

Amendment No. 1024

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| Assembly Amendment to Assembly Bill No. 445 | (BDR 32-797) |
| Proposed by: Assembly Committee on Ways and Means | |
| Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes | |

Adoption of this amendment will:

(1) MAINTAIN the 2/3s majority vote requirement for final passage of A.B. 445 (§§ 5, 7, 13, 15 + NRS 372.125, 372.130, 374.130, 374.135).

(2) ADD an appropriation where one does not currently exist in A.B. 445.

| ASSEMBLY ACTION | | | | Initial and Date | SENATE ACTION | | | | Initial and Date |
|-----------------|--------------------------|------|--------------------------|------------------|---------------|--------------------------|------|--------------------------|------------------|
| Adopted | <input type="checkbox"/> | Lost | <input type="checkbox"/> | _____ | Adopted | <input type="checkbox"/> | Lost | <input type="checkbox"/> | _____ |
| Concurred In | <input type="checkbox"/> | Not | <input type="checkbox"/> | _____ | Concurred In | <input type="checkbox"/> | Not | <input type="checkbox"/> | _____ |
| Receded | <input type="checkbox"/> | Not | <input type="checkbox"/> | _____ | Receded | <input type="checkbox"/> | Not | <input type="checkbox"/> | _____ |

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red-strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

JFD/BJF



Date: 5/29/2019

A.B. No. 445—Revises provisions governing sales and use taxes. (BDR 32-797)



ASSEMBLY BILL NO. 445—COMMITTEE ON TAXATION

MARCH 25, 2019

Referred to Committee on Taxation

SUMMARY—Revises provisions governing sales and use taxes. (BDR 32-797)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to taxation; requiring certain persons who facilitate retail sales of tangible personal property in this State to collect and remit sales and use taxes owed on such retail sales which they facilitate; providing that certain persons who facilitate retail sales of tangible personal property in this State are not liable for the failure to collect and remit sales and use taxes under certain circumstances; ~~requiring~~ authorizing the Department of Taxation to adopt regulations to require certain persons who list or advertise products to customers in this State to collect and remit sales and use taxes unless certain notice and reporting requirements are met; making an appropriation; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law imposes upon each retailer a sales tax measured by the gross receipts of the retailer from the retail sale of tangible personal property in this State. (NRS 372.105, 374.110, 374.111) Under existing law, a retailer is required to collect the sales tax from the purchaser in a transaction to which the sales tax applies. (NRS 372.110, 374.115)

Existing law also imposes a use tax on the storage, use or other consumption in this State of tangible personal property purchased outside of this State from a retailer in a transaction that would have been subject to the sales tax in this State if it had occurred within this State. (NRS 372.185, 374.190, 374.191) Under existing law, the use tax is required to be paid by the purchaser who stores, uses or consumes the tangible personal property in this State, but any retailer maintaining a place of business in this State is required to collect the use tax from the purchaser at the time of the sale. (NRS 372.190, 372.195, 374.195, 374.200)

The provisions of existing law relating to the imposition, collection and remittance of sales and use taxes apply to every retailer who has a sufficient nexus with this State to satisfy the requirements of the United States Constitution, including certain retailers who do not maintain a physical presence in this State. (NRS 372.724, 374.724; LCB File No. 189-18)

Sections 5 and 13 of this bill require a marketplace facilitator, which is defined by **section 3** of this bill ~~as a person~~ to include certain persons who directly or indirectly ~~facilitates~~ facilitate retail sales to customers in this State, to collect and remit sales and use taxes if the marketplace facilitator, in ~~for~~ the calendar year or in the immediately preceding calendar year: (1) had cumulative gross receipts from retail sales made to customers in this State, on its own behalf or on behalf of a seller, which exceeded \$100,000; or (2) made or facilitated 200 or more separate retail sales transactions, on its own behalf or on behalf of a

seller. **Sections 5 and 13** provide that a marketplace facilitator is not required to collect and remit sales and use taxes if : (1) the marketplace facilitator and a seller making sales through the marketplace facilitator have entered into a written agreement whereby the seller agrees to assume responsibility for the collection and remittance of sales and use taxes on retail sales made by the seller through the marketplace facilitator ~~;~~ ; and (2) the seller is registered with the Department of Taxation to collect sales and use taxes on retail sales made by the seller. Under section 5 and 13, a marketplace facilitator is required, upon the request of the Department of Taxation, to provide a report to the Department containing certain information about each seller with whom the marketplace facilitator has entered into such an agreement.

