STATE OF NEW YORK

9058

IN ASSEMBLY

January 18, 2018

Introduced by M. of A. CARROLL -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to requiring marketplace providers to collect sales tax

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 1101 of the tax law is amended by adding a new subdivision (e) to read as follows:

(e) When used in this article for the purposes of the taxes imposed under subdivision (a) of section eleven hundred five of this article and by section eleven hundred ten of this article, the following terms shall mean:

(1) Marketplace provider. A person who, pursuant to an agreement with a marketplace seller, facilitates sales of tangible personal property by such marketplace seller or sellers. A person "facilitates a sale of tangible personal property" for purposes of this paragraph when the person meets both of the following conditions: (i) such person provides the forum in which, or by means of which, the sale takes place or the offer of sale is accepted, including a shop, store, or booth, an internet website, catalog, or similar forum; and (ii) such person or an affiliate of such person collects the receipts paid by a customer to a marketplace seller for a sale of tangible personal property, or contracts with a third party to collect such receipts. For purposes of this paragraph, two persons are affiliated if one person has an ownership interest of more than five percent, whether direct or indirect, in the other, or where an ownership interest of more than five percent, whether direct or indirect, is held in each of such persons by another person or by a group of other persons that are affiliated persons with respect to each other. Notwithstanding anything in this paragraph, a person who facilitates sales exclusively by means of the internet is not a marketplace provider for a sales tax quarter when such person can show that it has facilitated less than one hundred million dollars of sales annually for every calendar year after two thousand fifteen.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD14165-01-8

(2) Marketplace seller. Any person, whether or not such person is required to obtain a certificate of authority under section eleven hundred thirty-four of this article, who has an agreement with a marketplace provider under which the marketplace provider will facilitate sales of tangible personal property by such person within the meaning of paragraph one of this subdivision.

§ 2. Subdivision 1 of section 1131 of the tax law, as amended by chapter 576 of the laws of 1994, is amended to read as follows:

(1) "Persons required to collect tax" or "person required to collect any tax imposed by this article" shall include: every vendor of tangible personal property or services; every recipient of amusement charges; [~~and~~] every operator of a hotel, and every marketplace provider with respect to sales of tangible personal property it facilitates as described in paragraph one of subdivision (e) of section eleven hundred one of this article. Said terms shall also include any officer, director or employee of a corporation or of a dissolved corporation, any employee of a partnership, any employee or manager of a limited liability company, or any employee of an individual proprietorship who as such officer, director, employee or manager is under a duty to act for such corporation, partnership, limited liability company or individual proprietorship in complying with any requirement of this article; and any member of a partnership or limited liability company. Provided, however, that any person who is a vendor solely by reason of clause (D) or (E) of subparagraph (i) of paragraph (8) of subdivision (b) of section eleven hundred one of this article shall not be a "person required to collect any tax imposed by this article" until twenty days after the date by which such person is required to file a certificate of registration pursuant to section eleven hundred thirty-four of this part.

§ 3. Section 1132 of the tax law is amended by adding a new subdivision (l) to read as follows:

(l) (1) A marketplace provider, with respect to a sale of tangible personal property it facilitates: (i) shall have all the obligations and rights of a vendor under this article and article twenty-nine of this chapter and under any regulations adopted pursuant thereto, including, but not limited to, the duty to obtain a certificate of authority, to collect tax, file returns, remit tax, and the right to accept a certificate or other documentation from a customer substantiating an exemption or exclusion from tax, the right to receive the refund authorized by subdivision (e) of this section and the credit allowed by subdivision (f) of section eleven hundred thirty-seven of this part subject to the provisions of such subdivision; and (ii) shall keep such records and information and cooperate with the commissioner to ensure the proper collection and remittance of tax imposed collected or required to be collected under this article and article twenty-nine of this chapter.

