House Bill 276 (AS PASSED HOUSE AND SENATE)
By: Representatives Harrell of the 106th, Kelley of the 16th, Carson of the 46th, Knight of the
130th, and Williamson of the 115th

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales
and use taxes, so as to revise the definition of dealer; to require the collection and remittance
of sales tax by certain persons that facilitate certain retail sales; to define marketplace
facilitator and marketplace seller; to prohibit certain class action suits; to provide for
limitations and exceptions; to provide for related matters; to provide for an effective date and
applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.
Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales and use
taxes, is amended in Code Section 48-8-2, relating to definitions, by adding a new
subparagraph to paragraph (8) and by adding two new paragraphs to read as follows:

"(M.3) Acts as a marketplace facilitator to facilitate retail sales that are taxable under
this chapter to be delivered, held for pickup, used, consumed, distributed, stored for use
or consumption, or rendered as a service within this state, if the total value of the sales
price of all such retail sales, combined across all its marketplace sellers and the
marketplace facilitator itself, equals or exceeds $100,000.00 in aggregate in the
previous or current calendar year;"

"(18.1) 'Marketplace facilitator' means a person that contracts with a seller in exchange
for any form of consideration to make available or facilitate a retail sale that is taxable
under this chapter on behalf of such seller by directly or through any agreement or
arrangement with another person:

(A) Providing a service that makes available or facilitates such retail sale in any
manner, including, but not limited to, promoting, marketing, advertising, taking orders
or reservations for, providing the physical or electronic infrastructure that brings
purchasers and marketplace sellers together for, or otherwise similarly assisting the
seller in making such retail sale, or transmitting or otherwise similarly communicating

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the offer and acceptance between the marketplace seller and the purchaser for, or
otherwise similarly assisting the seller for such retail sale, but excluding merely
processing the payments for such retail sale; and
(B) Collecting, charging, processing, or otherwise similarly facilitating payment for
such retail sale on behalf of the marketplace seller.

(18.2) 'Marketplace seller' means a person that conducts a retail sale through or
facilitated by any physical or electronic marketplace or platform operated directly or
indirectly by a marketplace facilitator, regardless of whether such marketplace seller is
required to be registered with the department pursuant to Code Section 48-8-59."

SECTION 2.

Said chapter is further amended in Code Section 48-8-30, relating to imposition of tax, rates,
and collection, by adding a new subsection to read as follows:

"(c.2) (1) A marketplace facilitator that meets the definition of a dealer provided in
subparagraph (M.3) of paragraph (8) of Code Section 48-8-2 shall constitute the dealer
and retailer for each retail sale taxable under this chapter at retail that it facilitates within
or outside this state on behalf of a marketplace seller if such retail sale is sourced, as
provided in Code Section 48-8-77, to a location within this state.
(2)(A) All taxes levied or imposed by this chapter on retail sales described in
paragraph (1) of this subsection shall be paid by the purchaser to the marketplace
facilitator that facilitates the retail sale on behalf of a marketplace seller.
(B) The marketplace facilitator shall remit such taxes to the commissioner as provided
in this article and, when received by the commissioner, the taxes shall be credited
against the taxes imposed on the retail sale.
(C) Each marketplace facilitator shall be liable for the full amount of taxes levied or
imposed by this chapter on all retail sales described in paragraph (1) of this subsection
or the amount of tax collected by such marketplace facilitator from all purchasers on
all such retail sales, whichever is greater.
(3) For the purposes of this subsection, it shall be prima-facie evidence that a retail sale
is sourced to a location within this state if it is to be held for pickup, used, consumed,
distributed, stored for use or consumption, or rendered as a service within this state.
(4) No retail sale that is not taxable to the purchaser at retail shall be taxable to the
marketplace facilitator. Taxes collected and remitted by a marketplace facilitator
pursuant to this subsection shall be subject to the credit otherwise granted by this article
for like taxes previously paid in another state. This subsection shall not be construed to
require a duplication in the payment of any tax.
(5) A marketplace seller shall not be obligated to collect and remit or be liable for the taxes levied or imposed by this chapter on any retail sale for which its marketplace facilitator is obligated and liable.

(6) The department may bring an action for a declaratory judgment in any superior court against any person that meets the definition of a dealer as provided in subparagraph (M.3) of paragraph (8) of Code Section 48-8-2, in order to establish that the collection obligation and liability established by this subsection is applicable and valid under state and federal law with respect to such a dealer. If such action presents a question for judicial determination related to the constitutionality of the imposition of taxes upon such a dealer, the court shall, upon motion, enjoin the state from enforcing the collection obligation against such a dealer. The superior court shall act on such declaratory judgment action and issue a final decision in an expeditious manner.

(7) 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 sales or use 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 of taxes erroneously paid.

(8) The department shall solely audit the marketplace facilitator for sales made by marketplace sellers but facilitated by the marketplace facilitator. The department will not audit marketplace sellers for sales facilitated by a marketplace facilitator except to the extent the marketplace facilitator seeks relief under paragraph (9) of this subsection.

(9) A marketplace facilitator is relieved of liability for failure to collect and remit the correct amount of tax imposed by this chapter to the extent that the marketplace facilitator demonstrates to the satisfaction of the department that the error was due to insufficient or incorrect information given to the marketplace facilitator by the marketplace seller and the marketplace facilitator made a reasonable effort to obtain correct and sufficient information from the marketplace seller; provided, however, that this paragraph shall not apply if the marketplace facilitator and the marketplace seller are related members as defined in Code Section 48-7-28.3. Where a marketplace facilitator is relieved of liability under this paragraph, the marketplace seller is solely liable for the amount of uncollected tax.

(10) A person that is a franchisor as such term is defined by 16 C.F.R. 436.1 shall not be a marketplace facilitator with respect to any dealer that is its franchisee, as such term is defined by 16 C.F.R. 436.1, and that would otherwise be a marketplace seller of such franchisor, provided that:

(A) In the prior calendar year, such franchisor and all of its franchisees combined made annual gross sales in the United States of at least $500 million in aggregate;
(B) Such franchisee maintains a valid certificate of registration as required by Code Section 48-8-59; and

(C) Such franchisee and franchisor maintain a valid contract providing that the franchisee will collect and remit all applicable taxes and fees that the franchisor would otherwise be required to collect and remit as a marketplace facilitator for such franchisee.

(11) A person shall not be a marketplace facilitator with respect to any dealer that would otherwise be its marketplace seller if:

(A) In the prior calendar year, such dealer made annual gross sales in Georgia of at least $500 million;

(B) Such dealer maintains a valid certificate of registration as required by Code Section 48-8-59; and

(C) Such dealer and person that would otherwise be the marketplace facilitator maintain a valid contract providing that the dealer will collect and remit all applicable taxes and fees that such person would otherwise be required to collect and remit as a marketplace facilitator for such dealer.

(12) A dealer shall return and report retail sales for which the dealer acted as a marketplace facilitator to the department as otherwise required by this chapter; provided, however, that such dealer may elect to return and report such retail sales either:

(A) Separately from retail sales made directly by such dealer using a separate marketplace facilitator return that shall be published by the department for such purposes; or

(B) Together with all other retail sales made directly by such dealer.

SECTION 3.

This Act shall become effective on April 1, 2020, and shall apply to all sales occurring on or after April 1, 2020.

SECTION 4.

All laws and parts of laws in conflict with this Act are repealed.