

**HB1301/885665/1**

BY: Committee on Ways and Means

AMENDMENTS TO HOUSE BILL 1301  
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, strike line 2 in its entirety and substitute “Taxation of Online Sales – Marketplace Facilitators and Sellers of Other Tobacco Products”; in line 3, after the first “of” insert “altering the distribution of certain sales and use tax revenue;”; in line 10, after “circumstances;” insert “providing that a marketplace facilitator is not liable for a failure to collect certain sales and use taxes except under certain circumstances; authorizing the Comptroller, under certain circumstances, to waive the requirement that certain marketplace facilitators collect the sales and use tax on certain transactions;”; in line 16, after “license;” insert “requiring certain out-of-state sellers to pay the tobacco tax on pipe tobacco or certain premium cigars under certain circumstances;”; in line 18, after “Act;” insert “prohibiting the Comptroller, under certain circumstances, from imposing certain penalties and interest; making the provisions of this Act severable;”; in line 19, after “tax” insert “and payment of the tobacco tax”; and in line 27, strike “and 11-502.1” and substitute “11-502.1, and 12-302(e)”.

On page 2, in line 3, after “Section” insert “2-1303”; and in line 4, before “and” insert “12-101”.

AMENDMENT NO. 2

On page 2, after line 9, insert:

“2-1303.”

**(A)** After making the distributions required under §§ 2-1301 through 2-1302.1 of this subtitle, the Comptroller shall pay:

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(1) revenues from the hotel surcharge into the Dorchester County Economic Development Fund established under § 10–130 of the Economic Development Article; [and]

(2) SUBJECT TO SUBSECTION (B) OF THIS SECTION, TO THE BLUEPRINT FOR MARYLAND’S FUTURE FUND ESTABLISHED UNDER § 5-219 OF THE EDUCATION ARTICLE, REVENUES COLLECTED AND REMITTED BY:

(I) A MARKETPLACE FACILITATOR; OR

(II) A PERSON THAT ENGAGES IN THE BUSINESS OF AN OUT-OF-STATE VENDOR AND WHO IS REQUIRED TO COLLECT AND REMIT SALES AND USE TAX AS SPECIFIED IN COMAR 03.06.01.33B(5); AND

(3) the remaining sales and use tax revenue into the General Fund of the State.

(B) FOR EACH FISCAL YEAR, THE COMPTROLLER SHALL PAY INTO THE GENERAL FUND OF THE STATE THE FIRST \$100,000,000 OF REVENUES COLLECTED AND REMITTED BY:

(1) A MARKETPLACE FACILITATOR; OR

(2) A PERSON THAT ENGAGES IN THE BUSINESS OF AN OUT-OF-STATE VENDOR AND WHO IS REQUIRED TO COLLECT AND REMIT SALES AND USE TAX AS SPECIFIED IN COMAR 03.06.01.33B(5).” .

AMENDMENT NO. 3

On pages 2 and 3, strike in their entirety the lines beginning with line 12 on page 2 through line 12 on page 3, inclusive, and substitute:

“(C-2)(1) “MARKETPLACE FACILITATOR” MEANS A PERSON THAT:

(I) FACILITATES A RETAIL SALE BY A MARKETPLACE SELLER BY LISTING OR ADVERTISING FOR SALE IN A MARKETPLACE TANGIBLE PERSONAL PROPERTY; AND

(II) REGARDLESS OF WHETHER THE PERSON RECEIVES COMPENSATION OR OTHER CONSIDERATION IN EXCHANGE FOR THE PERSON’S SERVICES, DIRECTLY OR INDIRECTLY THROUGH AGREEMENTS WITH THIRD PARTIES, COLLECTS PAYMENT FROM A BUYER AND TRANSMITS THE PAYMENT TO THE MARKETPLACE SELLER.

