

SB0728/969031/2

BY: Budget and Taxation Committee

AMENDMENTS TO SENATE BILL 728

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, 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;”; and in line 18, after “Act;” insert “prohibiting the Comptroller, under certain circumstances, from imposing certain penalties and interest;”.

On page 2, in line 3, after “Section” insert “2-1303.”.

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:

(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, REVENUES COLLECTED AND REMITTED BY A MARKETPLACE FACILITATOR OR A PERSON THAT ENGAGES IN THE BUSINESS OF AN OUT-OF-STATE VENDOR AND IS

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REQUIRED TO COLLECT AND REMIT SALES AND USE TAX UNDER 03.06.01.33B(5) OF THE CODE OF MARYLAND REGULATIONS INTO THE COMMISSION ON INNOVATION AND EXCELLENCE IN EDUCATION FUND ESTABLISHED UNDER § 5-219 OF THE EDUCATION ARTICLE; 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 THE FIRST \$100,000,000 OF REVENUES COLLECTED AND REMITTED BY A MARKETPLACE FACILITATOR OR A PERSON THAT ENGAGES IN THE BUSINESS OF AN OUT-OF-STATE VENDOR AND IS REQUIRED TO COLLECT AND REMIT SALES AND USE TAX UNDER 03.06.01.33B(5) OF THE CODE OF MARYLAND REGULATIONS INTO THE GENERAL FUND OF THE STATE.”.

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

(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

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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.

(i) (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

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On page 8, after line 27, insert:

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

(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.”;

in line 28, strike “3.” and substitute “4.”; and in line 29, strike “July” and substitute “October”.