

JAN 19 2018

A BILL FOR AN ACT

RELATING TO TAXATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 237, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§237- Obligations of marketplace providers. (a) Any
5 marketplace provider that facilitated over \$100,000 in taxable
6 retail sales to customers in the State for taxable year 2018 for
7 one or more marketplace participants shall collect and remit
8 general excise taxes on all taxable retail sales that the
9 marketplace provider facilitates for marketplace participants to
10 customers in the State.

11 (b) Any marketplace provider that does not meet the
12 requirements pursuant to subsection (a) shall begin collecting
13 general excise taxes on taxable retail sales that the
14 marketplace provider facilitates for marketplace participants to
15 customers in the State after the marketplace provider has
16 facilitated over \$100,000 in taxable retail sales to customers
17 in the State for one or more marketplace participants.



1 Marketplace providers shall begin collecting general excise
2 taxes as required pursuant to this subsection on the first day
3 of the calendar month following the month in which the
4 marketplace provider meets the \$100,000 sales threshold.

5 (c) Once a marketplace provider has been required to
6 collect general excise taxes under subsection (a) or (b), such
7 collection shall continue for at least twelve months. If after
8 the expiration of the twelve-month period the marketplace
9 provider can demonstrate to the department that during the
10 twelve-month period the marketplace provider's total taxable
11 retail sales facilitated for one or more marketplace
12 participants was less than or equal to \$100,000, the marketplace
13 provider may elect to cease collecting tax until such time as
14 collection is required pursuant to subsection (b).

15 (d) Marketplace providers shall not be required to collect
16 and remit general excise taxes on all taxable retail sales
17 pursuant to this section if the marketplace provider requests
18 and maintains a copy of the marketplace participant's
19 registration to collect general excise taxes in the State.

20 (e) Marketplace providers shall report the general excise
21 taxes pursuant to this section separately from any general



1 excise taxes collected on taxable retail sales made directly by
2 the marketplace provider, or affiliates of the marketplace
3 provider, to customers in the State using a separate marketplace
4 provider form to be made available by the department.

5 (f) A marketplace provider shall not be subject to audit
6 by the department with respect to the retail sales for which it
7 is required to collect and remit general excise taxes pursuant
8 to this section. Nothing in this subsection shall preclude the
9 department from auditing marketplace participants with respect
10 to sales facilitated by marketplace providers.

11 (g) Marketplace providers may rely in good faith on
12 information, including nexus determinations and product
13 categorizations, provided by a marketplace participant. A
14 marketplace provider shall not be liable for the failure to
15 collect and remit the correct amount of general excise tax if:

16 (1) The error was due to incorrect or insufficient
17 information given to the marketplace provider by the
18 marketplace participant; or

19 (2) The marketplace participant or customer has remitted
20 the general excise tax at issue;



1 provided that this subsection shall not apply if the marketplace
2 provider and the marketplace participant are related.

3 (h) Marketplace providers shall be allowed a credit
4 against the general excise taxes required to be collected and
5 remitted on behalf of marketplace participants pursuant to this
6 section in an amount equal to an amount determined by the
7 department. Nothing in this section shall preclude the
8 department from auditing the credit taken against the general
9 excise taxes collected by marketplace providers on behalf of
10 marketplace participants.

11 (i) No class action shall be brought against a marketplace
12 provider in any court of the State on behalf of customers
13 arising from or in any way related to an overpayment of general
14 excise taxes collected on sales facilitated by the marketplace
15 provider, regardless of whether that claim is characterized as a
16 tax refund claim. Nothing in this section affects a customer's
17 right to seek a refund directly from the department.

18 (j) Nothing in this section shall affect the obligation of
19 any consumer to remit general excise taxes for any taxable
20 transaction for which a marketplace provider or seller does not
21 collect and remit general excise taxes.



