A BILL ENTITLED

AN ACT concerning

Sales and Use Tax – Collection by Marketplace Facilitators

FOR the purpose of altering the definition of “vendor”, under the sales and use tax, to include certain marketplace facilitators and marketplace sellers; requiring a marketplace facilitator, under certain circumstances, to collect the sales and use tax on certain sales by a marketplace seller to a buyer in this State; authorizing a refund of the sales and use tax paid by a buyer under certain circumstances; requiring a marketplace facilitator to report the sales and use tax collected in a certain manner; prohibiting a class action from being brought against a marketplace facilitator in a court of this State under certain circumstances; requiring a marketplace facilitator to complete and file with the Comptroller a certain sales and use tax return within a certain period of time; specifying the contents of the return; authorizing a marketplace facilitator to file a certain consolidated return under certain circumstances; requiring a person to be licensed by the Comptroller before the person may engage in the business of a marketplace facilitator; prohibiting a person from engaging in the business of a marketplace facilitator without a certain license; defining certain terms; making certain conforming changes; providing for the construction and application of this Act; and generally relating to the collection of the sales and use tax.

BY repealing and reenacting, without amendments,

Article – Tax – General
Section 11–101(a), 11–701(a), and 13–901(a)
Annotated Code of Maryland
(2016 Replacement Volume and 2018 Supplement)

BY adding to

Article – Tax – General
Section 11–101(c–2) and (c–3), 11–403.1, and 11–502.1
Annotated Code of Maryland
(2016 Replacement Volume and 2018 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
BY repealing and reenacting, with amendments,

Article – Tax – General
Section 11–101(o), 11–501(a), 11–502(a), 11–701(d), 11–702, 11–703, 11–705, 11–712, and 13–901(g)
Annotated Code of Maryland
(2016 Replacement Volume and 2018 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Tax – General

11–101.

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

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

(1) FACILITATES FOR CONSIDERATION, REGARDLESS OF WHETHER
THE CONSIDERATION IS DEDUCTED AS FEES FROM THE TRANSACTION, THE SALE OF
A VENDOR’S PRODUCTS THROUGH A PHYSICAL OR ELECTRONIC MARKETPLACE
OPERATED BY THE PERSON;

(2) ENGAGES, DIRECTLY OR INDIRECTLY, THROUGH ONE OR MORE
AFFILIATES OF THE PERSON, IN ANY OF THE FOLLOWING ACTIVITIES:

(I) TRANSMITTING OR OTHERWISE COMMUNICATING THE
OFFER OR ACCEPTANCE BETWEEN A BUYER AND VENDOR;

(II) OWNING, RENTING, LICENSING, LEASING, MAKING
AVAILABLE, OR OPERATING ANY ELECTRONIC OR PHYSICAL INFRASTRUCTURE OR
ANY PROPERTY, PROCESS, METHOD, COPYRIGHT, TRADEMARK, OR PATENT THAT
CONNECTS MARKETPLACE SELLERS TO PURCHASERS FOR THE PURPOSE OF MAKING
RETAIL SALES;

(III) PROVIDING A VIRTUAL CURRENCY THAT BUYERS ARE
ALLOWED OR REQUIRED TO USE TO PURCHASE PRODUCTS FROM THE
MARKETPLACE SELLER; OR

(IV) PROVIDING SOFTWARE DEVELOPMENT, RESEARCH, OR
DEVELOPMENT ACTIVITIES RELATED TO ANY OF THE ACTIVITIES DESCRIBED UNDER
ITEMS (I) THROUGH (III) OF THIS ITEM, IF THE ACTIVITIES ARE DIRECTLY RELATED
TO A PHYSICAL OR ELECTRONIC MARKETPLACE OPERATED BY THE PERSON OR AN
AFFILIATED PERSON; AND
(3) ENGAGES IN ANY OF THE FOLLOWING ACTIVITIES WITH RESPECT TO THE MARKETPLACE SELLER’S PRODUCTS:

(I) PAYMENT PROCESSING SERVICES;

(II) FULFILLMENT OR STORAGE ACTIVITIES;

(III) LISTING PRODUCTS FOR SALE;

(IV) SETTING PRICES;

(V) BRANDING SALES AS THOSE OF THE MARKETPLACE FACILITATOR;

(VI) ORDER TAKING;

(VII) ADVERTISING OR PROMOTION; OR

(VIII) PROVIDING CUSTOMER SERVICE OR ACCEPTING OR ASSISTING WITH RETURNS OR EXCHANGES.

