

1 H.117

2 Introduced by Representatives Harrison of Chittenden and Masland of

3 Thetford

4 Referred to Committee on

5 Date:

6 Subject: Taxation; sales and use tax; marketplace facilitators; meals and

7 rooms; online travel companies

8 Statement of purpose of bill as introduced: This bill proposes to require
9 entities that host third-party sales to collect and remit the sales tax. The bill
10 also requires online travel companies to collect and remit the rooms tax on the
11 entire amount paid for the room.

12 An act relating to updating Vermont's sales and use tax and rooms tax
13 collection practices

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

15 * * * Marketplace Facilitators * * *

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

17 § 9701. DEFINITIONS

18 Unless the context in which they occur requires otherwise, the following
19 terms when used in this chapter mean:

20 * * *

1 (9) “Vendor” means:

2 * * *

3 (J) A marketplace facilitator who has facilitated sales by marketplace
4 sellers to destinations within this State of at least \$100,000.00, or totaling at
5 least 200 individual sales transactions, during any 12-month period preceding
6 the monthly period with respect to which that person’s liability for tax under
7 this chapter is determined.

8 (K) A marketplace seller who has combined sales to a destination
9 within this State and sales through a marketplace to destination within this
10 State of at least \$100,000.00, or totaling at least 200 individual sales
11 transactions, during any 12-month period preceding the monthly period with
12 respect to which that person’s liability for tax under this chapter is determined.

13 * * *

14 (14) “Persons required to collect tax” or “persons required to collect any
15 tax imposed by this chapter” means every vendor of taxable tangible personal
16 property or services, and every recipient of amusement charges. These terms
17 shall also include marketplace facilitators with respect to retail sales made on
18 behalf of a marketplace seller. These terms shall also include any officer or
19 employee of a corporation or other entity or of a dissolved entity who as that
20 officer or employee is under a duty to act for the corporation or entity in
21 complying with any requirement of this chapter.

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(56) “Marketplace facilitator” means a person who contracts with two or more sellers to facilitate for consideration, regardless of whether deducted as fees from the transaction, the sale of the sellers products through a physical or electronic marketplace operated by the person and engages:

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

(i) transmitting or otherwise communicating the offer or acceptance between purchasers and sellers;

(ii) owning or operating the infrastructure, electronic or physical, or technology that brings purchasers and sellers together;

(iii) providing a virtual currency that purchasers are allowed or required to use to purchase products from sellers; or

(iv) software development or research and development activities related to any of the activities described in subdivision (B) of this subdivision (56), if such activities are directly related to a physical or electronic marketplace operated by the person or an affiliated person; and

(B) in any of the following activities with respect to the sellers products:

(i) payment processing services;

(ii) fulfillment or storage services;

- 1 (iii) listing products for sale;
2 (iv) setting prices;
3 (v) branding sales as those of the marketplace facilitator;
4 (vi) order taking;
5 (vii) advertising or promotion; or
6 (viii) providing customer service or accepting or assisting with
7 returns or exchanges.

8 (57) “Marketplace seller” means a person who has an agreement with a
9 marketplace facilitator and makes retail sales of tangible personal property,
10 taxable services, or digital goods through a marketplace owned, operated, or
11 controlled by a marketplace facilitator, even if the person would not be
12 required to collect and remit the sales tax had the sale not been made through
13 the facilitated marketplace. For the purpose of subdivision (56) of this
14 subsection, a marketplace seller is considered a seller.

15 (58) “Marketplace” means the physical or electronic processes, systems,
16 places, and infrastructure, including a website, through which a marketplace
17 facilitator engages in any of the activities described in subdivision (56) of this
18 section.

19 (59) “Affiliated person” means a person who, with respect to another
20 person:

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

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

7 Sec. 2. 32 V.S.A. § 9713 is added to read:

8 § 9713. MARKETPLACE FACILITATORS AND MARKETPLACE
9 SELLERS.

