

SUBSTITUTE FOR
HOUSE BILL NO. 4541

A bill to amend 1937 PA 94, entitled
"Use tax act,"
(MCL 205.91 to 205.111) by adding section 5c.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 5C. (1) NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS
2 ACT, A MARKETPLACE FACILITATOR THAT HAS NEXUS IN THIS STATE SHALL
3 COLLECT AND REMIT THE TAX DUE UNDER THIS ACT ON ALL TAXABLE SALES
4 MADE BY THE MARKETPLACE FACILITATOR OR FACILITATED FOR MARKETPLACE
5 SELLERS TO A PURCHASER IN THIS STATE REGARDLESS OF WHETHER THE
6 MARKETPLACE SELLER FOR WHOM SALES ARE FACILITATED HAS NEXUS WITH
7 THIS STATE.

8 (2) A MARKETPLACE FACILITATOR IS A PERSON LIABLE FOR THE TAX
9 IMPOSED UNDER THIS ACT, REGARDLESS OF WHETHER THE MARKETPLACE
10 FACILITATOR MAKES ONLY FACILITATED SALES FOR MARKETPLACE SELLERS OR

1 A COMBINATION OF DIRECT AND FACILITATED SALES AND HAS ALL THE
2 RIGHTS AND DUTIES OF A TAXPAYER UNDER THIS ACT.

3 (3) A MARKETPLACE FACILITATOR SHALL REPORT ITS DIRECT SALES
4 AND THE SALES IT FACILITATES TO PURCHASERS IN THIS STATE IN A
5 MANNER AS PRESCRIBED BY THE DEPARTMENT.

6 (4) A CLASS ACTION SHALL NOT BE BROUGHT AGAINST A MARKETPLACE
7 FACILITATOR IN ANY COURT OF THIS STATE ON BEHALF OF PURCHASERS
8 ARISING FROM OR IN ANY WAY RELATED TO AN OVERPAYMENT OF USE TAX
9 COLLECTED AND REMITTED ON SALES FACILITATED BY THE MARKETPLACE
10 FACILITATOR, REGARDLESS OF WHETHER THAT CLAIM IS CHARACTERIZED AS A
11 TAX REFUND CLAIM. NOTHING IN THIS SUBSECTION AFFECTS A PURCHASER'S
12 RIGHT TO SEEK A REFUND AS PROVIDED UNDER SECTION 14B.

13 (5) NOTHING IN THIS SECTION AFFECTS THE OBLIGATION OF A
14 PURCHASER TO REMIT THE TAX IMPOSED BY THIS ACT FOR A TAXABLE
15 TRANSACTION ON WHICH A MARKETPLACE FACILITATOR OR MARKETPLACE
16 SELLER DOES NOT REMIT SALES OR USE TAX.

17 (6) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, IF A
18 MARKETPLACE FACILITATOR IS REQUIRED TO COLLECT AND REMIT TAX UNDER
19 SUBSECTION (1), THE DEPARTMENT SHALL AUDIT ONLY THE MARKETPLACE
20 FACILITATOR FOR SALES MADE BY MARKETPLACE SELLERS THAT WERE
21 FACILITATED BY THE MARKETPLACE FACILITATOR. THE DEPARTMENT SHALL
22 NOT AUDIT A MARKETPLACE SELLER FOR SALES FACILITATED BY A
23 MARKETPLACE FACILITATOR REQUIRED TO COLLECT AND REMIT TAX UNDER
24 SUBSECTION (1) UNLESS THE MARKETPLACE SELLER FAILS TO PROVIDE THE
25 MARKETPLACE FACILITATOR WITH SUFFICIENT INFORMATION TO THE EXTENT
26 THAT THE MARKETPLACE FACILITATOR IS NOT LIABLE UNDER SUBSECTION
27 (7).

1 (7) A MARKETPLACE FACILITATOR IS RELIEVED OF LIABILITY UNDER
2 THIS SECTION FOR FAILURE TO COLLECT AND REMIT THE CORRECT AMOUNT OF
3 TAX TO THE EXTENT THAT THE MARKETPLACE FACILITATOR DEMONSTRATES, TO
4 THE SATISFACTION OF THE DEPARTMENT, THAT THE FAILURE WAS DUE TO
5 INCORRECT OR INSUFFICIENT INFORMATION GIVEN TO THE MARKETPLACE
6 FACILITATOR BY THE MARKETPLACE SELLER. THE RELIEF UNDER THIS
7 SUBSECTION DOES NOT APPLY IF THE MARKETPLACE SELLER IS AN AFFILIATE
8 OF THE MARKETPLACE FACILITATOR.