(C–3) “MARKETPLACE SELLER” MEANS A PERSON THAT MAKES A RETAIL SALE OR SALE FOR USE THROUGH A PHYSICAL OR ELECTRONIC MARKETPLACE OPERATED BY A MARKETPLACE FACILITATOR.

(o) (1) “Vendor” means a person who:

(i) engages in the business of an out–of–state vendor, as defined in § 11–701 of this title;

(ii) engages in the business of a retail vendor, as defined in § 11–701 of this title;

(iii) holds a special license issued under § 11–707 of this title; [or]

(iv) is an accommodations intermediary;

(V) ENGAGES IN THE BUSINESS OF A MARKETPLACE FACILITATOR; OR

(VI) ENGAGES IN THE BUSINESS OF A MARKETPLACE SELLER.

(2) “Vendor” includes, for an out–of–state vendor, a salesman,
representative, peddler, or canvasser whom the Comptroller, for the efficient administration of this title, elects to treat as an agent jointly responsible with the dealer, distributor, employer, or supervisor:

(i) under whom the agent operates; or

(ii) from whom the agent obtains the tangible personal property or taxable service for sale.

11–403.1.

(A) (1) A MARKETPLACE FACILITATOR SHALL COLLECT THE APPLICABLE SALES AND USE TAX DUE ON A RETAIL SALE OR SALE FOR USE BY A MARKETPLACE SELLER TO A BUYER IN THIS STATE.

(2) A MARKETPLACE SELLER IS NOT REQUIRED TO COLLECT THE APPLICABLE SALES AND USE TAX UNDER PARAGRAPH (1) OF THIS SUBSECTION TO THE EXTENT THAT THE MARKETPLACE FACILITATOR COLLECTS THE APPLICABLE SALES AND USE TAX.

(B) EXCEPT AS OTHERWISE PROVIDED IN THIS TITLE, UNLESS A BUYER IS OTHERWISE REQUIRED BY REGULATION TO PAY THE SALES AND USE TAX DIRECTLY TO THE COMPTROLLER, THE BUYER SHALL PAY THE SALES AND USE TAX TO THE MARKETPLACE FACILITATOR AT THE TIME OF THE TAXABLE SALE DESCRIBED UNDER SUBSECTION (A) OF THIS SECTION.

(C) A MARKETPLACE FACILITATOR, OR OTHER APPROPRIATE PARTY, SHALL REFUND TO A BUYER THE PROPORTIONATE AMOUNT OF SALES AND USE TAX THAT THE BUYER HAS PAID IF:

(1) (I) A SALE IS RESCINDED OR CANCELED; OR

(II) THE PROPERTY SOLD IS RETURNED TO THE MARKETPLACE FACILITATOR OR MARKETPLACE SELLER; AND

(2) THE PURCHASE PRICE IS WHOLLY OR PARTIALLY REPAID OR CREDITED.

(D) A MARKETPLACE FACILITATOR SHALL REPORT THE SALES AND USE TAX COLLECTED UNDER THIS SECTION SEPARATELY FROM THE SALES AND USE TAX COLLECTED BY THE MARKETPLACE FACILITATOR ON TAXABLE SALES MADE DIRECTLY BY THE MARKETPLACE FACILITATOR, OR AN AFFILIATE OF THE MARKETPLACE FACILITATOR, TO BUYERS IN THIS STATE.
(E) (1) A class action may not be brought against a marketplace facilitator in a court of this State on behalf of buyers arising from or in any way related to an overpayment of sales or use tax collected on sales facilitated by the marketplace facilitator, regardless of whether that claim is characterized as a tax refund claim.

(2) Paragraph (1) of this subsection may not be construed to affect a buyer’s right to seek a refund under subsection (C) of this section or Title 13, Subtitle 9 of this article.

(F) Nothing in this section affects the obligation of a buyer to remit the applicable sales and use tax for any taxable sale for which a marketplace facilitator fails to collect and remit the applicable sales and use tax.

11–501.

(a) A buyer who fails to pay the sales and use tax on a purchase or use subject to the tax to the vendor as required in § 11–403 of this title OR TO A MARKETPLACE FACILITATOR AS REQUIRED IN § 11–403.1 OF THIS TITLE or who is required by regulation to file a return for a purchase or use subject to the tax shall complete, under oath, and file with the Comptroller a sales and use tax return:

(1) on or before the 20th day of the month that follows the month in which the buyer makes that purchase or use; and

(2) for other periods and on other dates that the Comptroller specifies, by regulation, including periods in which the buyer does not make any purchase or use subject to the sales and use tax.

11–502.