10 (a) Marketplace facilitators, qualifying as a vendor under subdivision
11 9701(9)(J) of this chapter, shall collect and remit the sales tax on retail sales by
12 marketplace sellers through a marketplace. Marketplace sellers shall collect
13 and remit the sales tax on any retail sales within this State that are not made
14 through a marketplace; provided that the marketplace seller qualifies as a
15 vendor under subdivision 9701(9)(K) of this chapter.

16 (b) A marketplace facilitator, qualifying as a vendor under subdivision
17 9701(9)(J) of this chapter, shall certify to its marketplace sellers that it will
18 collect and remit the sales tax under this chapter on the sale of taxable items
19 made through its marketplace. A marketplace seller that accepts a certification
20 from a marketplace facilitator in good faith shall exclude sales made through
21 the marketplace from its obligation as a vendor under this chapter.

1 (c) A marketplace facilitator is relieved from liability under this chapter if
2 it can demonstrate to the Commissioner that its failure to collect the correct
3 amount of tax was due to incorrect information given to the marketplace
4 facilitator by the marketplace seller.

5 * * * Booking Agents * * *

6 Sec. 3. 32 V.S.A. § 9202 is amended to read:

7 § 9202. DEFINITIONS

8 The following words, terms, and phrases when used in this chapter shall
9 have the meanings ascribed to them in this section unless the context clearly
10 indicates a different meaning:

11 * * *

12 (4) “Operator” means any person, or his or her agent, operating a hotel,
13 whether as owner or proprietor or lessee, sublessee, mortgagee, licensee, or
14 otherwise; and any person, or his or her agent, charging for a taxable meal or
15 alcoholic beverage; and any person, or his or her agent, engaged in both of the
16 foregoing activities. The term “operator” shall include booking agents. In the
17 event that an operator is a corporation or other entity, the term “operator” shall
18 include any officer or agent of such corporation or other entity who, as an
19 officer or agent of the corporation, is under a duty to pay the gross receipts tax
20 to the Commissioner as required by this chapter.

21 * * *

1 (8) “Rent” means the consideration received for occupancy valued in
2 money, whether received in money or otherwise, including all receipts, cash,
3 credits, and property or services of any kind or nature, and also any amount for
4 which the occupant is liable for the occupancy without any deduction
5 therefrom whatsoever; and any monies received in payment for time-share
6 rights at the time of purchase; provided, however, that such money received
7 shall not be considered rent and thus not taxable if a deeded interest is granted
8 to the purchaser for the time-share rights. The term “rent” shall include all
9 amounts collected by booking agents except the tax required to be collected
10 under this chapter. The term “rent” shall not include rental charges for living
11 quarters, sleeping, or household accommodations to any student necessitated
12 by attendance at a school as defined herein.

13 * * *

14 (20) “Booking agent” means a person who facilitates the rental of an
15 occupancy and collects rent for an occupancy and who has the right, access,
16 ability, or authority, through an Internet transaction or any other means, to
17 offer, reserve, book, arrange for, remarket, distribute, broker, resell, or
18 facilitate an occupancy that is subject to the tax under this chapter.

1 Sec. 4. 32 V.S.A. § 9271 is amended to read:

2 § 9271. LICENSES REQUIRED

3 Each operator prior to commencing business shall register with the
4 Commissioner each place of business within the State where he or she operates
5 a hotel or sells taxable meals or alcoholic beverages; provided however, that an
6 operator who sells taxable meals through a vending machine shall not be
7 required to hold a license for each individual machine, and a booking agent
8 shall not be required to hold a separate license for each property the rental of
9 which it facilitates. Upon receipt of an application in such form and containing
10 such information as the Commissioner may require for the proper
11 administration of this chapter, the Commissioner shall issue without charge a
12 license for each such place in such form as he or she may determine, attesting
13 that such registration has been made. No person shall engage in serving
14 taxable meals or alcoholic beverages or renting hotel rooms without the license
15 provided in this section. The license shall be nonassignable and
16 nontransferable and shall be surrendered to the Commissioner if the business is
17 sold or transferred or if the registrant ceases to do business at the place named.

18 Sec. 5. EFFECTIVE DATE

19 This act shall take effect on July 1, 2019.