Sections 6 and 14 of this bill provide that a marketplace facilitator is not liable for the payment of sales and use tax for a retail sale which the marketplace facilitator made or facilitated on behalf of a seller if the marketplace facilitator provides proof that the marketplace facilitator made a reasonable effort to obtain accurate information from the seller regarding the retail sale and the failure to collect and remit the correct sales tax on the retail sale was due to incorrect information provided by the seller. **Sections 6 and 14** also provide that a marketplace facilitator is not liable for the payment of sales and use tax, up to a certain amount, for a retail sale which the marketplace facilitator made or facilitated on behalf of a seller through the marketplace of the marketplace facilitator if the sale was made before January 1, ~~2022~~ 2021, and the failure to collect the sales tax or use tax was due to an error other than an error in sourcing the retail sale.

Sections 7 and 15 of this bill ~~require~~ authorize the Department of Taxation to adopt regulations requiring referrers, which ~~are~~ are defined in **sections 7 and 15** as certain persons who receive a fee in exchange for listing or advertising a product for a seller but do not collect money or other consideration from a customer, to impose, collect and remit sales and use taxes if ~~;~~ , in the calendar year or in the immediately preceding calendar year: (1) 200 or more retail sales to customers in this State result from referrals made by the referrer; or (2) the cumulative gross receipts of sales resulting from such referrals exceed \$100,000. **Sections 7 and 15** require any regulations adopted by the Department to provide that a referrer is not required to collect and remit sales and use taxes if the referrer complies with certain notice requirements and makes a ~~monthly~~ periodic report to the Department. ~~[of Taxation.]~~

Sections 8 and 16 of this bill provide that the provisions of this bill do not create a private right of action against a marketplace facilitator and that a marketplace facilitator is immune from civil liability for claims arising from the overpayment of sales and use tax if the marketplace facilitator acted in good faith.

Section 16.5 of this bill makes an appropriation to the Interim Finance Committee for allocation to the Department of Taxation for personnel and operating costs incurred by the Department relating to the implementation of this bill.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 372 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 8, inclusive, of this act.

Sec. 2. *As used in sections 2 to 8, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 2.5, 3 and 4 of this act have the meanings ascribed to them in those sections.*

Sec. 2.5. “Affiliate” means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For the purposes of this section, control shall be presumed to exist if any person directly or indirectly owns, controls, holds with the power to vote or holds proxies representing 10 percent or more of the voting securities of any other person. This presumption may be rebutted by a showing that control does not exist in fact.

1 **Sec. 3. 1. “Marketplace facilitator” means a person, including any**
2 **affiliate of the person, who:**

3 ~~1.1~~ **(a) Directly or indirectly, does one or more of the following to facilitate**
4 **a retail sale:**

5 ~~1.1.1~~ **(1) Lists, makes available or advertises tangible personal property for**
6 **sale by a marketplace seller in a marketplace owned, operated or controlled by**
7 **the person;**

8 ~~1.1.2~~ **(2) Facilitates the sale of a marketplace seller’s product through a**
9 **marketplace by transmitting or otherwise communicating an offer or acceptance**
10 **of a retail sale of tangible personal property between a marketplace seller and a**
11 **purchaser in a forum including a shop, store, booth, catalog, Internet site or**
12 **similar forum;**

13 ~~1.1.3~~ **(3) Owns, rents, licenses, makes available or operates any electronic or**
14 **physical infrastructure or any property, process, method, copyright, trademark or**
15 **patent that connects marketplace sellers to purchasers for the purpose of making**
16 **retail sales of tangible personal property;**

17 ~~1.1.4~~ **(4) Provides a marketplace for making retail sales of tangible personal**
18 **property, or otherwise facilitates retail sales of tangible personal property,**
19 **regardless of ownership or control of the tangible personal property that is the**
20 **subject of the retail sale;**

21 ~~1.1.5~~ **(5) Provides software development or research and development**
22 **activities related to any activity described in this subsection, if such software**
23 **development or research and development activities are directly related to the**
24 **physical or electronic marketplace provided by a marketplace provider;**

25 ~~1.1.6~~ **(6) Provides or offers fulfillment or storage services for a marketplace**
26 **seller;**

27 ~~1.1.7~~ **(7) Sets prices for the sale of tangible personal property by a**
28 **marketplace seller;**

29 ~~1.1.8~~ **(8) Provides or offers customer service to a marketplace seller or the**
30 **customers of a marketplace seller, or accepts or assists with taking orders, returns**
31 **or exchanges of tangible personal property sold by a marketplace seller; or**

32 ~~1.1.9~~ **(9) Brands or otherwise identifies sales as those of the marketplace**
33 **facilitator; and**

34 ~~2.1~~ **(b) Directly or indirectly, does one or more of the following to facilitate**
35 **a retail sale:**

36 ~~2.1.1~~ **(1) Collects the sales price or purchase price of a retail sale of tangible**
37 **personal property;**

38 ~~2.1.2~~ **(2) Provides payment processing services for a retail sale of tangible**
39 **personal property;**

