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H.587

Introduced by Representatives Harrison of Chittenden and Masland of
Thetford

Referred to Committee on

Date:

Subject: Taxation; sales tax; third-party sales

Statement of purpose of bill as introduced: This bill proposes to require
entities that host third-party sales to collect sales tax or follow notice
requirements.

An act relating to requiring certain third-party facilitators of retail sales to
collect sales tax or follow notice requirements

It is hereby enacted by the General Assembly of the State of Vermont:

* * * Main Substantive Provisions * * *

Sec. 1. 32 V.S.A. § 9701 is amended to read:

§ 9701. DEFINITIONS

* * *

(14) “Persons required to collect tax” or “persons required to collect any
tax imposed by this chapter” means every vendor of taxable tangible personal
property or services, and every recipient of amusement charges. These terms
also include marketplace facilitators, with respect to retail sales made on behalf

1 of a vendor under subdivision 9713(a)(2) of this chapter, and every person
2 required to collect and remit sales or use tax due to an election under section
3 9713 of this chapter. These terms shall also include any officer or employee of
4 a corporation or other entity or of a dissolved entity who as that officer or
5 employee is under a duty to act for the corporation or entity in complying with
6 any requirement of this chapter.

7 * * *

8 (22) “Taxpayer” means a person obligated to file a return with or pay or
9 remit any amount to this State under this chapter or to make an election under
10 section 9713 of this chapter.

11 * * *

12 (54) “~~Noncollecting Remote~~ vendor” means a ~~vendor that~~ person who
13 would qualify as a “vendor” under subdivision (9) of this section but for the
14 person’s location outside this State, and who sells tangible personal property or
15 services to purchasers who are not exempt from the sales tax under this
16 chapter, but ~~that~~ who does not collect the Vermont sales tax.

17 (55) “Marketplace facilitator” means a person who contracts with
18 vendors or remote vendors, or both, to facilitate for consideration, regardless of
19 whether deducted as fees from the transaction, the sale of the vendors’ or
20 remote vendors’ products through a physical or electronic marketplace
21 operated by the person and engages:

1 (A) directly, or indirectly through one or more affiliated persons, in
2 any of the following:

3 (i) transmitting or otherwise communicating the offer or
4 acceptance between purchasers and vendors or remote vendors;

5 (ii) owning or operating the infrastructure, electronic or physical,
6 or technology that brings purchasers and vendors or remote vendors together;

7 (iii) providing a virtual currency that purchasers are allowed or
8 required to use to purchase products from vendors or remote vendors; or

9 (iv) software development or research and development activities
10 related to any of the activities described in subdivision (B) of this subdivision
11 (55), if such activities are directly related to a physical or electronic
12 marketplace operated by the person or an affiliated person; and

13 (B) in any of the following activities with respect to the vendors' or
14 remote vendors' products:

15 (i) payment processing services;

16 (ii) fulfillment or storage services;

17 (iii) listing products for sale;

18 (iv) setting prices;

19 (v) branding sales as those of the marketplace facilitator;

1 (vi) order taking;

2 (vii) advertising or promotion; or

3 (viii) providing customer service or accepting or assisting with
4 returns or exchanges.

5 (56) “Marketplace” means the physical or electronic processes, systems,
6 places, and infrastructure, including a website, through which a marketplace
7 facilitator engages in any of the activities described in subdivision (55) of this
8 section.

9 (57) “Affiliated person” means a person who, with respect to another
10 person:

11 (A) has an ownership interest of more than five percent, whether
12 direct or indirect, in the other person; or

13 (B) is related to the other person because a third person, or group of
14 third persons who are affiliated persons with respect to each other, holds an
15 ownership interest of more than five percent, whether direct or indirect, in the
16 related persons.

