

HOUSE BILL No. 2657

By Committee on Taxation

2-12

1 AN ACT concerning taxation; relating to sales and compensating use
2 taxes; requiring collection and remittance by marketplace facilitators;
3 nexus; amending K.S.A. 79-3702 and repealing the existing section.
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5 *Be it enacted by the Legislature of the State of Kansas:*

6 New Section 1. The provisions of sections 1 through 10, and
7 amendments thereto, shall be part of and supplemental to the Kansas
8 retailers' sales tax act.

9 New Sec. 2. As used in this act:

10 (a) "Act" means sections 1 through 10, and amendments thereto.

11 (b) "Affiliated person" means a person that, with respect to another
12 person: (1) Has an ownership interest of more than 5%, whether direct or
13 indirect, in the other person; or (2) is related to the other person because a
14 third person, or group of third persons who are affiliated persons with
15 respect to each other, holds an ownership interest of more than 5%,
16 whether direct or indirect, in the related persons.

17 (c) "Cumulative gross receipts" means gross receipts as defined in
18 K.S.A. 79-3602, and amendments thereto, and includes the gross receipts
19 received by the marketplace facilitator from its own direct sales combined
20 with the gross receipts received from sales it facilitates for sellers or
21 marketplace sellers.

22 (d) "Department" means the Kansas department of revenue.

23 (e) (1) "Marketplace facilitator" means a person that, pursuant to an
24 agreement with a marketplace seller, facilitates sales by such marketplace
25 seller through a physical or electronic marketplace operated by the person,
26 and:

27 (A) Engages directly or indirectly, through one or more affiliated
28 persons in any of the following:

29 (i) Transmitting or otherwise communicating the offer or acceptance
30 between a buyer and marketplace seller;

31 (ii) owning or operating the infrastructure, electronic or physical, or
32 technology that brings buyers and marketplace sellers together;

33 (iii) providing a virtual currency that buyers are allowed or required
34 to use to purchase products from the marketplace seller; or

35 (iv) software development or research and development activities
36 related to any of the activities described in this subsection, if such

1 the referrer's platform.

2 (i) (1) "Referrer" means a person, other than a person engaging in the
3 business of printing a newspaper or publishing a newspaper, who contracts
4 or otherwise agrees with a seller or marketplace seller to list or advertise
5 for sale one or more items in any medium, including a website or catalog;
6 receives a commission, fee or other consideration from the seller for the
7 listing or advertisement; transfers, via telephone, internet link, or other
8 means, a purchaser to a seller, marketplace seller or an affiliated person to
9 complete the sale; and does not collect receipts from the purchasers for the
10 transaction.

11 (2) "Referrer" does not include a person that:

12 (A) Provides internet advertising services; and

13 (B) does not ever provide either the seller's or marketplace seller's
14 shipping terms or advertise whether the seller or marketplace seller
15 charges sales tax.

16 (j) "Sale" or "sales" shall have the same meaning as defined in K.S.A.
17 79-3602(kk), and amendments thereto, whether or not such sales qualify
18 for a sales tax exemption.

19 (k) "Seller" shall have the same meaning as defined in K.S.A. 79-
20 3602(mm), and amendments thereto, and includes marketplace facilitators,
21 whether making sales in the seller's own right or on behalf of marketplace
22 sellers.

23 (l) "Tax" means the sales tax imposed under K.S.A. 79-3603, and
24 amendments thereto, ~~or the use tax imposed under K.S.A. 79-3703, and~~
25 ~~amendments thereto.~~

26 (m) "Transaction" means a sale of tangible personal property or a
27 service by a marketplace seller including, but not limited to, all such
28 marketplace seller's transactions for tangible personal property or a
29 service, however consummated, including transactions completed on a
30 website operated by: (1) The marketplace seller; (2) an affiliated person; or
31 (3) a contract party, including a marketplace facilitator.

32 (n) The meaning ascribed to words and phrases in K.S.A. 79-3602,
33 and amendments thereto, insofar as practicable, shall be applicable herein
34 unless otherwise provided.

35 New Sec. 3. (a) On and after July 1, 2020, any marketplace facilitator
36 that meets the criteria in subsection (b) or that has a physical presence in
37 this state, must collect and remit retail sales or use tax on all taxable retail
38 sales made or facilitated by the marketplace facilitator into this state
39 pursuant to this act. Marketplace facilitators must begin collecting state
40 and local retail sales or use taxes on taxable retail sales made or facilitated
41 by the marketplace facilitator sourced to this state beginning on the first
42 day of the next calendar month that is at least 30 days from the date that
43 the marketplace facilitator met the threshold described in subsection (b).

, or the prepaid wireless 911 fee imposed under K.S.A. 12-5371, and amendments thereto

On and after July 1, 2021, any marketplace facilitator that is obligated to collect the taxes imposed under this act, shall also collect and remit to the department applicable prepaid wireless 911 fees imposed under K.S.A. 12-5371, and amendments thereto.