40 ~~2.1.3~~ **(3) Charges, collects or otherwise receives selling fees, listing fees,**
41 **referral fees, closing fees, fees for inserting or making available tangible**
42 **personal property on a marketplace or other consideration from the facilitation of**
43 **a retail sale of tangible personal property, regardless of ownership or control of**
44 **the tangible personal property that is the subject of the retail sale;**

45 ~~2.1.4~~ **(4) Through terms and conditions, agreements or arrangements with a**
46 **third party, collects payment in connection with a retail sale of tangible personal**
47 **property from a purchaser and transmits that payment to the marketplace seller,**
48 **regardless of whether the person collecting and transmitting such payment**
49 **receives compensation or other consideration in exchange for the service; or**

50 ~~2.1.5~~ **(5) Provides a virtual currency that purchasers are allowed or required**
51 **to use to purchase tangible personal property.**

52 **2. The term does not include:**

(a) A person who provides Internet advertising services, including, without limitation, the listing of products for sale, if the person does not directly or indirectly or through an affiliate:

(1) Transmit or otherwise communicate an offer or acceptance of a retail sale of tangible personal property between a marketplace seller and a purchaser; and

(2) Do one or more of the activities listed in paragraph (b) of subsection 1.

(b) A person who arranges, books or otherwise facilitates, for a commission, fee or other consideration, vacation or travel packages or rental car or other travel reservations or accommodations through a marketplace owned, operated or controlled by the person. The exclusion set forth in this paragraph applies only with respect to the arranging, booking or facilitation, for a commission, fee or other consideration, of the lease or rental of a passenger car, as defined in NRS 482.087.

Sec. 4. "Marketplace seller" means:

1. A seller who makes retail sales through any physical or electronic marketplace owned, operated or controlled by a marketplace facilitator, even if such seller would not have been required to collect and remit the sales tax or use tax had the sale not been made through such marketplace; or

2. A seller who makes retail sales resulting from a referral by a referrer, even if such seller would not have been required to collect and remit the sales tax or use tax had the sale not been made through such referrer.

Sec. 5. 1. Except as otherwise provided in this section and section 6 of this act, the provisions of this chapter relating to the imposition, collection and remittance of the sales tax, and the collection and remittance of the use tax, apply to a marketplace facilitator during a calendar year in which or during a calendar year immediately ~~preceding~~ following any calendar year in which:

(a) The cumulative gross receipts from retail sales made or facilitated by the marketplace facilitator on its own behalf or for one or more marketplace sellers to customers in this State exceed \$100,000; or

(b) The marketplace facilitator makes or facilitates 200 or more separate retail sales transactions on his or her own behalf or for one or more marketplace sellers to customers in this State.

2. The provisions of this chapter relating to the imposition, collection and remittance of sales tax and the collection and remittance of use tax do not apply to a marketplace facilitator described in subsection 1 if ~~the~~ :

(a) The marketplace facilitator and the marketplace seller have entered into a written agreement whereby the marketplace seller assumes responsibility for the collection and remittance of the sales tax, and the collection and remittance of the use tax, for retail sales made by the marketplace seller through the marketplace facilitator ~~it~~ ; and

(b) The marketplace seller has obtained a permit pursuant to NRS 372.125 or registered pursuant to NRS 360B.200.

↳ Upon request of the Department, a marketplace facilitator shall provide to the Department a report containing the name of each marketplace seller with whom the marketplace facilitator has entered into an agreement pursuant to this subsection and such other information as the Department determines is necessary to ensure that each marketplace seller with whom the marketplace facilitator has entered into an agreement pursuant to this subsection has obtained a permit pursuant to NRS 372.125 or registered pursuant to NRS 360B.200.

3. ~~The~~ Except as otherwise provided in this section and section 6 of this act, the provisions of subsection 1 apply regardless of whether:

1 (a) The marketplace seller for whom a marketplace facilitator makes or
2 facilitates a retail sale would not have been required to collect and remit the sales
3 tax or the use tax had the retail sale not been facilitated by the marketplace
4 facilitator;

5 (b) The marketplace seller for whom a marketplace facilitator makes or
6 facilitates a retail sale was required to register with the Department pursuant to
7 NRS 360B.200 or obtain a permit pursuant to NRS 372.125; or

8 (c) The amount of the sales price of a retail sale ~~that~~ will ultimately accrue
9 to or benefit the marketplace facilitator, the marketplace seller or any other
10 person.

11 4. In administering the provisions of this chapter, the Department shall
12 construe the terms "seller," "retailer" and "retailer maintaining a place of
13 business in this State" in accordance with the provisions of this section.