17 Sec. 2. 32 V.S.A. § 9712 is amended to read:

18 § 9712. NOTICE REQUIREMENTS FOR ~~NONCOLLECTING~~ CERTAIN
19 REMOTE VENDORS AND MARKETPLACE FACILITATORS

20 (a) Each ~~nonecollecting remote vendor making sales into Vermont or~~
21 marketplace facilitator electing the notice and reporting option under section

1 9713 of this chapter shall notify Vermont purchasers that sales or use tax is due
2 on nonexempt purchases made from the ~~noncollecting remote~~ vendor or
3 marketplace facilitator and that the State of Vermont requires the purchaser to
4 pay the tax due on his or her tax return. Failure to provide the notice required
5 by this subsection shall subject the ~~noncollecting remote~~ vendor or
6 marketplace facilitator to a penalty of \$5.00 for each such failure, unless the
7 ~~noncollecting remote~~ vendor or marketplace facilitator shows reasonable cause
8 for such failure.

9 (b) Each ~~noncollecting remote~~ vendor or marketplace facilitator electing
10 the notice and reporting option under section 9713 of this chapter shall send
11 notification to all Vermont purchasers on or before January 31 of each year
12 showing the total amount paid by the purchaser for Vermont purchases made
13 from the ~~noncollecting remote~~ vendor or marketplace facilitator in the previous
14 calendar year. The notice requirement in this subsection only applies to
15 Vermont purchasers who have made ~~\$500.00~~ \$200.00 or more of purchases
16 from the ~~noncollecting remote~~ vendor or marketplace facilitator in the previous
17 calendar year. The notice shall include any information required by the
18 Commissioner by rule. The notification shall state that the State of Vermont
19 requires a sales or use tax return to be filed and sales or use tax paid on
20 nonexempt purchases made by the purchaser from the ~~noncollecting remote~~
21 vendor or marketplace facilitator. The notification required by this subsection

1 shall be sent separately to all Vermont purchasers by first-class mail or
2 electronic mail and shall not be included with any other shipments. The
3 notification shall include the words “Important Tax Document Enclosed” on
4 the exterior of the mailing. The notification shall include the name of the
5 ~~nonecollecting~~ remote vendor or marketplace facilitator. Failure to send the
6 notification required by this subsection shall subject the ~~nonecollecting~~ remote
7 vendor or marketplace facilitator to a penalty of \$10.00 for each such failure,
8 unless the ~~nonecollecting~~ remote vendor or marketplace facilitator shows
9 reasonable cause for such failure.

10 (c) Each ~~nonecollecting~~ remote vendor or marketplace facilitator electing the
11 notice and reporting option under section 9713 of this chapter shall file a copy
12 of the notice required by subsection (b) of this section with the Department of
13 Taxes on or before January 31 of each year. The requirement to file a copy of
14 the notice required by this subsection shall only apply to ~~nonecollecting~~ remote
15 vendors or marketplace facilitators who made \$100,000.00 or more of sales
16 into Vermont in the previous calendar year. Failure to file a copy of the notice
17 required by this subsection shall subject the ~~nonecollecting~~ remote vendor or
18 marketplace facilitator to a penalty of \$10.00 for each failure, unless the
19 ~~nonecollecting~~ remote vendor or marketplace facilitator shows reasonable
20 cause.

1 (d) The Commissioner is authorized to adopt rules or procedures or to
2 create forms necessary to implement this section. Penalties imposed under this
3 section shall be subject to the same administrative and appeal provisions of this
4 chapter as if imposed under section 3202 of this title.

5 (e) Remote vendors are not obligated to comply with this section with
6 regard to sales made through the marketplace of a marketplace facilitator when
7 the requirements found in subsections 9714(d) through (f) of this chapter are
8 met.

9 (f) As required by subdivision 9713(a)(2) of this chapter, a marketplace
10 facilitator that has elected to comply with this section shall nevertheless collect
11 and remit sales or use tax on its own sales, if the marketplace facilitator is a
12 vendor, and on sales made on behalf of vendors. For sales on which the
13 marketplace facilitator has collected and remitted tax:

14 (1) The marketplace facilitator shall not send notices under subsection
15 (a) of this section.

16 (2) The marketplace facilitator shall not include the sales in the total
17 purchases listed in the notices under subsections (b) and (c) of this section.
18 However, such sales shall be counted for purposes of determining whether the
19 notice requirements in subsections (b) and (c) of this section apply.

