

Date of Hearing: April 5, 2021

ASSEMBLY COMMITTEE ON REVENUE AND TAXATION
Autumn R. Burke, Chairwoman

AB 1402 (Levine) – As Introduced February 19, 2021

Majority vote. Fiscal committee.

SUBJECT: Marketplace facilitator: fee collection

SUMMARY: Revises the Marketplace Facilitator Act to require marketplace facilitators to register, collect, and remit fees administered under the Fee Collection Procedures Law (FCPL) that are imposed upon the retail sale of tangible personal property (TPP) in this state.

Specifically, **this bill:**

- 1) Extends specified responsibilities of a marketplace facilitator under the Sales and Use Tax (SUT) Law to any law imposing a fee administered under the FCPL.
- 2) Provides that a marketplace facilitator shall be considered the seller, retailer, and dealer for sales facilitated through its marketplace for purposes of determining whether the marketplace facilitator must register with the California Department of Tax and Fee Administration (CDTFA) under any law imposing a fee administered pursuant to the FCPL, in addition to each sale for which the marketplace facilitator is itself the seller, retailer, or dealer.
- 3) Provides that a marketplace facilitator that is registered or required to register with CDTFA under any law imposing a fee administered under the FCPL and that facilitates a retail sale of TPP by a marketplace seller is the retailer for purposes of collecting and remitting any fee imposed on the consumer in connection with that sale.
- 4) Modifies the Marketplace Facilitator Act's definition of a "marketplace seller" consistent with this bill's provisions.
- 5) Requires a marketplace seller to register with CDTFA for purposes of any tax or fee administered under the FCPL for sales made on its own behalf and not facilitated by a registered marketplace facilitator.

EXISTING LAW:

- 1) Provides, under the FCPL, for the administration of various fee programs by CDTFA.
- 2) Charges CDTFA with administering the SUT Law, which imposes a sales tax on retailers for the privilege of selling TPP, absent a specific exemption. The tax is based upon the retailer's gross receipts from TPP sales in this state. When sales tax does not apply, California law imposes a complementary use tax on the storage, use, or other consumption in this state of TPP purchased from a retailer.

- 3) Establishes that a marketplace facilitator, as defined, is considered the seller and retailer for each sale facilitated through its marketplace for purposes of determining whether that marketplace facilitator is required to register with CDTFA under the SUT Law.
- 4) Treats any marketplace facilitator that is registered or required to register with CDTFA under the SUT Law and that facilitates a retail sale of TPP by a marketplace seller, as defined, as the retailer selling TPP sold through its marketplace for purposes of paying any sales taxes and collecting any use taxes.
- 5) Requires a marketplace seller to register with CDTFA for purposes of SUT for sales made on its own behalf and not facilitated by a registered marketplace facilitator.

FISCAL EFFECT: This bill would result in increased fee revenues of an unknown amount due to increased compliance.

COMMENTS:

- 1) The author has provided the following statement in support of this bill:

Under existing law, marketplace sellers must collect and remit specific applicable fees including e-waste fees upon their sale to a California consumer. To reduce uncertainty and the administrative burden on marketplace sellers, AB 1402 requires that marketplace facilitators collect and remit these applicable state-level fees in addition to their existing role of collecting and remitting sales and use tax. This bill will increase the ease of collecting these fees, compliance, and help California realize the revenue from these fees that go to important programs like the Air Pollution Control Fund, the Electronic Waste and Recovery Recycling Account, Timber Regulation and Forest Restoration Fund, and the Lead-Acid Battery Cleanup Fund.

- 2) Committee Staff Comments:

- a) *The way forward after Wayfair:* On April 25, 2019, the Governor signed into law AB 147 (Burke), Chapter 5, Statutes of 2019. AB 147 was designed to modernize California law consistent with the holding in *South Dakota v. Wayfair, Inc.*, which allows California to impose a use tax collection duty on retailers with specified levels of economic activity in California, even though they do not have a physical presence here.

AB 147 also recognized the realities of today's e-commerce economy by requiring marketplace facilitators¹ (e.g., Amazon and eBay) to collect and remit SUT on behalf of their third-party retailers. Specifically, AB 147 established the Marketplace Facilitator Act within the SUT Law. The Marketplace Facilitator Act, in turn, treats any marketplace facilitator that is registered with CDTFA under the SUT Law and that facilitates a retail sale of TPP by a marketplace seller, as the retailer for purposes of paying any sales taxes and collecting any use taxes. AB 147 imposed this collection

¹ The Marketplace Facilitator Act defines a marketplace facilitator as a person who contracts with marketplace sellers to facilitate for consideration, regardless of whether deducted as fees from the transaction, the sale of the marketplace seller's products through a marketplace operated by the person or related person and who engages in specified activities.

responsibility on marketplace facilitators both to increase compliance with the SUT Law and to relieve the administrative burden on smaller and less sophisticated retailers selling through such marketplaces.

- b) *The FCPL*: In addition to the SUT, CDTFA also administers more than 30 other special tax and fee programs. Of these programs, four impose a fee, administered pursuant to the FCPL, which the retailer must collect from the purchaser. These four state fee programs are:
- i) *The California Tire Fee*: This fee is imposed on California consumers for each new tire purchased. Generally, the retailer will collect the tire fee from the customer at the time of sale;
 - ii) *The Covered Electronic Waste (eWaste) Fee*: This fee is imposed on the retail purchase or lease of certain video display devices that have been identified by the Department of Toxic Substances Control as covered electronic devices (CEDs). A retailer of CEDs must register with CDTFA, file returns, and remit the fee to CDTFA;
 - iii) *The Lead-Acid Battery Fee*: This fee, which the retailer collects from the purchaser, is imposed on the purchaser of a replacement lead-acid battery; and,
 - iv) *The Lumber Products Assessment*: This fee is assessed on purchases of lumber products and engineered wood products for use in California, based on the selling price of the products. Retailers charge and collect this assessment from purchasers.
- c) *What would this bill do?* This bill would revise the Marketplace Facilitator Act to require marketplace facilitators to register, collect, and remit fees administered under the FCPL that are imposed upon the retail sale of TPP in this state. Thus, marketplace facilitators would be responsible for collecting and remitting the fees noted above, along with any future FCPL fees imposed on the retail sale of TPP. As noted by the author's office, "This clarification will enhance compliance and reduce the administrative burden on marketplace sellers who would now have to collect applicable fees even though the marketplace facilitators would be collecting applicable sales and use tax for the sale."

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

None on file

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