1 (k) Nothing in this section shall interfere with the
2 ability of a marketplace provider and a marketplace participant
3 to enter into an agreement regarding the fulfillment of the
4 requirements of this section, including an agreement that the
5 marketplace participant will report and remit any general excise
6 taxes on retail sales facilitated by the marketplace provider.

7 (l) For the purposes of this section:

8 "Department" means the department of taxation.

9 "Marketplace participant" means any person that sells
10 tangible personal property or services via the forum provided by
11 a marketplace provider.

12 "Marketplace provider" means any person who, pursuant to an
13 agreement with one or more marketplace participants, facilitates
14 sales for marketplace participants; provided that a marketplace
15 provider facilitates a sale for a marketplace participant if the
16 marketplace provider:

17 (1) Provides a forum for the listing for sale of tangible
18 personal property or taxable services for sale by the
19 marketplace participant, including a catalog or
20 internet website; and



1 (2) Either directly or indirectly, through agreements or
2 arrangements with marketplace participants, collects
3 receipts from the customer and transmits those
4 receipts to the marketplace participant, regardless of
5 whether the marketplace provider receives compensation
6 or other consideration in exchange for its services.

7 "Related" means connected by legal guardianship,
8 trusteeship, blood, or marriage.

9 "Taxable retail sales" means any sales of tangible personal
10 property or services that are subject to general excise taxes
11 under this chapter."

12 SECTION 2. Chapter 238, Hawaii Revised Statutes, is
13 amended by adding a new section to be appropriately designated
14 and to read as follows:

15 "§238- Obligations of marketplace providers. (a) Any
16 marketplace provider that facilitated over \$100,000 in taxable
17 retail sales to customers in the State for taxable year 2018 for
18 one or more marketplace participants shall collect and remit use
19 taxes on all taxable retail sales that the marketplace provider
20 facilitates for marketplace participants to customers in the
21 State.



1 (b) Any marketplace provider that does not meet the
2 requirements pursuant to subsection (a) shall begin collecting
3 use taxes on taxable retail sales that the marketplace provider
4 facilitates for marketplace participants to customers in the
5 State after the marketplace provider has facilitated over
6 \$100,000 in taxable retail sales to customers in the State for
7 one or more marketplace participants. Marketplace providers
8 shall begin collecting use taxes as required pursuant to this
9 subsection on the first day of the calendar month following the
10 month in which the marketplace provider meets the \$100,000 sales
11 threshold.

12 (c) Once a marketplace provider has been required to
13 collect use taxes under subsection (a) or (b), such collection
14 shall continue for at least twelve months. If after the
15 expiration of the twelve-month period the marketplace provider
16 can demonstrate to the department that during the twelve-month
17 period the marketplace provider's total taxable retail sales
18 facilitated for one or more marketplace participants was less
19 than or equal to \$100,000, the marketplace provider may elect to
20 cease collecting tax until such time as collection is required
21 pursuant to subsection (b).



1 (d) Marketplace providers shall not be required to collect
2 and remit use taxes on all taxable retail sales pursuant to this
3 section if the marketplace provider requests and maintains a
4 copy of the marketplace participant's registration to collect
5 use tax in the State.

6 (e) Marketplace providers shall report the use taxes
7 pursuant to this section separately from any use taxes collected
8 on taxable retail sales made directly by the marketplace
9 provider, or affiliates of the marketplace provider, to
10 customers in the State using a separate marketplace provider
11 form to be made available by the department.

12 (f) A marketplace provider shall not be subject to audit
13 by the department with respect to the retail sales for which it
14 is required to collect and remit use taxes pursuant to this
15 section. Nothing in this subsection shall preclude the
16 department from auditing marketplace participants with respect
17 to sales facilitated by marketplace providers.

18 (g) Marketplace providers may rely in good faith on
19 information, including nexus determinations and product
20 categorizations, provided by a marketplace participant. A



1 marketplace provider shall not be liable for the failure to
2 collect and remit the correct amount of use tax if:

3 (1) The error was due to incorrect or insufficient
4 information given to the marketplace provider by the
5 marketplace participant; or

6 (2) The marketplace participant or customer has remitted
7 the use tax at issue;

8 provided that this subsection shall not apply if the marketplace
9 provider and the marketplace participant are related.