1 Sec. 3. 32 V.S.A. § 9713 is added to read:

2 § 9713. COLLECT OR REPORT ELECTION FOR MARKETPLACE

3 FACILITATORS AND REMOTE VENDORS

4 (a)(1) Beginning on July 1, 2019, marketplace facilitators and remote
5 vendors shall elect to either collect and remit retail sales or use tax pursuant to
6 this chapter on all sales into this State as if they were vendors or comply with
7 the notice requirement of section 9712 of this chapter.

8 (2) Marketplace facilitators shall collect and remit sales or use tax on
9 sales by vendors through the marketplace. For marketplace facilitators, the
10 election provided in this subsection applies only with respect to:

11 (A) retail sales facilitated by the marketplace facilitator on behalf of
12 remote vendors; and

13 (B) the marketplace facilitator's own retail sales, if the marketplace
14 facilitator is a remote vendor.

15 (3) An election under subdivision (1) of this subsection to collect retail
16 sales or use tax is binding on the marketplace facilitator or remote vendor until
17 January 1 of the calendar year that is at least 12 consecutive months after the
18 marketplace facilitator or remote vendor began collecting retail sales or use tax
19 under such election. A marketplace facilitator or remote vendor that has made
20 an election under this section to collect retail sales or use tax may change its
21 election by providing written notice of its election to comply with section 9712

1 of this chapter to the Commissioner in a form and manner required by the
2 Commissioner. Such an election change may take effect only on the first day
3 of the calendar year that is at least 30 days following the date that the
4 Commissioner received written notice from the marketplace facilitator or
5 remote vendor of its change in election.

6 (4) Marketplace facilitators and remote vendors complying with section
7 9712 of this chapter may change their election under this section at any time by
8 beginning to collect and remit retail sales or use tax pursuant to this chapter on
9 all sales into this State of property or services listed in section 9771 of this
10 chapter through the marketplace or by the remote vendor. Such an election is
11 binding as provided in subsection (c) of this section.

12 (5) If the Commissioner discovers that any marketplace facilitator or
13 remote vendor required to make an election under this section is not registered
14 with the Commissioner and is collecting retail sales or use tax on all applicable
15 sales within 30 days after the date that the marketplace facilitator or remote
16 vendor meets the appropriate threshold described in subsection (b) of this
17 section, the marketplace facilitator or remote vendor is conclusively presumed
18 to have elected to comply with the notice and reporting requirements of section
19 9712 of this chapter.

1 (b)(1) A remote vendor is subject to subsection (a) of this section if, during
2 the current or immediately preceding calendar year, its gross receipts from
3 retail sales into the State are at least \$10,000.00.

4 (2) A marketplace facilitator is subject to subsection (a) of this section
5 if, during the current or immediately preceding calendar year, the gross
6 receipts from retail sales into the State by the marketplace facilitator, including
7 its own sales and the sales of contracting vendors or remote vendors through
8 the marketplace, are at least \$10,000.00.

9 (c) Nothing in this section or in section 9712 or 9714 of this chapter affects
10 any obligation of a purchaser to remit sales or use tax as to an applicable
11 taxable transaction in which the vendor, remote vendor, or agent of the vendor
12 or remote vendor does not collect and remit sales tax.

13 Sec. 4. 32 V.S.A. § 9714 is added to read:

14 § 9714. COLLECT OR REPORT ELECTION; RESPONSIBILITIES

15 (a) For purposes of this chapter, a marketplace facilitator is deemed to be
16 an agent of any vendor or remote vendor making retail sales through the
17 marketplace facilitator's physical or electronic marketplace.

18 (b) In addition to any other applicable record-keeping requirements, the
19 Commissioner may require marketplace facilitators and remote vendors
20 electing to comply with the notice and reporting requirements of section 9712
21 of this chapter to provide or make available to the Commissioner any

1 information the Commissioner determines is reasonably necessary to enforce
2 the provisions of this chapter. The Commissioner may prescribe by rule the
3 form and manner for providing this information.

4 (c) A marketplace facilitator is relieved of liability under this chapter for
5 failure to collect the correct amount of tax to the extent that the marketplace
6 facilitator can show to the Commissioner's satisfaction that the error was due
7 to incorrect information given to the marketplace facilitator by a vendor or
8 remote vendor, unless the marketplace facilitator and vendor or remote vendor
9 are affiliated persons. When the marketplace facilitator is relieved of liability
10 under this subsection, the vendor or remote vendor is liable for the amount of
11 uncollected tax due, notwithstanding subsection (d) of this section.

