

SENATE BILL 728

Q4

9lr0834
CF 9lr2587

By: **Senator Guzzone**

Introduced and read first time: February 4, 2019

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Sales and Use Tax – Collection by Marketplace Facilitators**

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

20 BY repealing and reenacting, without amendments,
21 Article – Tax – General
22 Section 11–101(a), 11–701(a), and 13–901(a)
23 Annotated Code of Maryland
24 (2016 Replacement Volume and 2018 Supplement)

25 BY adding to
26 Article – Tax – General
27 Section 11–101(c–2) and (c–3), 11–403.1, and 11–502.1
28 Annotated Code of Maryland
29 (2016 Replacement Volume and 2018 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, with amendments,
2 Article – Tax – General
3 Section 11–101(o), 11–501(a), 11–502(a), 11–701(d), 11–702, 11–703, 11–705,
4 11–712, and 13–901(g)
5 Annotated Code of Maryland
6 (2016 Replacement Volume and 2018 Supplement)

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

9 **Article – Tax – General**

10 11–101.

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

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

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

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

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

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

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

29 **(IV) PROVIDING SOFTWARE DEVELOPMENT, RESEARCH, OR**
30 **DEVELOPMENT ACTIVITIES RELATED TO ANY OF THE ACTIVITIES DESCRIBED UNDER**
31 **ITEMS (I) THROUGH (III) OF THIS ITEM, IF THE ACTIVITIES ARE DIRECTLY RELATED**
32 **TO A PHYSICAL OR ELECTRONIC MARKETPLACE OPERATED BY THE PERSON OR AN**
33 **AFFILIATED PERSON; AND**

1 **(3) ENGAGES IN ANY OF THE FOLLOWING ACTIVITIES WITH RESPECT**
 2 **TO THE MARKETPLACE SELLER’S PRODUCTS:**

3 **(I) PAYMENT PROCESSING SERVICES;**

4 **(II) FULFILLMENT OR STORAGE ACTIVITIES;**

5 **(III) LISTING PRODUCTS FOR SALE;**

6 **(IV) SETTING PRICES;**

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

9 **(VI) ORDER TAKING;**

10 **(VII) ADVERTISING OR PROMOTION; OR**

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

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

16 (o) (1) “Vendor” means a person who:

17 (i) engages in the business of an out-of-state vendor, as defined in
 18 § 11-701 of this title;

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

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

22 (iv) is an accommodations intermediary;

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

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

26 (2) “Vendor” includes, for an out-of-state vendor, a salesman,

1 representative, peddler, or canvasser whom the Comptroller, for the efficient
2 administration of this title, elects to treat as an agent jointly responsible with the dealer,
3 distributor, employer, or supervisor:

4 (i) under whom the agent operates; or

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

7 **11-403.1.**

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

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

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

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

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

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

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

28 (D) A MARKETPLACE FACILITATOR SHALL REPORT THE SALES AND USE TAX
29 COLLECTED UNDER THIS SECTION SEPARATELY FROM THE SALES AND USE TAX
30 COLLECTED BY THE MARKETPLACE FACILITATOR ON TAXABLE SALES MADE
31 DIRECTLY BY THE MARKETPLACE FACILITATOR, OR AN AFFILIATE OF THE
32 MARKETPLACE FACILITATOR, TO BUYERS IN THIS STATE.

1 **(E) (1) A CLASS ACTION MAY NOT BE BROUGHT AGAINST A MARKETPLACE**
2 **FACILITATOR IN A COURT OF THIS STATE ON BEHALF OF BUYERS ARISING FROM OR**
3 **IN ANY WAY RELATED TO AN OVERPAYMENT OF SALES OR USE TAX COLLECTED ON**
4 **SALES FACILITATED BY THE MARKETPLACE FACILITATOR, REGARDLESS OF**
5 **WHETHER THAT CLAIM IS CHARACTERIZED AS A TAX REFUND CLAIM.**

6 **(2) PARAGRAPH (1) OF THIS SUBSECTION MAY NOT BE CONSTRUED**
7 **TO AFFECT A BUYER'S RIGHT TO SEEK A REFUND UNDER SUBSECTION (C) OF THIS**
8 **SECTION OR TITLE 13, SUBTITLE 9 OF THIS ARTICLE.**

9 **(F) NOTHING IN THIS SECTION AFFECTS THE OBLIGATION OF A BUYER TO**
10 **REMIT THE APPLICABLE SALES AND USE TAX FOR ANY TAXABLE SALE FOR WHICH A**
11 **MARKETPLACE FACILITATOR FAILS TO COLLECT AND REMIT THE APPLICABLE**
12 **SALES AND USE TAX.**

13 11-501.