(a) [Each] EXCEPT AS PROVIDED IN § 11–403.1(A) OF THIS TITLE AND § 11–502.1 OF THIS SUBTITLE, EACH vendor shall complete, under oath, and file with the Comptroller a sales and use tax return:

(1) on or before the 20th day of the month that follows the month in which the vendor makes any retail sale or sale for use; and

(2) for other periods and on other dates that the Comptroller specifies by regulation, including periods in which the vendor does not make any retail sale or sale for use.

11–502.1.
(A) Each marketplace facilitator shall complete, under oath, and file with the Comptroller a sales and use tax return:

(1) On or before the 20th day of the month that follows the month in which a marketplace seller makes any retail sale or sale for use through the marketplace facilitator; and

(2) For other periods and on other dates that the Comptroller specifies by regulation, including periods in which a marketplace seller does not make any retail sale or sale for use through the marketplace facilitator.

(B) A return shall state, for the period that the return covers:

(1) For a marketplace facilitator facilitating a retail sale or a sale for use:

   (I) The marketplace facilitator’s gross revenues from the sales of marketplace sellers that the marketplace facilitator has facilitated and delivered in the State;

   (II) The taxable price of sales of those marketplace sellers on which the sales and use tax is computed; and

   (III) The sales and use tax due; and

(2) For a marketplace facilitator facilitating a sale for use:

   (I) The total value of the tangible personal property or taxable service sold by marketplace sellers the use of which became subject to the sales and use tax; and

   (II) The sales and use tax due.

(C) If the Comptroller approves, a marketplace facilitator engaging in more than one business in which the marketplace facilitator facilitates retail sales or sales for use may file a consolidated return covering the activities of the businesses.

11–701.

(a) In this subtitle the following words have the meanings indicated.
(d) (1) “License” means a license issued by the Comptroller:

   (i) to engage in the business of an out-of-state vendor; [or]

   (ii) to engage in the business of a retail vendor; OR

   (III) TO ENGAGE IN THE BUSINESS OF A MARKETPLACE FACILITATOR.

(2) “License” includes a special license issued under § 11–707 of this subtitle.

A person shall be licensed by the Comptroller before the person may:

   (1) engage in the business of an out-of-state vendor in the State; [or]

   (2) engage in the business of a retail vendor in the State; OR

   (3) ENGAGE IN THE BUSINESS OF A MARKETPLACE FACILITATOR.

An applicant for a license to engage in the business of an out-of-state vendor [or],
to engage in the business of a retail vendor, OR TO ENGAGE IN THE BUSINESS OF A MARKETPLACE FACILITATOR shall submit an application to the Comptroller:

   (1) for each place of business in the State where the applicant sells tangible personal property or a taxable service;

   (2) if the applicant has no fixed place of business and sells from 1 or more vehicles, for each vehicle; or

   (3) if the applicant has no fixed place of business and does not sell from a vehicle, for the place designated as the address to which notices are to be mailed.

While it is effective, and except as provided under § 11–707(b) of this subtitle, a license authorizes the licensee:

   (1) to engage in the business of an out–of–state vendor; [or]

   (2) to engage in the business of a retail vendor; OR
(3) TO ENGAGE IN THE BUSINESS OF A MARKETPLACE FACILITATOR.

A person may not engage in the business of a retail vendor [or], engage in the business of an out-of-state vendor, OR ENGAGE IN THE BUSINESS OF A MARKETPLACE FACILITATOR without a license issued by the Comptroller under this subtitle.

13–901.

(a) A claim for refund may be filed with the tax collector who collects the tax, fee, or charge by a claimant who:

(1) erroneously pays to the State a greater amount of tax, fee, charge, interest, or penalty than is properly and legally payable;

(2) pays to the State a tax, fee, charge, interest, or penalty that is erroneously, illegally, or wrongfully assessed or collected in any manner; or

(3) pays a tax qualifying for refund under subsections (b) through (h) of this section.

(g) A claim for refund of sales and use tax may be filed by a claimant who:

(1) pays the tax on a sale exempt under §11–216 of this article;

(2) refunds the tax to a buyer in a canceled or rescinded sale under §11–403(c) OR §11–403.1(c) of this article;

(3) pays the tax in a canceled or rescinded sale for which the vendor OR MARKETPLACE FACILITATOR refuses to refund the tax as required under §11–403(c) OR §11–403.1(c) of this article; or

(4) pays the tax under §11–408(c) of this article on a cash sale or sale for use that is not a retail sale.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any sales of tangible personal property or taxable services for delivery in the State before the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That, subject to Section 2 of this Act, this Act shall take effect July 1, 2019.