12 (d) Except as otherwise provided in this section, when a vendor or remote
13 vendor has obtained documentation from a marketplace facilitator indicating
14 that the marketplace facilitator is registered with the Commissioner under
15 section 9707 of this chapter and will collect all applicable taxes on all retail
16 sales made by or on behalf of the vendor or remote vendor through the
17 marketplace operated by the marketplace facilitator:

18 (1) A vendor or remote vendor otherwise obligated or electing to collect
19 the taxes imposed under this chapter is not required to collect such taxes with
20 regard to retail sales made through the marketplace operated by the
21 marketplace facilitator.

1 (2) A remote vendor electing to comply with the notice and reporting
2 requirements of section 9712 of this chapter is not required to comply with the
3 notice and reporting requirements with regard to retail sales made through the
4 marketplace operated by the marketplace facilitator.

5 (e) Except as otherwise provided in this section, when a marketplace
6 facilitator furnishes documentation indicating that the marketplace facilitator
7 has elected to comply with the notice and reporting requirements of section
8 9712 of this chapter:

9 (1) A remote vendor electing to collect the taxes imposed under this
10 chapter is not required to collect such taxes with regard to retail sales made
11 through the marketplace operated by the marketplace facilitator.

12 (2) A remote vendor electing to comply with the notice and reporting
13 requirements of section 9712 of this chapter is not required to comply with the
14 notice and reporting requirements with regard to retail sales made through the
15 marketplace operated by the marketplace facilitator.

16 (f) The documentation required by subsections (d) and (e) of this section
17 shall be provided in a form, manner, and frequency prescribed by or acceptable
18 to the Commissioner. Such documentation shall not relieve a vendor or remote
19 vendor of any obligations to collect tax or comply with the notice and reporting
20 requirements under this chapter when the vendor or remote vendor knows or
21 should know that the representations made in the documentation are false.

1 or for whom he or she solicits business, the Commissioner may, in his or her
2 discretion, treat such agent as the vendor, remote vendor, or marketplace
3 facilitator jointly and severally responsible with the principal, distributor,
4 supervisor, or employer for the collection and payment of the tax.

5 Sec. 7. 32 V.S.A. § 9708 is amended to read:

6 § 9708. RESTRICTIONS ON ADVERTISING

7 * * *

8 (b) Upon written application duly made and proof duly presented to the
9 satisfaction of the Commissioner showing that in his or her particular business
10 it would be impractical for the ~~vendor~~ person required to collect tax to
11 separately charge the tax to the customer, the Commissioner may waive the
12 application of the requirement herein as to such ~~vendor~~ person.

13 * * *

14 Sec. 8. 32 V.S.A. § 9745 is amended to read:

15 § 9745. CERTIFICATE OR AFFIDAVIT OF EXEMPTION; DIRECT

16 PAYMENT PERMIT

17 (a) Certificate or affidavit of exemption. The Commissioner may require
18 that a ~~vendor~~ persons required to collect tax obtain an exemption certificate,
19 which may be an electronic filing, with respect to the following sales: sales for
20 resale; sales to organizations that are exempt under section 9743 of this title;
21 and sales that qualify for a use-based exemption under section 9741 of this

1 title. Acceptance of an exemption certificate containing such information as
2 the Commissioner may prescribe shall satisfy the ~~vendor's~~ person's burden
3 under subsection 9813(a) of this title of proving that the transaction is not
4 taxable. A ~~vendor's~~ person's failure to possess an exemption certificate at the
5 time of sale shall be presumptive evidence that the sale is taxable.