14 **Sec. 6.** 1. In administering the provisions of this chapter, the Department
15 shall not hold a marketplace facilitator liable for the payment of any tax imposed
16 by this chapter which is attributable to a retail sale made or facilitated on behalf
17 of a marketplace seller who is not an affiliate of the marketplace facilitator if:

18 (a) The marketplace facilitator provides proof satisfactory to the Department
19 that the marketplace facilitator has made a reasonable effort to obtain accurate
20 information from the marketplace seller about the retail sale; and

21 (b) The failure to collect and remit the correct tax on the retail sale was due
22 to incorrect information provided to the marketplace facilitator by the
23 marketplace seller.

24 2. Except as otherwise provided in subsection 3, in administering the
25 provisions of this chapter, the Department shall not hold a marketplace facilitator
26 liable for the payment of any tax imposed by this chapter which is attributable to
27 a retail sale made or facilitated on behalf of a marketplace seller who is not an
28 affiliate of the marketplace facilitator if the marketplace facilitator provides proof
29 satisfactory to the Department that:

30 (a) The retail sale was made before January 1, ~~2022~~, 2021;

31 (b) The retail sale was made through a marketplace of the marketplace
32 facilitator; and

33 (c) The failure to collect the sales tax or use tax was due to an error other
34 than an error in sourcing the retail sale.

35 3. The relief from liability provided pursuant to subsection 2 for the 2019
36 and 2020 calendar year, respectively, shall not exceed ~~the following percentage~~
37 5 percent of the total sales and use tax owed for the calendar year on the
38 cumulative gross receipts of the marketplace facilitator from retail sales made or
39 facilitated by the marketplace facilitator for one or more marketplace sellers to
40 customers in this State. ~~during the calendar year~~

41 ~~(a) During the 2019 and 2020 calendar years, 10 percent; and~~

42 ~~(b) During the 2021 calendar year, 5 percent.~~

43 4. If a marketplace ~~seller~~ facilitator is relieved of liability for the collection
44 and remittance of any amount of the sales tax or use tax pursuant to subsection
45 1, the marketplace seller or purchaser, as applicable, is liable for the payment of
46 such uncollected, unpaid or unremitted tax.

47 5. To the extent that a marketplace ~~seller~~ facilitator is relieved of liability
48 for the collection and remittance of any tax pursuant to subsections 2 and 3, the
49 marketplace seller for whom the marketplace facilitator made or facilitated the
50 retail sale giving rise to the tax is also relieved of such liability.

51 6. Nothing in this section shall be construed to relieve any person of
52 liability for collecting but failing to remit to the Department any tax imposed by
53 this chapter.

1 Sec. 7. 1. ~~Except~~ The Department may provide by regulation that,
2 except as otherwise provided in this section, the provisions of this chapter relating
3 to the imposition, collection and remittance of the sales tax, and the collection
4 and remittance of the use tax, apply to a referrer during a calendar year in
5 which, or during a calendar year immediately ~~preceding~~ following any calendar
6 year in which:

7 (a) The cumulative gross receipts from retail sales to customers in this State
8 resulting from referrals from a platform of the referrer are in excess of \$100,000;
9 or

10 (b) There are 200 or more separate retail sales transactions involving sales to
11 customers in this State resulting from referrals from a platform of the referrer.

12 2. ~~The~~ Any regulations adopted by the Department pursuant to subsection
13 1 must provide that the provisions of this chapter relating to the imposition,
14 collection and remittance of the sales tax, and the collection and remittance of
15 the use tax do not apply to a referrer described in subsection 1 if the referrer:

16 (a) Posts a conspicuous notice on each platform of the referrer that includes
17 all of the following:

18 (1) A statement that sales and use tax is due on certain purchases;

19 (2) A statement that the marketplace seller from whom the person is
20 purchasing on the platform may or may not collect and remit sales and use tax on
21 a purchase;

22 (3) A statement that Nevada requires the purchaser to pay sales or use
23 tax and file a sales and use tax return if sales or use tax is not collected at the
24 time of the sale by the marketplace seller;

25 (4) Information informing the purchaser that the notice is provided
26 under the requirements of this section; and

27 (5) Instructions for obtaining additional information from the
28 Department regarding whether and how to remit sales and use tax;

29 (b) The referrer provides a monthly notice to each marketplace seller to
30 whom the referrer made a referral of a potential customer located in this State
31 during the previous calendar year, which monthly notice shall contain all of the
32 following:

33 (1) A statement that Nevada imposes sales and use tax on retail sales in
34 this State;

35 (2) A statement that a marketplace facilitator or other retailer making
36 retail sales in this State must collect and remit sales and use tax; and

37 (3) Instructions for obtaining additional information from the
38 Department regarding the collection and remittance of sales and use tax; and

39 (c) The referrer provides the Department with ~~monthly~~ periodic reports in
40 an electronic format and in the manner prescribed by the Department, which
41 ~~monthly~~ reports contain all of the following:

42 (1) A list of marketplace sellers who received a notice from the referrer
43 pursuant to paragraph (b);

44 (2) A list of marketplace sellers that collect and remit sales and use tax
45 and that list or advertise the marketplace seller's products for sale on a platform
46 of the referrer; and

47 (3) An affidavit signed under penalty of perjury from an officer of the
48 referrer affirming that the referrer made reasonable efforts to comply with the
49 applicable sales and use tax notice and reporting requirements of this subsection.