(2) “MARKETPLACE FACILITATOR” DOES NOT INCLUDE:

(I) A PLATFORM OR FORUM THAT EXCLUSIVELY PROVIDES INTERNET ADVERTISING SERVICES, INCLUDING LISTING PRODUCTS FOR SALE, IF THE PLATFORM OR FORUM DOES NOT ALSO ENGAGE, DIRECTLY OR INDIRECTLY, IN COLLECTING PAYMENT FROM A BUYER AND TRANSMITTING THAT PAYMENT TO THE VENDOR;

(II) A PAYMENT PROCESSOR BUSINESS APPOINTED BY A VENDOR TO HANDLE PAYMENT TRANSACTIONS FROM CLIENTS, INCLUDING CREDIT CARDS AND DEBIT CARDS, WHOSE ONLY ACTIVITY WITH RESPECT TO MARKETPLACE SALES IS TO HANDLE TRANSACTIONS BETWEEN TWO PARTIES;

(III) A PEER-TO-PEER CAR SHARING PROGRAM, AS DEFINED IN § 19-520 OF THE INSURANCE ARTICLE; OR

(Over)

(IV) A DELIVERY SERVICE COMPANY THAT DELIVERS TANGIBLE PERSONAL PROPERTY ON BEHALF OF A MARKETPLACE SELLER THAT IS ENGAGED IN THE BUSINESS OF A RETAIL VENDOR AND HOLDS A LICENSE ISSUED UNDER SUBTITLE 7 OF THIS TITLE.”.

AMENDMENT NO. 4

On page 5, after line 8, insert:

“(F) (1) THIS SUBSECTION DOES NOT APPLY IF A MARKETPLACE FACILITATOR AND A MARKETPLACE SELLER ARE RELATED ENTITIES.

(2) A MARKETPLACE FACILITATOR IS NOT LIABLE FOR A FAILURE TO COLLECT THE CORRECT AMOUNT OF SALES AND USE TAX DUE UNDER THIS SECTION IF THE MARKETPLACE FACILITATOR DEMONSTRATES TO THE SATISFACTION OF THE COMPTROLLER THAT THE FAILURE WAS THE RESULT OF INSUFFICIENT OR INCORRECT INFORMATION PROVIDED BY THE MARKETPLACE SELLER.”;

in line 9, strike “(F)” and substitute “(G)”; and after line 12, insert:

“(H) (1) A MARKETPLACE FACILITATOR AND MARKETPLACE SELLER MAY APPLY TO THE COMPTROLLER FOR A WAIVER OF THE COLLECTION REQUIREMENT UNDER THIS SECTION IF:

(I) THE MARKETPLACE SELLER IS A COMMUNICATIONS COMPANY THAT IS PUBLICLY TRADED OR IS CONTROLLED, DIRECTLY OR INDIRECTLY, BY A COMPANY THAT IS PUBLICLY TRADED;

(II) THE MARKETPLACE FACILITATOR AND MARKETPLACE SELLER ENTER INTO AN AGREEMENT THAT THE MARKETPLACE SELLER WILL

COLLECT AND REMIT ALL APPLICABLE SALES AND USE TAXES IMPOSED UNDER THIS TITLE; AND

(III) THE MARKETPLACE SELLER PROVIDES EVIDENCE TO THE MARKETPLACE FACILITATOR THAT THE MARKETPLACE SELLER IS LICENSED UNDER § 11-702 OF THIS TITLE TO ENGAGE IN THE BUSINESS OF AN OUT-OF-STATE VENDOR IN THE STATE OR A RETAIL VENDOR IN THE STATE.

(2) IF THE WAIVER UNDER PARAGRAPH (1) OF THIS SUBSECTION IS AUTHORIZED:

(I) THE MARKETPLACE SELLER SUBJECT TO THE AGREEMENT UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL COLLECT AND REMIT THE SALES AND USE TAX IMPOSED UNDER THIS TITLE;

(II) THE MARKETPLACE FACILITATOR IS NOT REQUIRED TO COLLECT OR REMIT THE SALES AND USE TAX IMPOSED UNDER THIS TITLE; AND

(III) THE MARKETPLACE FACILITATOR IS NOT LIABLE FOR THE FAILURE OF A MARKETPLACE SELLER TO COLLECT AND REMIT ANY SALES AND USE TAX IMPOSED UNDER THIS TITLE.

(3) THE COMPTROLLER SHALL ADOPT REGULATIONS THAT ESTABLISH:

(I) THE CRITERIA FOR OBTAINING A WAIVER UNDER THIS SUBSECTION; AND

(II) THE PROCESS AND PROCEDURE TO APPLY FOR A WAIVER.

(Over)

(1) (1) IF THE COMPTROLLER CONDUCTS AN AUDIT FOR COMPLIANCE WITH THIS SECTION, THE COMPTROLLER MAY AUDIT ONLY THE MARKETPLACE FACILITATOR FOR SALES MADE BY A MARKETPLACE SELLER THAT ARE FACILITATED BY THE MARKETPLACE FACILITATOR.

