Chapter 182

H.B. No. 1525

- 1 AN ACT
- 2 relating to the administration and collection of sales and use
- 3 taxes applicable to sales involving marketplace providers.
- 4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
- 5 SECTION 1. Section 151.008(b), Tax Code, is amended to read
- 6 as follows:
- 7 (b) "Seller" and "retailer" include:
- 8 (1) a person in the business of making sales at auction
- 9 of tangible personal property owned by the person or by another;
- 10 (2) a person who makes more than two sales of taxable
- 11 items during a 12-month period, including sales made in the
- 12 capacity of an assignee for the benefit of creditors or receiver or
- 13 trustee in bankruptcy;
- 14 (3) a person regarded by the comptroller as a seller or
- 15 retailer under Section 151.024;
- 16 (4) a hotel, motel, or owner or lessor of an office or
- 17 residential building or development that contracts and pays for
- 18 telecommunications services for resale to guests or tenants;
- 19 (5) a person who engages in regular or systematic
- 20 solicitation of sales of taxable items in this state by the
- 21 distribution of catalogs, periodicals, advertising flyers, or
- 22 other advertising, by means of print, radio, or television media,
- 23 or by mail, telegraphy, telephone, computer data base, cable,
- 24 optic, microwave, or other communication system for the purpose of

- 1 effecting sales of taxable items; [and]
- 2 (6) a person who, under an agreement with another
- 3 person, is:
- 4 (A) entrusted with possession of tangible
- 5 personal property with respect to which the other person has title
- 6 or another ownership interest; and
- 7 (B) authorized to sell, lease, or rent the
- 8 property without additional action by the person having title to or
- 9 another ownership interest in the property; and
- (7) a person who is a marketplace provider under
- 11 <u>Section 151.0242</u>.
- 12 SECTION 2. Subchapter B, Chapter 151, Tax Code, is amended
- 13 by adding Section 151.0242 to read as follows:
- 14 Sec. 151.0242. MARKETPLACE PROVIDERS AND MARKETPLACE
- 15 SELLERS. (a) In this section:
- 16 (1) "Marketplace" means a physical or electronic
- 17 medium through which persons other than the owner or operator of the
- 18 medium make sales of taxable items. The term includes a store,
- 19 Internet website, software application, or catalog.
- 20 (2) "Marketplace provider" means a person who owns or
- 21 operates a marketplace and directly or indirectly processes sales
- 22 or payments for marketplace sellers.
- 23 (3) "Marketplace seller" means a seller, other than
- 24 the marketplace provider, who makes a sale of a taxable item through
- 25 <u>a marketplace</u>.
- (b) Except as otherwise provided by this section, a
- 27 marketplace provider has the rights and duties of a seller or

- 1 retailer under this chapter with respect to sales made through the
- 2 marketplace.
- 3 (c) A marketplace provider shall:
- 4 (1) certify to each marketplace seller that the
- 5 marketplace provider assumes the rights and duties of a seller or
- 6 retailer under this chapter with respect to sales made by the
- 7 marketplace seller through the marketplace;
- 8 (2) collect in the manner provided by Subchapters C
- 9 and D the taxes imposed by this chapter on sales of taxable items
- 10 made through the marketplace; and
- 11 (3) report and remit under Subchapter I the taxes
- 12 imposed by this chapter on all sales made through the marketplace.
- 13 (d) A marketplace seller who in good faith accepts a
- 14 marketplace provider's certification under Subsection (c)(1) shall
- 15 exclude sales made through the marketplace from the marketplace
- 16 seller's report under Subchapter I, notwithstanding Section
- 17 151.406.
- 18 (e) A marketplace seller shall retain records for all
- 19 marketplace sales as required by Section 151.025.
- 20 (f) A marketplace seller shall furnish to the marketplace
- 21 provider information that is required to correctly collect and
- 22 remit taxes imposed by this chapter. The information may include a
- 23 <u>certification of taxability that an item being sold is a taxable</u>
- 24 item, is not a taxable item, or is exempt from taxation.
- 25 (g) Except as provided by Subsection (h), a marketplace
- 26 provider is not liable for failure to collect and remit the correct
- 27 amount of taxes imposed by this chapter if the marketplace provider

- 1 demonstrates that the failure resulted from the marketplace
- 2 provider's good faith reliance on incorrect or insufficient
- 3 information provided by the marketplace seller. The marketplace
- 4 seller is liable for a deficiency resulting from incorrect or
- 5 insufficient information provided by the marketplace seller.
- 6 (h) A marketplace provider and marketplace seller that are
- 7 affiliates or associates, as defined by Section 1.002, Business
- 8 Organizations Code, are jointly and severally liable for a
- 9 deficiency resulting from a sale made by the marketplace seller
- 10 through the marketplace.
- 11 (i) This section does not affect the tax liability of a
- 12 purchaser under Section 151.052 or 151.102.
- 13 (j) A court may not certify an action brought against a
- 14 marketplace provider concerning this section as a class action.
- (k) The comptroller may adopt rules and forms to implement
- 16 this section and by rule except certain marketplace providers from
- 17 some or all of the requirements of this section.
- 18 SECTION 3. Section 321.203, Tax Code, is amended by adding
- 19 Subsection (e-1) to read as follows:
- 20 (e-1) Notwithstanding any other provision of this section,
- 21 a sale of a taxable item made by a marketplace seller through a
- 22 marketplace as provided by Section 151.0242 is consummated at the
- 23 location in this state to which the item is shipped or delivered or
- 24 at which possession is taken by the purchaser.
- 25 SECTION 4. Section 323.203, Tax Code, is amended by adding
- 26 Subsection (e-1) to read as follows:
- 27 (e-1) Notwithstanding any other provision of this section,

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- 1 a sale of a taxable item made by a marketplace seller through a
- 2 marketplace as provided by Section 151.0242 is consummated at the
- 3 location in this state to which the item is shipped or delivered or
- 4 at which possession is taken by the purchaser.
- 5 SECTION 5. The changes in law made by this Act do not affect
- 6 tax liability accruing before the effective date of this Act. That
- 7 liability continues in effect as if this Act had not been enacted,
- 8 and the former law is continued in effect for the collection of
 - taxes due and for civil and criminal enforcement of the liability
- 10 for those taxes.
- 11 SECTION 6. This Act takes effect October 1, 2019.

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resident of the Senate

Speaker of the House

I certify that H.B. No. 1525 was passed by the House on April 11, 2019, by the following vote: Yeas 145, Nays 1, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 1525 on May 10, 2019, by the following vote: Yeas 103, Nays 3, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1525 was passed by the Senate, with amendments, on May 3, 2019, by the following yate: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED:

5-24-2019

Date

Gove/rner

SECRETARY OF STATE

Secretary of State