9 (8) A MARKETPLACE FACILITATOR IS RELIEVED OF LIABILITY UNDER
10 THIS SECTION IF THE MARKETPLACE FACILITATOR DEMONSTRATES, TO THE
11 SATISFACTION OF THE DEPARTMENT, THAT THE TAX LEVIED UNDER THIS ACT
12 ON A SALE FACILITATED BY THE MARKETPLACE FACILITATOR WAS PAID TO
13 THE DEPARTMENT BY THE MARKETPLACE SELLER OR PROVIDES A CLAIM OF
14 EXEMPTION PROVIDED BY THE MARKETPLACE SELLER'S PURCHASER.

15 (9) A MARKETPLACE SELLER IS NOT LIABLE FOR THE TAX IMPOSED BY
16 THIS ACT ON SALES MADE THROUGH A MARKETPLACE FACILITATOR REQUIRED
17 TO COLLECT AND REMIT TAX UNDER SUBSECTION (1) UNLESS THE
18 MARKETPLACE SELLER FAILS TO PROVIDE THE MARKETPLACE FACILITATOR
19 WITH SUFFICIENT INFORMATION TO THE EXTENT THAT THE MARKETPLACE
20 FACILITATOR IS NOT LIABLE UNDER SUBSECTION (7).

21 (10) THIS SECTION APPLIES REGARDLESS OF WHETHER THE
22 MARKETPLACE FACILITATOR HAS A PHYSICAL PRESENCE IN THIS STATE.

23 (11) AS USED IN THIS SECTION:

24 (A) "AFFILIATE" MEANS AN AFFILIATED PERSON AS THAT TERM IS
25 DEFINED IN SECTION 5A.

26 (B) "MARKETPLACE FACILITATOR" MEANS A PERSON THAT MEETS THE
27 REQUIREMENTS OF SUBPARAGRAPH (i), BUT DOES NOT INCLUDE A PERSON

1 DESCRIBED IN SUBPARAGRAPH (ii) OR (iii) :

2 (i) A PERSON IS A MARKETPLACE FACILITATOR IF THE PERSON
3 FACILITATES A RETAIL SALE BY A MARKETPLACE SELLER BY LISTING OR
4 ADVERTISING FOR SALE BY A MARKETPLACE SELLER IN A MARKETPLACE,
5 TANGIBLE PERSONAL PROPERTY OR TAXABLE SERVICES AND EITHER DIRECTLY
6 OR INDIRECTLY THROUGH AGREEMENTS OR ARRANGEMENTS WITH THIRD PARTIES
7 OR ITS AFFILIATES COLLECTING PAYMENT FROM THE CUSTOMER AND
8 TRANSMITTING THAT PAYMENT TO THE MARKETPLACE SELLER FOR
9 CONSIDERATION.

10 (ii) MARKETPLACE FACILITATOR DOES NOT INCLUDE A PERSON WHO
11 OPERATES A PLATFORM OR FORUM THAT PROVIDES INTERNET, PRINT,
12 ELECTRONIC, OR ANY OTHER FORM OF ADVERTISING SERVICES, INCLUDING
13 LISTING TANGIBLE PERSONAL PROPERTY OR SERVICES FOR SALE, IF THE
14 PERSON DOES NOT ALSO ENGAGE DIRECTLY OR INDIRECTLY, THROUGH 1 OR
15 MORE AFFILIATES, IN THE ACTIVITIES DESCRIBED IN SUBPARAGRAPH (i) .

16 (iii) A PERSON IS NOT A MARKETPLACE FACILITATOR WITH RESPECT
17 TO THE SALE OF OR CHARGES FOR ROOMS, LODGINGS, OR ACCOMMODATIONS
18 DESCRIBED IN SECTION 3A IF THE ROOMS, LODGINGS, OR ACCOMMODATIONS
19 ARE PROVIDED BY A HOTELKEEPER, MOTEL OPERATOR, OR OTHER PERSON THAT
20 IS REGISTERED UNDER SECTION 5 OR LICENSED UNDER SECTION 3 OF THE
21 GENERAL SALES TAX ACT, 1933 PA 167, MCL 205.53.

22 (C) "MARKETPLACE SELLER" MEANS A PERSON THAT MAKES RETAIL
23 SALES THROUGH A PHYSICAL OR ELECTRONIC MARKETPLACE OPERATED BY A
24 MARKETPLACE FACILITATOR.

25 Enacting section 1. As provided in section 5 of 1846 RS 1, MCL
26 8.5, this amendatory act is severable.

27 Enacting section 2. This amendatory act takes effect January

1 1, 2020. An obligation to collect use tax under this amendatory act
2 does not apply retroactively.