

USE TAX ACT (EXCERPT)
Act 94 of 1937

205.95c Marketplace facilitators; nexus; report; class action prohibited; audit; liability; conditions; definitions.

Sec. 5c.

(1) Notwithstanding anything to the contrary in this act, a marketplace facilitator that has nexus in this state shall collect and remit the tax due under this act on all taxable sales made by the marketplace facilitator or facilitated for marketplace sellers to a purchaser in this state regardless of whether the marketplace seller for whom sales are facilitated has nexus with this state.

(2) A marketplace facilitator is a person liable for the tax imposed under this act, regardless of whether the marketplace facilitator makes only facilitated sales for marketplace sellers or a combination of direct and facilitated sales and has all the rights and duties of a taxpayer under this act.

(3) A marketplace facilitator shall report its direct sales and the sales it facilitates to purchasers in this state in a manner as prescribed by the department.

(4) A class action shall not be brought against a marketplace facilitator in any court of this state on behalf of purchasers arising from or in any way related to an overpayment of use tax collected and remitted 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 purchaser's right to seek a refund as provided under section 14b.

(5) Nothing in this section affects the obligation of a purchaser to remit the tax imposed by this act for a taxable transaction on which a marketplace facilitator or marketplace seller does not remit sales or use tax.

(6) Except as otherwise provided in this subsection, if a marketplace facilitator is required to collect and remit tax under subsection (1), the department shall audit only the marketplace facilitator for sales made by marketplace sellers that were facilitated by the marketplace facilitator. The department shall not audit a marketplace seller for sales facilitated by a marketplace facilitator required to collect and remit tax under subsection (1) unless the marketplace seller fails to provide the marketplace facilitator with sufficient information to the extent that the marketplace facilitator is not liable under subsection (7).

(7) A marketplace facilitator is relieved of liability under this section for failure to collect and remit the correct amount of tax to the extent that the marketplace facilitator demonstrates, to the satisfaction of the department, that the failure was due to incorrect or insufficient information given to the marketplace facilitator by the marketplace seller. The relief under this subsection does not apply if the marketplace seller is an affiliate of the marketplace facilitator.

(8) A marketplace facilitator is relieved of liability under this section if the marketplace facilitator demonstrates, to the satisfaction of the department, that the tax levied under this act on a sale facilitated by the marketplace facilitator was paid to the department by the marketplace seller or provides a claim of exemption provided by the marketplace seller's purchaser.

(9) A marketplace seller is not liable for the tax imposed by this act on sales made through a marketplace facilitator required to collect and remit tax under subsection (1) unless the marketplace seller fails to provide the marketplace facilitator with sufficient information to the extent that the marketplace facilitator is not liable under subsection (7).

(10) This section applies regardless of whether the marketplace facilitator has a physical presence in this state.

(11) As used in this section:

(a) "Affiliate" means an affiliated person as that term is defined in section 5a.

(b) "Marketplace facilitator" means a person that meets the requirements of subparagraph (i), but does not include a person described in subparagraph (ii), (iii), or (iv):

(i) A person is a marketplace facilitator if the person facilitates a retail sale by a marketplace seller by listing or advertising for sale by a marketplace seller in a marketplace, tangible personal property or taxable services and either directly or indirectly through agreements or arrangements with third parties or its affiliates collecting payment from the customer and transmitting that payment to the marketplace seller for consideration.

(ii) Marketplace facilitator does not include a person who operates a platform or forum that provides internet, print, electronic, or any other form of advertising services, including listing tangible personal property or services for sale, if the person does not also engage directly or indirectly, through 1 or more affiliates, in the activities described in subparagraph (i).

(iii) A person is not a marketplace facilitator with respect to the sale of or charges for rooms, lodgings, or accommodations described in section 3a if the rooms, lodgings, or accommodations are provided by a hotelkeeper, motel operator, or other person that is registered under section 5 or licensed under section 3 of the general sales tax act, 1933 PA 167, MCL 205.53.

(iv) A person is not a marketplace facilitator with respect to the sale of telecommunications services as described

in section 3a.

(c) "Marketplace seller" means a person that makes retail sales through a physical or electronic marketplace operated by a marketplace facilitator.

History: Add. 2019, Act 144, Eff. Jan. 1, 2020

Compiler's Notes: Enacting sections 1 and 2 of Act 144 of 2019 provide: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this amendatory act is severable." "Enacting section 2. This amendatory act takes effect January 1, 2020. An obligation to collect sales tax under this amendatory act does not apply retroactively."