(2) A marketplace seller who is a vendor is relieved from the duty to collect tax in regard to a particular sale of tangible personal property subject to tax under subdivision (a) of section eleven hundred five of this article and shall not include the receipts from such sale in its taxable receipts for purposes of section eleven hundred thirty-six of this part if, in regard to such sale: (i) the marketplace seller can show that such sale was facilitated by a marketplace provider from whom such seller has received in good faith a properly completed certificate of collection in a form prescribed by the commissioner, certifying that the marketplace provider is registered to collect sales tax and will collect sales tax on all taxable sales of tangible personal property by the marketplace seller facilitated by the marketplace provider, and with

such other information as the commissioner may prescribe; and (ii) any failure of the marketplace provider to collect the proper amount of tax in regard to such sale was not the result of such marketplace seller providing the marketplace provider with incorrect information. This provision shall be administered in a manner consistent with subparagraph (i) of paragraph one of subdivision (c) of this section as if a certificate of collection were a resale or exemption certificate for purposes of such subparagraph, including with regard to the completeness of such certificate of collection and the timing of its acceptance by the marketplace seller. Provided that, with regard to any sales of tangible personal property by a marketplace seller that are facilitated by a marketplace provider who is affiliated with such marketplace seller within the meaning of paragraph one of subdivision (e) of section eleven hundred one of this article, the marketplace seller shall be deemed liable as a person under a duty to act for such marketplace provider for purposes of subdivision one of section eleven hundred thirty-one of this part.

(3) The commissioner may, in his or her discretion: (i) develop a standard provision, or approve a provision developed by a marketplace provider, in which the marketplace provider obligates itself to collect the tax on behalf of all the marketplace sellers for whom the marketplace provider facilitates sales of tangible personal property, with respect to all sales that it facilitates for such sellers where delivery occurs in the state; and (ii) provide by regulation or otherwise that the inclusion of such provision in the publicly-available agreement between the marketplace provider and marketplace seller will have the same effect as a marketplace seller's acceptance of a certificate of collection from such marketplace provider under paragraph two of this subdivision.

§ 4. Section 1133 of the tax law is amended by adding a new subdivision (f) to read as follows:

(f) A marketplace provider is relieved of liability under this section for failure to collect the correct amount of tax to the extent that the marketplace provider can show that the error was due to incorrect information given to the marketplace provider by the marketplace seller. Provided, however, this subdivision shall not apply if the marketplace seller and marketplace provider are affiliated within the meaning of paragraph one of subdivision (e) of section eleven hundred one of this article.

§ 5. Paragraph 4 of subdivision (a) of section 1136 of the tax law, as amended by section 46 of part K of chapter 61 of the laws of 2011, is amended to read as follows:

(4) The return of a vendor of tangible personal property or services shall show such vendor's receipts from sales and the number of gallons of any motor fuel or diesel motor fuel sold and also the aggregate value of tangible personal property and services and number of gallons of such fuels sold by the vendor, the use of which is subject to tax under this article, and the amount of tax payable thereon pursuant to the provisions of section eleven hundred thirty-seven of this part. The return of a recipient of amusement charges shall show all such charges and the amount of tax thereon, and the return of an operator required to collect tax on rents shall show all rents received or charged and the amount of tax thereon. The return of a marketplace seller shall exclude the receipts from a sale of tangible personal property facilitated by a marketplace provider if, in regard to such sale: (A) the marketplace seller has timely received in good faith a properly completed certif-

icate of collection from the marketplace provider or the marketplace provider has included a provision approved by the commissioner in the publicly-available agreement between the marketplace provider and the marketplace seller as described in subdivision (1) of section eleven hundred thirty-two of this part, and (B) the information provided by the marketplace seller to the marketplace provider about such tangible personal property is accurate.

§ 6. Section 1142 of the tax law is amended by adding a new subdivision 15 to read as follows:

15. To publish a list on the department's website of marketplace providers whose certificate of authority has been revoked and, if necessary to protect sales tax revenue, provide by regulation or otherwise that a marketplace seller who is a vendor will be relieved of the duty to collect tax for sales of tangible personal property facilitated by a marketplace provider only if, in addition to the conditions prescribed by paragraph two of subdivision (l) of section eleven hundred thirty-two of this part being met, such marketplace provider is not on such list at the commencement of the calendar year in which the sale was made.

§ 7. This act shall take effect September 1, 2018, and shall apply to sales made on or after such date.