

2021 Kansas Statutes

79-5603. Agreements with sellers; collection and administration requirements; liability. (a) Except as provided in K.S.A. 2021 Supp. 79-5602(b) or (c), and amendments thereto, a marketplace facilitator doing business in this state under K.S.A. 2021 Supp. 79-5602, and amendments thereto, shall collect and remit the taxes on all taxable sales made by the marketplace facilitator or facilitated for marketplace sellers to customers in this state, regardless of whether the marketplace seller for whom sales are facilitated has registered to collect taxes or would have been required to collect taxes if the sale had not been facilitated by the marketplace facilitator. A marketplace facilitator has the same rights and duties as a seller to collect and remit all such taxes. Marketplace facilitators and marketplace sellers may enter into agreements with each other regarding fulfillment of the requirements of this section, but the marketplace facilitator remains the party that is liable to the state for fulfilling such requirements.

(b) A marketplace facilitator shall either:

(1) Report the tax imposed pursuant to subsection (a) separately from any taxes collected on taxable sales made directly by the marketplace facilitator, or affiliates of the marketplace facilitator, to customers in this state using a separate form to be published by the department; or

(2) report the tax imposed pursuant to subsection (a) combined with any taxes collected on taxable sales made directly by the marketplace facilitator, or affiliates of the marketplace facilitator.

(c) No class action may be brought against a marketplace facilitator in any court of this state on behalf of customers arising from or in any way related to an overpayment of tax collected on sales facilitated by the marketplace facilitator, regardless of whether that claim is characterized as a tax refund claim. Nothing in this subsection affects a customer's right to seek a refund as provided under K.S.A. 79-3650, and amendments thereto.

(d) Nothing in this section affects the obligation of any consumer to remit the tax for any taxable transaction for which a marketplace facilitator or seller does not collect and remit the tax.

(e) The department shall solely audit the marketplace facilitator for sales made by marketplace sellers but facilitated by the marketplace facilitator, except with respect to transactions that are subject to K.S.A. 2021 Supp. 79-5602(b) or (c), and amendments thereto. The department shall not audit or otherwise assess tax against marketplace sellers for sales facilitated by a marketplace facilitator except to the extent that the marketplace facilitator seeks relief under subsection (f) or with respect to transactions that are subject to K.S.A. 2021 Supp. 79-5602(b) or (c), and amendments thereto.

(f) A marketplace facilitator shall be relieved of liability under this section for failure to collect and remit the correct amount of tax to the extent that the error was due to incorrect or insufficient information on the nature of the product or service given to the marketplace facilitator by the marketplace seller, if the marketplace facilitator can demonstrate a reasonable effort to obtain correct and sufficient information from the marketplace seller. This subsection shall not apply if the marketplace facilitator and the marketplace seller are under common ownership and control.

(g) The department may waive penalties and interest if a marketplace facilitator seeks liability relief and the department determines that reasonable cause exists.

(h) A marketplace facilitator shall be relieved of liability under this section if it can prove, to the satisfaction of the department, that the tax levied on a sale facilitated by the marketplace facilitator was paid to the department by the marketplace seller.

History: L. 2021, ch. 93, § 3; July 1.