this act. The penalty shall be
7 assessed separately for each violation but may only be assessed once
8 in a calendar year.

9 B. A remote seller, a marketplace facilitator or a referrer
10 that makes an election under subsection A of Section 3 of this act
11 to collect and remit the tax imposed under Section 1354 or 1402 of
12 Title 68 of the Oklahoma Statutes shall be subject to all of the
13 provisions of Title 68 of the Oklahoma Statutes with respect to the
14 collection and remittance of such tax and shall be subject to all of
15 the penalties and interest levied under Title 68 of the Oklahoma
16 Statutes for failing to comply with the provisions of this act
17 except as provided in this section.

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

22 D. A marketplace facilitator or a referrer is relieved of
23 liability under subsection B of this section if the marketplace
24 facilitator or the referrer can show to the satisfaction of the

1 Commission that the failure to collect the correct amount of tax was
2 due to incorrect information given to the marketplace facilitator or
3 the referrer by a marketplace seller or remote seller.

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

12 SECTION 8. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1397 of Title 68, unless there
14 is created a duplication in numbering, reads as follows:

15 Nothing in this act affects the obligations of a vendor to
16 register with the Tax Commission and to collect and remit sales tax
17 or use tax."

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