10 (h) Marketplace providers shall be allowed a credit
11 against the use taxes required to be collected and remitted on
12 behalf of marketplace participants pursuant to this section in
13 an amount equal to an amount determined by the department.

14 Nothing in this section shall preclude the department from
15 auditing the credit taken against the use taxes collected by
16 marketplace providers on behalf of marketplace participants.

17 (i) No class action shall be brought against a marketplace
18 provider in any court of the State on behalf of customers
19 arising from or in any way related to an overpayment of use
20 taxes collected on sales facilitated by the marketplace
21 provider, regardless of whether that claim is characterized as a



1 tax refund claim. Nothing in this section affects a customer's
2 right to seek a refund directly from the department.

3 (j) Nothing in this section shall affect the obligation of
4 any consumer to remit use taxes for any taxable transaction for
5 which a marketplace provider or seller does not collect and
6 remit use taxes.

7 (k) Nothing in this section shall interfere with the
8 ability of a marketplace provider and a marketplace participant
9 to enter into an agreement regarding the fulfillment of the
10 requirements of this section, including an agreement that the
11 marketplace participant will report and remit any use tax on
12 retail sales facilitated by the marketplace provider.

13 (l) For the purposes of this section:

14 "Department" means the department of taxation.

15 "Marketplace participant" means any person that sells
16 tangible personal property or services via the forum provided by
17 a marketplace provider.

18 "Marketplace provider" means any person who, pursuant to an
19 agreement with one or more marketplace participants, facilitates
20 sales for marketplace participants; provided that a marketplace



1 provider facilitates a sale for a marketplace participant if the
2 marketplace provider:

3 (1) Provides a forum for the listing for sale of tangible
4 personal property or taxable services for sale by the
5 marketplace participant, including a catalog or
6 internet website; and

7 (2) Either directly or indirectly, through agreements or
8 arrangements with marketplace participants, collects
9 receipts from the customer and transmits those
10 receipts to the marketplace participant, regardless of
11 whether the marketplace provider receives compensation
12 or other consideration in exchange for its services.

13 "Related" means connected by legal guardianship,
14 trusteeship, blood, or marriage.

15 "Taxable retail sales" means any sales of tangible personal
16 property or services that are subject to use taxes under this
17 chapter."

18 SECTION 3. Nothing in this Act shall override, alter, or
19 limit the department of taxation's ability to bring an action
20 against any person for uncollected or unpaid taxes when the
21 person, wilfully or unknowingly, fails to meet an obligation to



1 collect retail taxes prior to the enactment of this Act because
2 the person held the person's self out to be a marketplace
3 provider, marketplace facilitator, or any other business not
4 required to collect or pay retail taxes under state law, even
5 though the person would have been considered a retailer or
6 vendor pursuant to the laws in effect prior to the enactment of
7 this Act.

8 SECTION 4. If any provision of this Act, or the
9 application thereof to any person or circumstance, is held
10 invalid, the invalidity does not affect other provisions or
11 applications of the Act that can be given effect without the
12 invalid provision or application, and to this end the provisions
13 of this Act are severable.

14 SECTION 5. This Act shall apply to taxable years beginning
15 after December 31, 2017.

16 INTRODUCED BY:

BC
Michelle Sidani
Mail
to
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S.B. NO. 2282

Report Title:

Marketplace Provider; Marketplace Participant; General Excise
Tax; Use Tax; Collect

Description:

Requires marketplace providers to collect general excise and use
tax on taxable retail sales that the marketplace provider
facilities for marketplace participants to customers after a
certain threshold. Applies to taxable years after December 31,
2016.

*The summary description of legislation appearing on this page is for informational purposes only and is
not legislation or evidence of legislative intent.*