(2) THE COMPTROLLER MAY NOT AUDIT THE MARKETPLACE SELLER FOR SALES FACILITATED BY THE MARKETPLACE FACILITATOR FOR WHICH THE MARKETPLACE FACILITATOR COLLECTED OR SHOULD HAVE COLLECTED THE SALES AND USE TAX DUE.”.

AMENDMENT NO. 5

On page 8, after line 5, insert:

“12-101.

(a) In this title the following words have the meanings indicated.

(b) “Cigarette” means any size or shaped roll for smoking that is made of tobacco or tobacco mixed with another ingredient and wrapped in paper or in any other material except tobacco.

(c) “Manufacturer” means a person who acts as a manufacturer as defined in § 16-201 of the Business Regulation Article or as an other tobacco products manufacturer as defined in § 16.5-101 of the Business Regulation Article.

(d) “Other tobacco product” means:

(1) any cigar or roll for smoking, other than a cigarette, made in whole or in part of tobacco; or

(2) any other tobacco or product made primarily from tobacco, other than a cigarette, that is intended for consumption by smoking or chewing or as snuff.

(e) “Other tobacco products retailer” means a person authorized under § 16.5–205(b) of the Business Regulation Article to purchase other tobacco products on which the tobacco tax has not been paid.

**(F) “OUT-OF-STATE SELLER” MEANS A PERSON LOCATED OUTSIDE THE STATE THAT SELLS, HOLDS FOR SALE, SHIPS, OR DELIVERS PREMIUM CIGARS OR PIPE TOBACCO TO CONSUMERS IN THE STATE IF, DURING THE PREVIOUS CALENDAR YEAR OR THE CURRENT CALENDAR YEAR:**

**(1) THE PERSON’S GROSS REVENUE FROM THE SALE OF PREMIUM CIGARS OR PIPE TOBACCO IN THE STATE EXCEEDS \$100,000; OR**

**(2) THE PERSON SOLD PREMIUM CIGARS OR PIPE TOBACCO INTO THE STATE IN 200 OR MORE SEPARATE TRANSACTIONS.**

**(G) “PIPE TOBACCO” HAS THE MEANING STATED IN § 16.5-101 OF THE BUSINESS REGULATION ARTICLE.**

**(H) “PREMIUM CIGARS” HAS THE MEANING STATED IN § 16.5-101 OF THE BUSINESS REGULATION ARTICLE.**

**[(f)] (I) “Sell” means to exchange or transfer, or to make an agreement to exchange or transfer, title or possession of property, in any manner or by any means, for consideration.**

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**[(g)] (J)** “Tax stamp” means a device in the design and denomination that the Comptroller authorizes by regulation for the purpose of being affixed to a package of cigarettes as evidence that the tobacco tax is paid.

**[(h)] (K)** “Tobacconist” means a person authorized under § 16.5–205(e) of the Business Regulation Article to purchase other tobacco products on which the tobacco tax has not been paid.

**[(i)] (L)** “Unstamped cigarettes” means a package of cigarettes to which tax stamps are not affixed in the amount and manner required in § 12–304 of this title.

**[(i)] (M)** “Wholesale price” means the price for which a wholesaler buys other tobacco products, exclusive of any discount, trade allowance, rebate, or other reduction.

**[(k)] (N)** “Wholesaler” means, unless the context requires otherwise, a person who acts as a wholesaler as defined in § 16–201 of the Business Regulation Article or as an other tobacco products wholesaler as defined in § 16.5–101 of the Business Regulation Article.

12-302.

**(E) AN OUT-OF-STATE SELLER SHALL PAY THE TOBACCO TAX ON PIPE TOBACCO OR PREMIUM CIGARS ON WHICH THE TOBACCO TAX HAS NOT BEEN PAID.”**

AMENDMENT NO. 6

On page 8, after line 27, insert:

“SECTION 3. AND BE IT FURTHER ENACTED, That:

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(a) The Comptroller may not impose any penalty or interest on a marketplace facilitator that fails to collect and remit the sales and use tax as required by this Act if the marketplace facilitator demonstrates, to the satisfaction of the Comptroller, a hardship implementing the computer programs necessary to collect the sales and use tax.

(b) This section applies only to transactions completed on or before January 1, 2020.

SECTION 4. AND BE IT FURTHER ENACTED, That, if any provision of this Act or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Act that can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are declared severable.”;

in line 28, strike “3.” and substitute “5.”; and in line 29, strike “July” and substitute “October”.