50 3. ~~Any~~ Any regulations adopted by the Department pursuant to subsection 1
51 must provide that in administering the provisions of this chapter, the Department
52 shall construe the terms "seller," "retailer" and "retailer maintaining a place of
53 business in this State" in accordance with the provisions of this section.

1 4. ~~[The provisions of this section]~~ Any regulations adopted by the
2 Department pursuant to subsection 1 must apply only to referrals by a referrer
3 and shall not preclude the applicability of other provisions of this chapter to a
4 person who is a referrer and is also a retailer, a marketplace facilitator or a
5 marketplace seller.

6 5. As used in this section:

7 (a) "Platform" means an electronic or physical medium, including, without
8 limitation, an Internet site or catalog, that is owned, operated or controlled by a
9 referrer.

10 (b) "Referral" means the transfer through telephone, Internet link or other
11 means by a referrer of a potential customer to a retailer or seller who advertises
12 or lists products for sale on a platform of the referrer.

13 (c) "Referrer":

14 (1) Means a person who does all of the following:

15 (I) Contracts or otherwise agrees with a retailer, seller or
16 marketplace facilitator to list or advertise for sale a product of the retailer, seller
17 or marketplace facilitator on a platform, provided such listing or advertisement
18 identifies whether or not the retailer, seller or marketplace facilitator collects
19 sales and use tax;

20 (II) Receives a commission, fee or other consideration from the
21 retailer, seller or marketplace facilitator for the listing or advertisement;

22 (III) Provides referrals to a retailer, seller or marketplace facilitator,
23 or an affiliate of a retailer, seller or marketplace facilitator; and

24 (IV) Does not collect money or other consideration from the
25 customer for the transaction.

26 (2) Does not include:

27 (I) A person primarily engaged in the business of printing or
28 publishing a newspaper; or

29 (II) A person who does not provide the retailer's, seller's or
30 marketplace facilitator's shipping terms and who does not advertise whether a
31 retailer, seller or marketplace facilitator collects sales or use tax.

32 Sec. 8. 1. Nothing in sections 2 to 8, inclusive, of this act shall be
33 construed to create any remedy or private right of action against a marketplace
34 facilitator.

35 2. A marketplace facilitator that is required to collect taxes imposed by this
36 chapter is immune from civil liability for claims arising from or related to the
37 overpayment of taxes imposed by this chapter if the marketplace facilitator acted
38 in good faith and without malicious intent.

39 3. Nothing in this section shall apply to or otherwise limit:

40 (a) Any claim, action, mandate, power, remedy or discretion of the
41 Department, or an agent or designee of the Department.

42 (b) The right of a taxpayer to seek a refund pursuant to NRS 372.630 to
43 372.720, inclusive.

44 Sec. 9. Chapter 374 of NRS is hereby amended by adding thereto the
45 provisions set forth as sections 10 to 16, inclusive, of this act.

46 Sec. 10. As used in sections 10 to 16, inclusive, of this act, unless the
47 context otherwise requires, the words and terms defined in sections 10.5, 11 and
48 12 of this act have the meanings ascribed to them in those sections.

49 Sec. 10.5. "Affiliate" means a person who directly or indirectly owns or
50 controls, is owned or controlled by, or is under common ownership or control
51 with, another person. For the purposes of this section, control shall be presumed
52 to exist if any person directly or indirectly owns, controls, holds with the power to
53 vote or holds proxies representing 10 percent or more of the voting securities of

any other person. This presumption may be rebutted by a showing that control does not exist in fact.

Sec. 11. 1. "Marketplace facilitator" means a person, including any affiliate of the person, who:

~~11.1~~ (a) Directly or indirectly, does one or more of the following to facilitate a retail sale:

~~11.1.1~~ (1) Lists, makes available or advertises tangible personal property for sale by a marketplace seller in a marketplace owned, operated or controlled by the person;

~~11.1.2~~ (2) Facilitates the sale of a marketplace seller's product through a marketplace by transmitting or otherwise communicating an offer or acceptance of a retail sale of tangible personal property between a marketplace seller and a purchaser in a forum including a shop, store, booth, catalog, internet site or similar forum;

~~11.1.3~~ (3) Owns, rents, licenses, makes available or operates any electronic or physical infrastructure or any property, process, method, copyright, trademark or patent that connects marketplace sellers to purchasers for the purpose of making retail sales of tangible personal property;

~~11.1.4~~ (4) Provides a marketplace for making retail sales of tangible personal property, or otherwise facilitates retail sales of tangible personal property, regardless of ownership or control of the tangible personal property that is the subject of the retail sale;

