

SENATE BILL 728

Q4

9lr0834
CF HB 1301

By: **Senator Guzzone**

Introduced and read first time: February 4, 2019

Assigned to: Budget and Taxation

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 22, 2019

CHAPTER _____

1 AN ACT concerning

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

3 FOR the purpose of altering the distribution of certain sales and use tax revenue; altering
4 the definition of “vendor”, under the sales and use tax, to include certain marketplace
5 facilitators and marketplace sellers; requiring a marketplace facilitator, under
6 certain circumstances, to collect the sales and use tax on certain sales by a
7 marketplace seller to a buyer in this State; authorizing a refund of the sales and use
8 tax paid by a buyer under certain circumstances; requiring a marketplace facilitator
9 to report the sales and use tax collected in a certain manner; prohibiting a class
10 action from being brought against a marketplace facilitator in a court of this State
11 under certain circumstances; providing that a marketplace facilitator is not liable for
12 a failure to collect certain sales and use taxes except under certain circumstances;
13 authorizing the Comptroller, under certain circumstances, to waive the requirement
14 that certain marketplace facilitators collect the sales and use tax on certain
15 transactions; requiring a marketplace facilitator to complete and file with the
16 Comptroller a certain sales and use tax return within a certain period of time;
17 specifying the contents of the return; authorizing a marketplace facilitator to file a
18 certain consolidated return under certain circumstances; requiring a person to be
19 licensed by the Comptroller before the person may engage in the business of a
20 marketplace facilitator; prohibiting a person from engaging in the business of a
21 marketplace facilitator without a certain license; defining certain terms; making
22 certain conforming changes; providing for the construction and application of this
23 Act; prohibiting the Comptroller, under certain circumstances, from imposing
24 certain penalties and interest; and generally relating to the collection of the sales
25 and use tax.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY repealing and reenacting, without amendments,
 2 Article – Tax – General
 3 Section 11–101(a), 11–701(a), and 13–901(a)
 4 Annotated Code of Maryland
 5 (2016 Replacement Volume and 2018 Supplement)

6 BY adding to
 7 Article – Tax – General
 8 Section 11–101(c–2) and (c–3), 11–403.1, and 11–502.1
 9 Annotated Code of Maryland
 10 (2016 Replacement Volume and 2018 Supplement)

11 BY repealing and reenacting, with amendments,
 12 Article – Tax – General
 13 Section ~~2–1303~~, 11–101(o), 11–501(a), 11–502(a), 11–701(d), 11–702, 11–703,
 14 11–705, 11–712, and 13–901(g)
 15 Annotated Code of Maryland
 16 (2016 Replacement Volume and 2018 Supplement)

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

19 **Article – Tax – General**

20 2–1303.

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

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

26 (2) SUBJECT TO SUBSECTION (B) OF THIS SECTION, REVENUES
 27 COLLECTED AND REMITTED BY A MARKETPLACE FACILITATOR OR A PERSON THAT
 28 ENGAGES IN THE BUSINESS OF AN OUT–OF–STATE VENDOR AND IS REQUIRED TO
 29 COLLECT AND REMIT SALES AND USE TAX UNDER 03.06.01.33B(5) OF THE CODE OF
 30 MARYLAND REGULATIONS INTO THE COMMISSION ON INNOVATION AND
 31 EXCELLENCE IN EDUCATION FUND ESTABLISHED UNDER § 5–219 OF THE
 32 EDUCATION ARTICLE; AND

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

1 **(B) FOR EACH FISCAL YEAR, THE COMPTROLLER SHALL PAY THE FIRST**
2 **\$100,000,000 OF REVENUES COLLECTED AND REMITTED BY A MARKETPLACE**
3 **FACILITATOR OR A PERSON THAT ENGAGES IN THE BUSINESS OF AN OUT-OF-STATE**
4 **VENDOR AND IS REQUIRED TO COLLECT AND REMIT SALES AND USE TAX UNDER**
5 **03.06.01.33B(5) OF THE CODE OF MARYLAND REGULATIONS INTO THE GENERAL**
6 **FUND OF THE STATE.**

7 11-101.

