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AB-1402 Marketplace facilitator: fee collection. (2021-2022)

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Assembly Bill No. 1402

CHAPTER 421

An act to amend Sections 6041, 6041.2, 6042, 6045, 6046, and 6047 of, and to add Section 6043.1 to, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 30, 2021. Filed with Secretary of State September 30, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1402, Levine. Marketplace facilitator: fee collection.

Existing law, the Fee Collection Procedures Law, provides for the administration and collection of various fee programs and was originally administered by the State Board of Equalization. In 2017, the California Department of Tax and Fee Administration was established, and existing law transferred many of the tax and fee administration duties, powers, and responsibilities of the board to the department.

Existing law, the Sales and Use Tax Law, administered by the department, establishes that a marketplace facilitator, as defined, is considered the seller and retailer for each sale facilitated through its marketplace, as defined, for purposes of determining whether that marketplace facilitator is required to register with the department under the Sales and Use Tax Law. Existing law treats any marketplace facilitator that is registered or required to register with the department under the Sales and Use Tax Law and who facilitates a retail sale of tangible personal property by a marketplace seller, as defined, as the retailer selling or making the sale of the tangible personal property sold through its marketplace for purposes of paying any sales taxes and collecting any use taxes. Existing law requires a marketplace seller to register with the department for purposes of sales and use taxes for sales made on its own behalf and not facilitated by a registered marketplace facilitator. Existing law grants marketplace facilitators relief from liability for the tax on a retail sale in specified circumstances.

This bill would extend the requirements of a marketplace facilitator relating to registration pursuant to the Sales and Use Tax Law to a law, as specified, that imposes a fee administered pursuant to the Fee Collection Procedures Law. The bill would treat a marketplace facilitator that is registered or required to register with the department under the Fee Collection Procedures Law, and who facilitates a retail sale of tangible personal property by a marketplace seller, as the retailer or dealer or both for purposes of collecting and remitting fees imposed upon the consumer in relation to that retail sale. The bill would further require a marketplace seller to register with the department for purposes of taxes or fees administered pursuant to the Fee Collection Procedures Law for sales made on its own behalf and not facilitated by a registered marketplace facilitator.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 6041 of the Revenue and Taxation Code is amended to read:

6041. For purposes of this chapter, the following definitions shall apply:

(a) "Marketplace" means a physical or electronic place, including, but not limited to, a store, booth, internet website, catalog, television or radio broadcast, or a dedicated sales software application, where a marketplace seller sells or offers for sale tangible personal property for delivery in this state regardless of whether the tangible personal property, marketplace seller, or marketplace has a physical presence in this state.

(b) "Marketplace facilitator" means a person who contracts with marketplace sellers to facilitate for consideration, regardless of whether deducted as fees from the transaction, the sale of the marketplace seller's products through a marketplace operated by the person or a related person and who does both of the following:

(1) Directly or indirectly, through one or more related persons, engages in any of the following:

(A) Transmitting or otherwise communicating the offer or acceptance between the buyer and seller.

(B) Owning or operating the infrastructure, electronic or physical, or technology that brings buyers and sellers together.

(C) Providing a virtual currency that buyers are allowed or required to use to purchase products from the seller.

(D) Software development or research and development activities related to any of the activities described in paragraph (2), if such activities are directly related to a marketplace operated by the person or a related person.

(2) Directly or indirectly, through one or more related persons, engages in any of the following activities with respect to the marketplace seller's products:

(A) Payment processing services.

(B) Fulfillment or storage services.

(C) Listing products for sale.

(D) Setting prices.

(E) Branding sales as those of the marketplace facilitator.

(F) Order taking.

(G) Providing customer service or accepting or assisting with returns or exchanges.

(c) "Marketplace seller" means a person who has an agreement with a marketplace facilitator and makes retail sales of tangible personal property through a marketplace owned, operated, or controlled by a marketplace facilitator, even if that person would not have been required to hold a seller's permit or permits, or required to collect the taxes imposed pursuant to Chapter 2 (commencing with Section 6051) or Chapter 3 (commencing with Section 6201), or a fee administered pursuant to Part 30 (commencing with Section 55001), had the sale not been made through that marketplace.

SEC. 2. Section 6041.2 of the Revenue and Taxation Code is amended to read:

6041.2. For purposes of this chapter, the following shall apply:

(a) A person is related to another person if both persons are related to each other pursuant to Section 267(b) of the Internal Revenue Code and the regulations thereunder.

(b) (1) A "fee administered pursuant to Part 30 (commencing with Section 55001)" shall include a charge pursuant to the Lead-Acid Battery Recycling Act of 2016 (Article 10.5 (commencing with Section 25215) of Chapter 6.5 of Division 20 of the Health and Safety Code), a lumber products assessment pursuant to Article 9.5 (commencing with Section 4629) of Chapter 8 of Part 2 of Division 4 of the Public Resources Code, a covered electronic waste recycling fee pursuant to Chapter 8.5 (commencing with Section 42460) of Part 3 of Division 30 of the Public Resources Code, and a California tire fee pursuant to Article 5 (commencing with Section 42885) of Chapter 17 of Part 3 of Division 30 of the Public Resources Code.