~~11.1.5~~ (5) Provides software development or research and development activities related to any activity described in this subsection, if such software development or research and development activities are directly related to the physical or electronic marketplace provided by a marketplace provider;

~~11.1.6~~ (6) Provides or offers fulfillment or storage services for a marketplace seller;

~~11.1.7~~ (7) Sets prices for the sale of tangible personal property by a marketplace seller;

~~11.1.8~~ (8) Provides or offers customer service to a marketplace seller or the customers of a marketplace seller, or accepts or assists with taking orders, returns or exchanges of tangible personal property sold by a marketplace seller; or

~~11.1.9~~ (9) Brands or otherwise identifies sales as those of the marketplace facilitator; and

~~11.2~~ (b) Directly or indirectly, does one or more of the following to facilitate a retail sale:

~~11.2.1~~ (1) Collects the sales price or purchase price of a retail sale of tangible personal property;

~~11.2.2~~ (2) Provides payment processing services for a retail sale of tangible personal property;

~~11.2.3~~ (3) Charges, collects or otherwise receives selling fees, listing fees, referral fees, closing fees, fees for inserting or making available tangible personal property on a marketplace or other consideration from the facilitation of a retail sale of tangible personal property, regardless of ownership or control of the tangible personal property that is the subject of the retail sale;

~~11.2.4~~ (4) Through terms and conditions, agreements or arrangements with a third party, collects payment in connection with a retail sale of tangible personal property from a purchaser and transmits that payment to the marketplace seller, regardless of whether the person collecting and transmitting such payment receives compensation or other consideration in exchange for the service; or

~~11.2.5~~ (5) Provides a virtual currency that purchasers are allowed or required to use to purchase tangible personal property.

2. The term does not include:

(a) A person who provides Internet advertising services, including, without limitation, the listing of products for sale, if the person does not directly or indirectly or through an affiliate:

(1) Transmit or otherwise communicate an offer or acceptance of a retail sale of tangible personal property between a marketplace seller and a purchaser; and

(2) Do one or more of the activities listed in paragraph (b) of subsection 1.

(b) A person who arranges, books or otherwise facilitates, for a commission, fee or other consideration, vacation or travel packages or rental car or other travel reservations or accommodations through a marketplace owned, operated or controlled by the person. The exclusion set forth in this paragraph applies only with respect to the arranging, booking or facilitation, for a commission, fee or other consideration, of the lease or rental of a passenger car, as defined in NRS 482.087.

Sec. 12. "Marketplace seller" means:

1. A seller who makes retail sales through any physical or electronic marketplace owned, operated or controlled by a marketplace facilitator, even if such seller would not have been required to collect and remit the sales tax or use tax had the sale not been made through such marketplace; or

2. A seller who makes retail sales resulting from a referral by a referrer, even if such seller would not have been required to collect and remit the sales tax or use tax had the sale not been made through such referrer.

Sec. 13. 1. Except as otherwise provided in this section and section 14 of this act, the provisions of this chapter relating to the imposition, collection and remittance of the sales tax, and the collection and remittance of the use tax, apply to a marketplace facilitator during a calendar year in which, or during a calendar year immediately ~~preceding~~ following any calendar year in which:

(a) The cumulative gross receipts from retail sales made or facilitated by the marketplace facilitator on his or her own behalf or for one or more marketplace sellers to customers in this State exceed \$100,000; or

(b) The marketplace facilitator makes or facilitates 200 or more separate retail sales transactions on his or her own behalf or for one or more marketplace sellers to customers in this State.

2. The provisions of this chapter relating to the imposition, collection and remittance of the sales tax, and the collection and remittance of the use tax do not apply to a marketplace facilitator described in subsection 1 if ~~the~~:

(a) The marketplace facilitator and the marketplace seller have entered into a written agreement whereby the marketplace seller assumes responsibility for the collection and remittance of the sales tax, and the collection and remittance of the use tax for retail sales made by the marketplace seller through the marketplace facilitator ~~if~~; and

(b) The marketplace seller has obtained a permit pursuant to NRS 374.130 or registered pursuant to NRS 360B.200.

↳ Upon request of the Department, a marketplace facilitator shall provide to the Department a report containing the name of each marketplace seller with whom the marketplace facilitator has entered into an agreement pursuant to this subsection and such other information as the Department determines is necessary to ensure that each marketplace seller with whom the marketplace facilitator has entered into an agreement pursuant to this subsection has obtained a permit pursuant to NRS 374.130 or registered pursuant to NRS 360B.200.

3. The provisions of subsection 1 apply regardless of whether:

1 (a) The marketplace seller for whom a marketplace facilitator makes or
2 facilitates a retail sale would not have been required to collect and remit the sales
3 tax or use tax had the retail sale not been facilitated by the marketplace
4 facilitator.