6 (b) Direct payment permit. The Commissioner may, in his or her
7 discretion, authorize a purchaser, who acquires tangible personal property or
8 services under circumstances ~~which~~ that make it impossible at the time of
9 acquisition to determine the manner in which the tangible personal property or
10 services will be used, to pay the tax directly to the Commissioner and waive
11 the collection of the tax by the vendor, remote vendor, or marketplace
12 facilitator through the issuance of a direct payment permit. Any contractor,
13 subcontractor, or ~~repairman~~ repairperson who acquires tangible personal
14 property consisting of materials and supplies for use by him or her in erecting
15 structures for others, or building on, or otherwise improving, altering, or
16 repairing real property of others, may apply for a direct payment permit to pay
17 the tax directly to the Commissioner and waive the collection of the tax by the
18 vendor, remote vendor, or marketplace facilitator. No such authority shall be
19 granted or exercised except upon application to the Commissioner and the
20 issuance by the Commissioner of a direct payment permit. If a direct payment
21 permit is granted, its use shall be subject to conditions specified by the

1 Commissioner, and the payment of tax on all acquisitions pursuant to the
2 permit shall be made directly to the Commissioner by the permit holder.

3 Sec. 9. 32 V.S.A. § 9746 is amended to read:

4 § 9746. SNOWMOBILE, MOTORBOAT, AND VESSEL SALES

5 * * *

6 (c) A ~~vendor~~ person required to collect taxes determining sales price under
7 this section shall obtain in good faith from the purchaser, on a form provided
8 by the Department of Taxes and signed by the purchaser and bearing his or her
9 name and address, a certificate of sale or payment of insurance proceeds with
10 regard to the first vehicle or vessel.

11 Sec. 10. 32 V.S.A. § 9772 is amended to read:

12 § 9772. AMOUNT OF TAX TO BE COLLECTED

13 (a) For the purpose of adding and collecting the tax imposed by this
14 chapter, or an amount equal as nearly as possible or practicable to the average
15 equivalent thereof, to be reimbursed to ~~the vendor~~ a person required to collect
16 taxes by the purchaser, the ~~vendor~~ person shall multiply the total sales price of
17 all the transactions taxable by the rate specified in section 9771 of this title
18 carried to the third decimal place and rounded up to the nearest whole cent if
19 the third decimal point is greater than four and rounded down to the nearest
20 whole cent if the third decimal point is four or less. The tax may be computed
21 on either the total invoice amount or on each taxable item.

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Sec. 11. 32 V.S.A. § 9775 is amended to read:

§ 9775. RETURNS

(a) Except as otherwise provided in this section, every person required to collect or pay tax under this chapter shall, where the sales and use tax liability under this chapter for the immediately preceding calendar year has been (or would have been in cases when the business was not operating or was not required to collect sales or use tax for the entire year) \$500.00 or less, pay the tax imposed by this chapter in one annual payment on or before the 25th day of January of each year. Every person required to collect or pay tax under this chapter shall, where the sales and use tax liability under this chapter for the immediately preceding calendar year has been (or would have been in cases when the business was not operating or was not required to collect sales or use tax for the entire year) more than \$500.00 but less than \$2,500.00, pay the tax imposed by this chapter in quarterly installments on or before the 25th day of the calendar month succeeding the quarter ending on the last day of March, June, September, and December of each year. In all other cases, except as provided in subsections (e) and (g) of this section, the tax imposed by this chapter shall be due and payable monthly on or before the 25th (23rd of February) day of the month following the month for which the tax is due. Payment by electronic funds transfer does not affect the requirement to file

1 returns. The return of a vendor, remote vendor, or marketplace facilitator of
2 tangible personal property shall show such information as the Commissioner
3 may require.

4 * * *

5 Sec. 12. 32 V.S.A. § 9812 is amended to read:

6 § 9812. ACTIONS FOR COLLECTION OF TAX

7 (a) Action may be brought by the Attorney General at the instance of the
8 Commissioner in the name of the State to recover the amount of taxes,
9 penalties, and interest due from ~~such vendor~~ a person required to collect tax,
10 provided such action is brought within six years after the same are due. Such
11 action shall be returnable in the county where the ~~vendor~~ person required to
12 collect tax resides if a resident of the State; and if a nonresident, the action
13 shall be returnable to Washington County. The limitation of six years in this
14 section shall not apply to a suit to collect taxes, penalties, interest, and costs
15 when the ~~vendor~~ person required to collect tax filed a fraudulent return or
16 failed to file a return when the same was due.

17 * * *

18 * * * Effective Date * * *

19 Sec. 13. EFFECTIVE DATE

20 This act shall take effect on July 1, 2018.