

BILL ANALYSIS

Senate Research Center
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S.B. 890
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Finance
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

- To implement the recent Supreme Court decision on online sales tax in order to create a level playing field for marketplace sellers.
- The United States Supreme Court recently decided the *Wayfair* case, which allows states to require sellers who are not physically located in the state to collect use tax for that state.
- Currently, the Tax Code does not require marketplace providers to collect and remit state and local sales and use tax on sales made on their marketplaces by third party sellers.

As proposed, S.B. 890 amends current law relating to the administration and collection of sales and use taxes applicable to sales involving marketplace providers.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the comptroller of public accounts of the State of Texas in SECTION 2 (Section 151.0242, Tax Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 151.008(b), Tax Code, as follows:

(b) Provides that "seller" and "retailer" include:

- (1)–(4) makes no changes to these subdivisions;
- (5)–(6) makes nonsubstantive changes to these subdivisions; and
- (7) a person who is a marketplace provider under Section 151.0242.

SECTION 2. Amends Subchapter B, Chapter 151, Tax Code, by adding Section 151.0242, as follows:

Sec. 151.0242. MARKETPLACE PROVIDERS AND MARKETPLACE SELLERS. (a) Defines "marketplace," "marketplace provider," and "marketplace seller."

(b) Provides that, except as otherwise provided by this section, a marketplace provider has the rights and duties of a seller or retailer under this chapter with respect to sales made through the marketplace.

(c) Requires a marketplace provider to:

- (1) certify to each marketplace seller that the marketplace provider assumes the rights and duties of a seller or retailer under this chapter with respect to sales made by the marketplace seller through the marketplace;

(2) report under Subchapter I (Reports, Payments, and Methods of Reporting) all sales made through the marketplace; and

(3) collect in the manner provided by Subchapters C (Imposition and Collection of Sales Tax) and D (Imposition and Collection of Use Tax) and remit the taxes imposed under this chapter on sales of taxable items made through the marketplace.

(d) Requires a marketplace seller who in good faith accepts a marketplace provider's certification under Subsection (c)(1) to exclude sales made through the marketplace from the marketplace seller's report under Subchapter I, notwithstanding Section 151.406 (Contents and Form of Report).

(e) Requires a marketplace seller to retain records for all marketplace sales as required by Section 151.025 (Records Required to be Kept).

(f) Requires a marketplace seller to furnish to the marketplace provider information that is required to correctly collect and remit taxes imposed under this chapter. Authorizes this information to include a certification of taxability that an item being sold is a taxable item, is not a taxable item, or is exempt from taxation.

(g) Provides that, except as provided by Subsection (b), a marketplace provider is not liable for failure to collect and remit the correct amount of taxes imposed under this chapter if the marketplace provider demonstrates that the failure resulted from the marketplace provider's good faith reliance on incorrect information provided by the marketplace seller. Provides that the marketplace seller is liable for a deficiency resulting from incorrect information provided by the marketplace seller.

(h) Provides that a marketplace provider and marketplace seller that are affiliates or associates, as defined by Section 1.002 (Definitions), Business Organizations Code, are jointly and severally liable for a deficiency resulting from a sale made by the marketplace seller through the marketplace.

(i) Provides that this section does not affect the tax liability of a purchaser under Section 151.052 (Collection by Retailer) or 151.102 (User Liable for Tax).

(j) Prohibits a court from certifying an action brought against a marketplace provider concerning this section as a class action.

(k) Authorizes the comptroller of public accounts of the State of Texas to adopt rules and forms to implement this section and by rule except certain small marketplace providers from some or all of the requirements of this section.

SECTION 3. Amends Section 321.203, Tax Code, by adding Subsection (e-1), as follows:

(e-1) Provides that, notwithstanding any other provision of this section, a sale of a taxable item made by a marketplace seller through a marketplace as provided by Section 151.00242 is consummated at the location in this state to which the item is shipped or delivered or at which possession is taken by the purchaser.

SECTION 4. Amends Section 323.203, Tax Code, by adding Subsection (e-1), as follows:

(e-1) Provides that, notwithstanding any other provision of this section, a sale of a taxable item made by a marketplace seller through a marketplace as provided by Section 151.0242 is consummated at the location in this state to which the item is shipped or delivered or which possession is taken by the purchaser.

SECTION 5. Provides that the changes in law made by this Act do not affect the tax liability accruing before the effective date of this Act. Provides that liability continues in effect as if this

Act had not been enacted, and the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability for those taxes.

SECTION 6. Effective date: September 1, 2019.