5 (b) The marketplace seller for whom a marketplace facilitator makes or
6 facilitates a retail sale was required to register with the Department pursuant to
7 NRS 360B.200 or obtain a permit pursuant to NRS 374.130.

8 (c) The amount of the sales price of a retail sale ~~that~~ will ultimately accrue
9 to or benefit the marketplace facilitator, the marketplace seller or any other
10 person.

11 4. In administering the provisions of this chapter, the Department shall
12 construe the terms "seller," "retailer" and "retailer maintaining a place of
13 business in this State" in accordance with the provisions of this section.

14 **Sec. 14.** 1. In administering the provisions of this chapter, the
15 Department shall not hold a marketplace facilitator liable for the payment of any
16 tax imposed by this chapter which is attributable to a retail sale made or
17 facilitated on behalf of a marketplace seller who is not an affiliate of the
18 marketplace facilitator if:

19 (a) The marketplace facilitator provides proof satisfactory to the Department
20 that the marketplace facilitator has made a reasonable effort to obtain accurate
21 information from the marketplace seller about the retail sale; and

22 (b) The failure to collect and remit the correct tax on the retail sale was due
23 to incorrect information provided to the marketplace facilitator by the
24 marketplace seller.

25 2. Except as otherwise provided in subsection 3, in administering the
26 provisions of this chapter, the Department shall not hold a marketplace facilitator
27 liable for the payment of any tax imposed by this chapter which is attributable to
28 a retail sale made or facilitated on behalf of a marketplace seller who is not an
29 affiliate of the marketplace facilitator if the marketplace facilitator provides proof
30 satisfactory to the Department that:

31 (a) The retail sale was made before January 1, ~~2022~~, 2021;

32 (b) The retail sale was made through a marketplace of the marketplace
33 facilitator; and

34 (c) The failure to collect the sales tax or use tax was due to an error other
35 than an error in sourcing the retail sale.

36 3. The relief from liability provided pursuant to subsection 2 for the 2019
37 and 2020 calendar year, respectively, shall not exceed ~~the following percentage~~
38 5 percent of the total sales and use tax owed for the calendar year on the
39 cumulative gross receipts of the marketplace facilitator from retail sales made or
40 facilitated by the marketplace facilitator for one or more marketplace sellers to
41 customers in this State. ~~[during the calendar year]~~

42 ~~— (a) During the 2019 and 2020 calendar years, 10 percent; and~~

43 ~~— (b) During the 2021 calendar year, 5 percent.]~~

44 4. If a marketplace ~~seller~~ facilitator is relieved of liability for the collection
45 and remittance of any amount of the sales tax or use tax pursuant to subsection
46 1, the marketplace seller or purchaser, as applicable, is liable for the payment of
47 such uncollected, unpaid or unremitted tax.

48 5. To the extent that a marketplace ~~seller~~ facilitator is relieved of liability
49 for the collection and remittance of any tax pursuant to subsections 2 and 3, the
50 marketplace seller for whom the marketplace facilitator made or facilitated the
51 retail sale giving rise to the tax is also relieved of such liability.

1 6. Nothing in this section shall be construed to relieve any person of
2 liability for collecting but failing to remit to the Department any tax imposed by
3 this chapter.

4 Sec. 15. 1. ~~Except~~ The Department may provide by regulation that,
5 except as otherwise provided in this section, the provisions of this chapter relating
6 to the imposition, collection and remittance of the sales tax, and the collection
7 and remittance of the use tax, apply to a referrer during a calendar year in
8 which, or during a calendar year immediately ~~preceding~~ following any calendar
9 year in which:

10 (a) The cumulative gross receipts from retail sales to customers in this State
11 resulting from referrals from a platform of the referrer are in excess of \$100,000;
12 or

13 (b) There are 200 or more separate retail sales transactions involving sales to
14 customers in this State resulting from referrals from a platform of the referrer.

15 2. ~~The~~ Any regulation adopted by the Department pursuant to subsection
16 I must provide that the provisions of this chapter relating to the imposition,
17 collection and remittance of the sales tax and the collection and remittance of the
18 use tax do not apply to a referrer described in subsection 1 if the referrer:

19 (a) Posts a conspicuous notice on each platform of the referrer that includes
20 all of the following:

21 (1) A statement that sales and use tax is due on certain purchases;

22 (2) A statement that the marketplace seller from whom the person is
23 purchasing on the platform may or may not collect and remit sales and use tax on
24 a purchase;

25 (3) A statement that Nevada requires the purchaser to pay sales or use
26 tax and file a sales and use tax return if sales or use tax is not collected at the
27 time of the sale by the marketplace seller;

28 (4) Information informing the purchaser that the notice is provided
29 under the requirements of this section; and