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

9 ~~(c-2) "MARKETPLACE FACILITATOR" MEANS A PERSON THAT:~~

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

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

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

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

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

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

31 ~~(3) ENGAGES IN ANY OF THE FOLLOWING ACTIVITIES WITH RESPECT~~
32 ~~TO THE MARKETPLACE SELLER'S PRODUCTS:~~

33 ~~(I) PAYMENT PROCESSING SERVICES;~~

- 1 ~~(II) FULFILLMENT OR STORAGE ACTIVITIES;~~
- 2 ~~(III) LISTING PRODUCTS FOR SALE;~~
- 3 ~~(IV) SETTING PRICES;~~
- 4 ~~(V) BRANDING SALES AS THOSE OF THE MARKETPLACE~~
 5 ~~FACILITATOR;~~
- 6 ~~(VI) ORDER TAKING;~~
- 7 ~~(VII) ADVERTISING OR PROMOTION; OR~~
- 8 ~~(VIII) PROVIDING CUSTOMER SERVICE OR ACCEPTING OR~~
 9 ~~ASSISTING WITH RETURNS OR EXCHANGES.~~

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

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

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

19 (2) “MARKETPLACE FACILITATOR” DOES NOT INCLUDE:

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

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

29 (III) A PEER-TO-PEER CAR SHARING PROGRAM, AS DEFINED IN §
 30 19-520 OF THE INSURANCE ARTICLE; OR

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

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

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

9 (i) engages in the business of an out-of-state vendor, as defined in
10 § 11-701 of this title;

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

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

14 (iv) is an accommodations intermediary;

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

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

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

22 (i) under whom the agent operates; or

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

25 **11-403.1.**

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

29 **(2) A MARKETPLACE SELLER IS NOT REQUIRED TO COLLECT THE**
30 **APPLICABLE SALES AND USE TAX UNDER PARAGRAPH (1) OF THIS SUBSECTION TO**

1 THE EXTENT THAT THE MARKETPLACE FACILITATOR COLLECTS THE APPLICABLE
2 SALES AND USE TAX.

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

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

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

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

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

16 (D) A MARKETPLACE FACILITATOR SHALL REPORT THE SALES AND USE TAX
17 COLLECTED UNDER THIS SECTION SEPARATELY FROM THE SALES AND USE TAX
18 COLLECTED BY THE MARKETPLACE FACILITATOR ON TAXABLE SALES MADE
19 DIRECTLY BY THE MARKETPLACE FACILITATOR, OR AN AFFILIATE OF THE
20 MARKETPLACE FACILITATOR, TO BUYERS IN THIS STATE.

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

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

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

31 (2) A MARKETPLACE FACILITATOR IS NOT LIABLE FOR A FAILURE TO
32 COLLECT THE CORRECT AMOUNT OF SALES AND USE TAX DUE UNDER THIS SECTION
33 IF THE MARKETPLACE FACILITATOR DEMONSTRATES TO THE SATISFACTION OF THE

1 COMPTROLLER THAT THE FAILURE WAS THE RESULT OF INSUFFICIENT OR
2 INCORRECT INFORMATION PROVIDED BY THE MARKETPLACE SELLER.

3 ~~(F)~~ (G) NOTHING IN THIS SECTION AFFECTS THE OBLIGATION OF A
4 BUYER TO REMIT THE APPLICABLE SALES AND USE TAX FOR ANY TAXABLE SALE FOR
5 WHICH A MARKETPLACE FACILITATOR FAILS TO COLLECT AND REMIT THE
6 APPLICABLE SALES AND USE TAX.

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

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

13 (II) THE MARKETPLACE FACILITATOR AND MARKETPLACE
14 SELLER ENTER INTO AN AGREEMENT THAT THE MARKETPLACE SELLER WILL
15 COLLECT AND REMIT ALL APPLICABLE SALES AND USE TAXES IMPOSED UNDER THIS
16 TITLE; AND

17 (III) THE MARKETPLACE SELLER PROVIDES EVIDENCE TO THE
18 MARKETPLACE FACILITATOR THAT THE MARKETPLACE SELLER IS LICENSED UNDER
19 § 11-702 OF THIS TITLE TO ENGAGE IN THE BUSINESS OF AN OUT-OF-STATE VENDOR
20 IN THE STATE OR A RETAIL VENDOR IN THE STATE.

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

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

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

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

31 (3) THE COMPTROLLER SHALL ADOPT REGULATIONS THAT
32 ESTABLISH:

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

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

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

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

12 11-501.

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

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

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

23 11-502.

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

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

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

32 **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.

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

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

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

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

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

7 11-702.

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

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

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

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

12 11-703.

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

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

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

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

22 11-705.

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

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

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

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

1 11-712.

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

5 13-901.

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

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

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

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

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

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

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

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

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

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

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

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

1 (b) This section applies only to transactions completed on or before January 1,
2 2020.

3 SECTION ~~3~~ 4. AND BE IT FURTHER ENACTED, That, subject to Section 2 of this
4 Act, this Act shall take effect ~~July~~ October 1, 2019.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.