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

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

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

24 11-502.

25 (a) **[Each] EXCEPT AS PROVIDED IN § 11-403.1(A) OF THIS TITLE AND §**
26 **11-502.1 OF THIS SUBTITLE, EACH** vendor shall complete, under oath, and file with the
27 Comptroller a sales and use tax return:

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

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

33 **11-502.1.**

1 **(A) EACH MARKETPLACE FACILITATOR SHALL COMPLETE, UNDER OATH,**
2 **AND FILE WITH THE COMPTROLLER A SALES AND USE TAX RETURN:**

3 **(1) ON OR BEFORE THE 20TH DAY OF THE MONTH THAT FOLLOWS THE**
4 **MONTH IN WHICH A MARKETPLACE SELLER MAKES ANY RETAIL SALE OR SALE FOR**
5 **USE THROUGH THE MARKETPLACE FACILITATOR; AND**

6 **(2) FOR OTHER PERIODS AND ON OTHER DATES THAT THE**
7 **COMPTROLLER SPECIFIES BY REGULATION, INCLUDING PERIODS IN WHICH A**
8 **MARKETPLACE SELLER DOES NOT MAKE ANY RETAIL SALE OR SALE FOR USE**
9 **THROUGH THE MARKETPLACE FACILITATOR.**

10 **(B) A RETURN SHALL STATE, FOR THE PERIOD THAT THE RETURN COVERS:**

11 **(1) FOR A MARKETPLACE FACILITATOR FACILITATING A RETAIL SALE**
12 **OR A SALE FOR USE:**

13 **(I) THE MARKETPLACE FACILITATOR'S GROSS REVENUES**
14 **FROM THE SALES OF MARKETPLACE SELLERS THAT THE MARKETPLACE**
15 **FACILITATOR HAS FACILITATED AND DELIVERED IN THE STATE;**

16 **(II) THE TAXABLE PRICE OF SALES OF THOSE MARKETPLACE**
17 **SELLERS ON WHICH THE SALES AND USE TAX IS COMPUTED; AND**

18 **(III) THE SALES AND USE TAX DUE; AND**

19 **(2) FOR A MARKETPLACE FACILITATOR FACILITATING A SALE FOR**
20 **USE:**

21 **(I) THE TOTAL VALUE OF THE TANGIBLE PERSONAL PROPERTY**
22 **OR TAXABLE SERVICE SOLD BY MARKETPLACE SELLERS THE USE OF WHICH BECAME**
23 **SUBJECT TO THE SALES AND USE TAX; AND**

24 **(II) THE SALES AND USE TAX DUE.**

25 **(C) IF THE COMPTROLLER APPROVES, A MARKETPLACE FACILITATOR**
26 **ENGAGING IN MORE THAN ONE BUSINESS IN WHICH THE MARKETPLACE**
27 **FACILITATOR FACILITATES RETAIL SALES OR SALES FOR USE MAY FILE A**
28 **CONSOLIDATED RETURN COVERING THE ACTIVITIES OF THE BUSINESSES.**

29 11-701.

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

1 (d) (1) "License" means a license issued by the Comptroller:

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

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

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

6 (2) "License" includes a special license issued under § 11-707 of this
7 subtitle.

8 11-702.

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

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

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

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

13 11-703.

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

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

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

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

23 11-705.

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

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

27 (2) to engage in the business of a retail vendor; **OR**

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

2 11-712.

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

6 13-901.

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

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

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

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

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

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

17 (2) refunds the tax to a buyer in a canceled or rescinded sale under §
18 11-403(c) **OR § 11-403.1(C)** of this article;

19 (3) pays the tax in a canceled or rescinded sale for which the vendor **OR**
20 **MARKETPLACE FACILITATOR** refuses to refund the tax as required under § 11-403(c) **OR**
21 **§ 11-403.1(C)** of this article; or

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

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

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