30 (5) Instructions for obtaining additional information from the
31 Department regarding whether and how to remit sales and use tax;

32 (b) The referrer provides a monthly notice to each marketplace seller to
33 whom the referrer made a referral of a potential customer located in this State
34 during the previous calendar year, which monthly notice shall contain all of the
35 following:

36 (1) A statement that Nevada imposes sales and use tax on retail sales in
37 this State;

38 (2) A statement that a marketplace facilitator or other retailer making
39 retail sales in this State must collect and remit sales and use tax; and

40 (3) Instructions for obtaining additional information from the
41 Department regarding the collection and remittance of sales and use tax; and

42 (c) The referrer provides the Department with ~~monthly~~ periodic reports in
43 an electronic format and in the manner prescribed by the Department, which
44 ~~monthly~~ reports contain all of the following:

45 (1) A list of marketplace sellers who received a notice from the referrer
46 pursuant to paragraph (b);

47 (2) A list of marketplace sellers that collect and remit sales and use tax
48 and that list or advertise the marketplace seller's products for sale on a platform
49 of the referrer; and

50 (3) An affidavit signed under penalty of perjury from an officer of the
51 referrer affirming that the referrer made reasonable efforts to comply with the
52 applicable sales and use tax notice and reporting requirements of this subsection.

3. ~~Any regulations adopted by the Department pursuant to subsection 1 must provide that in administering the provisions of this chapter, the Department shall construe the terms "seller," "retailer" and "retailer maintaining a place of business in this State" in accordance with the provisions of this section.~~

4. ~~The provisions of this section~~ Any regulations adopted by the Department pursuant to subsection 1 must apply only to referrals by a referrer and shall not preclude the applicability of other provisions of this chapter to a person who is a referrer and is also a retailer, a marketplace facilitator or a marketplace seller.

5. As used in this section:

(a) "Platform" means an electronic or physical medium, including, without limitation, an Internet site or catalog, that is owned, operated or controlled by a referrer.

(b) "Referral" means the transfer through telephone, Internet link or other means by a referrer of a potential customer to a retailer or seller who advertises or lists products for sale on a platform of the referrer.

(c) "Referrer":

(1) Means a person who does all of the following:

(I) Contracts or otherwise agrees with a retailer, seller or marketplace facilitator to list or advertise for sale a product of the retailer, seller or marketplace facilitator on a platform, provided such listing or advertisement identifies whether or not the retailer, seller or marketplace facilitator collects sales and use tax;

(II) Receives a commission, fee or other consideration from the retailer, seller or marketplace facilitator for the listing or advertisement;

(III) Provides referrals to a retailer, seller or marketplace facilitator, or an affiliate of a retailer, seller or marketplace facilitator; and

(IV) Does not collect money or other consideration from the customer for the transaction.

(2) Does not include:

(I) A person primarily engaged in the business of printing or publishing a newspaper; or

(II) A person who does not provide the retailer's, seller's or marketplace facilitator's shipping terms and who does not advertise whether a retailer, seller or marketplace facilitator collects sales or use tax.

Sec. 16. 1. Nothing in sections 10 to 16, inclusive, of this act shall be construed to create any remedy or private right of action against a marketplace facilitator.

2. A marketplace facilitator that is required to collect taxes imposed by this chapter is immune from civil liability for claims arising from or related to the overpayment of taxes imposed by this chapter if the marketplace facilitator acted in good faith and without malicious intent.

3. Nothing in this section shall apply to or otherwise limit:

(a) Any claim, action, mandate, power, remedy or discretion of the Department, or an agent or designee of the Department.

(b) The right of a taxpayer to seek a refund pursuant to NRS 374.635 to 374.720, inclusive.

Sec. 16.5. 1. There is hereby appropriated from the State General Fund to the Interim Finance Committee the sum of \$1,000,000 for allocation to the Department of Taxation for personnel and operating costs incurred by the Department relating to the implementation of this act. Money appropriated pursuant to this subsection can only be allocated by the Interim Finance Committee upon submittal by the Department of Taxation of an analysis

1 demonstrating the need for the funds and a plan for the utilization of the
2 funding.

3 2. Any remaining balance of the appropriation made by subsection 1
4 must not be committed for expenditure after June 30, 2021, by the entity to
5 which the appropriation is made or any entity to which money from the
6 appropriation is granted or otherwise transferred in any manner, and any
7 portion of the appropriated money remaining must not be spent for any
8 purpose after September 17, 2021, by either the entity to which the money was
9 appropriated or the entity to which the money was subsequently granted or
10 transferred, and must be reverted to the State General Fund on or before
11 September 17, 2021.

12 Sec. 17. 1. This section and section 16.5 of this act ~~becomes~~ become
13 effective on July 1, 2019.

14 2. Sections 1 to 16, inclusive, of this act become effective on October 1,
15 2019.