(2) A "fee administered pursuant to Part 30 (commencing with Section 55001)" shall not include the fee administered pursuant to Part 21.1 (commencing with Section 42100).

SEC. 3. Section 6042 of the Revenue and Taxation Code is amended to read:

6042. A marketplace facilitator shall be considered the seller, retailer, and dealer for each sale facilitated through its marketplace for purposes of determining whether the marketplace facilitator is required to register with the department under Chapter 2

(commencing with Section 6051), Chapter 3 (commencing with Section 6201), or under any other law that imposes a fee administered pursuant to Part 30 (commencing with Section 55001), in addition to each sale for which the marketplace facilitator is the seller, retailer, dealer, or any combination of the three, under Chapter 1 (commencing with Section 6001), or any other law that imposes a fee administered pursuant to Part 30 (commencing with Section 55001).

SEC. 4. Section 6043.1 is added to the Revenue and Taxation Code, to read:

6043.1. A marketplace facilitator that is registered with the department or required to register with the department under any law that imposes a fee administered pursuant to Part 30 (commencing with Section 55001) and that facilitates a retail sale of tangible personal property by a marketplace seller is the retailer or dealer or both for purposes of collecting and remitting any fee imposed on the consumer in regards to that retail sale.

SEC. 5. Section 6045 of the Revenue and Taxation Code is amended to read:

6045. A marketplace seller shall register with the department under Chapter 2 (commencing with Section 6051), Chapter 3 (commencing with Section 6201), or any other law that imposes a fee administered pursuant to Part 30 (commencing with Section 55001), as required, for retail sales made on its own behalf and not facilitated through a registered marketplace facilitator.

SEC. 6. Section 6046 of the Revenue and Taxation Code is amended to read:

6046. If the marketplace facilitator demonstrates to the satisfaction of the department that the marketplace facilitator has made a reasonable effort to obtain accurate and complete information from an unrelated marketplace seller about a retail sale and that the failure to remit the correct amount of taxes or fees imposed under this part, or under any other law that imposes a fee administered pursuant to Part 30 (commencing with Section 55001), was due to incorrect or incomplete information provided to the marketplace facilitator by the unrelated marketplace seller, then the marketplace facilitator shall be relieved of liability for the taxes or fees for that retail sale. This section does not apply with regard to a retail sale for which the marketplace facilitator is the retailer selling or making the sale of the tangible personal property on its own behalf or if the marketplace facilitator and marketplace seller are related. Where a marketplace facilitator is relieved of liability for the taxes or fees on a retail sale under this section, the marketplace seller is the retailer for that retail sale.

SEC. 7. Section 6047 of the Revenue and Taxation Code is amended to read:

6047. (a) A marketplace facilitator shall be relieved of the taxes or fees on retail sales facilitated through its marketplace as provided in subdivision (c) if the marketplace facilitator demonstrates to the satisfaction of the department all of the following:

- (1) The retail sales were facilitated for a marketplace seller prior to January 1, 2023, through a marketplace of the marketplace facilitator.
- (2) The marketplace facilitator is not the marketplace seller.
- (3) The marketplace facilitator and the marketplace seller are not related.
- (4) The failure to collect sales and use tax or any other fee administered pursuant to Part 30 (commencing with Section 55001) was due to a good faith error other than an error in sourcing the sale pursuant to the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)) or any other law that imposes a fee administered pursuant to Part 30 (commencing with Section 55001).

(b) To the extent that a marketplace facilitator is relieved of liability for collection of sales and use tax or any other fee administered pursuant to Part 30 (commencing with Section 55001) under this section, the marketplace seller for whom the marketplace facilitator has facilitated the retail sale is also relieved of liability, unless the marketplace seller is the retailer for those retail sales pursuant to Section 6046. The department may determine the manner in which a marketplace facilitator or marketplace seller shall claim the liability relief provided in this section.

(c) The liability relief provided under this section shall not exceed the following percentage of the sum of all sales and use tax and any other fee administered pursuant to Part 30 (commencing with Section 55001) due on sales facilitated by a marketplace facilitator for marketplace sellers, which sales shall not include sales by the marketplace facilitator or persons related to the marketplace facilitators:

- (1) For sales facilitated during the fourth quarter of 2019 or during the 2020 calendar year, 7 percent.
- (2) For sales facilitated during the 2021 calendar year, 5 percent.
- (3) For sales facilitated during the 2022 calendar year, 3 percent.

(d) Nothing in this section shall be construed to relieve any person of liability for collecting but failing to remit to the department sales and use tax or any other fee administered pursuant to Part 30 (commencing with Section 55001).