

1 H.536

2 Introduced by Committee on Ways and Means

3 Date:

4 Subject: Taxation; sales tax; statewide education property tax; yields;  
5 nonresidential rate

6 Statement of purpose of bill as introduced: This bill proposes to change the  
7 term “nonresidential” to “nonhomestead” in statute, clarify the applicability of  
8 the sales tax to third-party sales made over the Internet, and to set the  
9 statewide education property tax yields and nonresidential rate for fiscal year  
10 2020.

11 An act relating to education finance

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

13 ~~\*\*\* Definitions: Homestead; Nonhomestead \*\*\*~~

14 Sec. 1. 32 V.S.A. § 5401 is amended to read:

15 § 5401. DEFINITIONS

16 As used in this chapter:

17 \* \* \*

18 (10) “~~Nonresidential~~ Nonhomestead property” means all property

19 ~~except.~~

1 \* \* \*

2 Sec. 2. CONFORMING REVISIONS

3 When preparing the Vermont Statutes Annotated for publication, the Office  
4 of Legislative Council shall make the following revisions throughout the  
5 statutes as needed for consistency with Sec. 1 of this act, as long as the  
6 revisions have no other effect on the meaning of the affected statutes:

7 (1) replace “nonresidential” with “nonhomestead” in Title 32 and  
8 Title 16; and

9 (2) make revisions that are substantially similar to those described in  
10 subdivision (1) of this subsection in other titles of the Vermont Statutes  
11 Annotated.

12 \* \* \* Sales and Use Tax; Marketplace Facilitators \* \* \*

13 Sec. 3. 32 V.S.A. § 9701 is amended to read:

14 § 9701. DEFINITIONS

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

17 \* \* \*

18 (9) “Vendor” means:

19 \* \* \*

20 (J) A marketplace facilitator who has facilitated sales by marketplace  
21 sellers to destinations within this State of at least \$100,000.00, or totaling at

1 ~~least 200 individual sales transactions, during any 12-month period preceding~~  
2 ~~the monthly period with respect to which that person's liability for tax under~~  
3 ~~this chapter is determined.~~

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

9 \* \* \*

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

18 \* \* \*

19 (56) "Marketplace facilitator" means a person who contracts with  
20 marketplace sellers to facilitate for consideration, regardless of whether  
21 deducted as fees from the transaction, the sale of the marketplace sellers

1 acts through a physical or electronic marketplace operated by the person and

2 engages:

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

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

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

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

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

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

17 (i) payment processing services;

18 (ii) fulfillment or storage services;

19 (iii) listing products for sale;

20 (iv) setting prices;

21 (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 (57) "Marketplace seller" means a person who has an agreement with a  
6 marketplace facilitator and makes retail sales of tangible personal property,  
7 taxable services, or digital goods through a marketplace owned, operated, or  
8 controlled by a marketplace facilitator, even if the person would not be  
9 required to collect and remit the sales tax had the sale not been made through  
10 the facilitated marketplace.

11 (58) "Marketplace" means the physical or electronic processes, systems,  
12 places, and infrastructure, including a website, through which a marketplace  
13 facilitator engages in any of the activities described in subdivision (56) of this  
14 section.

15 (59) "Affiliated person" means a person who, with respect to another  
16 person:

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

19 (B) is related to the other person because a third person, or group of  
20 third persons who are affiliated persons with respect to each other, holds an

1 ~~ownership interest of more than five percent, whether direct or indirect, in the~~  
2 related persons.

3 Sec. 4. 32 V.S.A. § 9713 is added to read:

4 § 9713. MARKETPLACE FACILITATORS AND MARKETPLACE

5 SELLERS

6 (a) Marketplace facilitators shall collect and remit the sales tax on retail  
7 sales by marketplace sellers through a marketplace. Marketplace sellers shall  
8 collect and remit the sales tax on any retail sales within this State that are not  
9 made through a marketplace.

10 (b) A marketplace facilitator shall certify to its marketplace sellers that it  
11 will collect and remit the sales tax under this chapter on the sale of taxable  
12 items made through its marketplace. A marketplace seller that accepts a  
13 certification from a marketplace facilitator in good faith shall exclude sales  
14 made through the marketplace from its obligation as a vendor under this  
15 chapter.

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

1 ~~\*\*\* Statewide Education Property Tax Yields and Nonresidential Rate\*\*\*~~

2 Sec. 5. PROPERTY DOLLAR EQUIVALENT YIELD, INCOME

3 DOLLAR EQUIVALENT YIELD, AND NONRESIDENTIAL  
4 RATE FOR FISCAL YEAR 2020

5 (a) Pursuant to 32 V.S.A. § 5402b(b), for fiscal year 2020 only, the  
6 property dollar equivalent yield shall be \$10,705.00.

7 (b) Pursuant to 32 V.S.A. § 5402b(b), for fiscal year 2020 only, the income  
8 dollar equivalent yield shall be \$13,164.00.

9 (c) Notwithstanding any other provision of law, the nonresidential rate for  
10 fiscal year 2020 shall be \$1.582 per \$100.00 of equalized education property  
11 value under 32 V.S.A. § 5402(a)(1).

12 \*\*\* Effective Dates \*\*\*

13 Sec. 6. EFFECTIVE DATES

14 (a) This section shall take effect on passage.

15 (b) Secs. 1–2 (nonhomestead) shall take effect on January 1, 2019 and  
16 apply to grand lists lodged after that date.

17 (c) Secs. 3–4 (marketplace facilitators) shall take effect on June 1, 2019.

18 (d) Sec. 5 (yields and nonresidential rate) shall take effect on July 1, 2019  
19 and apply to fiscal year 2020.

*\*\*\* Definitions; Homestead; Nonhomestead \*\*\**

*Sec. 1. 32 V.S.A. § 5401 is amended to read:*

§ 5401. DEFINITIONS

*As used in this chapter:*

\* \* \*

(10) *~~“Nonresidential”~~ “Nonhomestead property” means all property  
except:*

\* \* \*

Sec. 2. CONFORMING REVISIONS

When preparing the Vermont Statutes Annotated for publication, the Office  
of Legislative Council shall make the following revisions throughout the  
statutes as needed for consistency with Sec. 1 of this act, as long as the  
revisions have no other effect on the meaning of the affected statutes:

(1) replace “nonresidential” with “nonhomestead” in Title 32 and  
Title 16; and

(2) make revisions that are substantially similar to those described in  
subdivision (1) of this subsection in other titles of the Vermont Statutes  
Annotated.

\* \* \* *Sales and Use Tax; Marketplace Facilitators* \* \* \*

Sec. 3. 32 V.S.A. § 9701 is amended to read:

§ 9701. DEFINITIONS

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

\* \* \*

(9) “Vendor” means:

\* \* \*

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

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

\* \* \*

(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 of a marketplace seller. These terms shall also include any officer or employee of a corporation or other entity or of a dissolved entity

*who as that officer or employee is under a duty to act for the corporation or entity in complying with any requirement of this chapter.*

\* \* \*

*(56) “Marketplace facilitator” means 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 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 marketplace sellers;*

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

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

(i) payment processing services;

(ii) fulfillment or storage services;

(iii) listing products for sale;

(iv) setting prices;

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

(vi) order taking;

(vii) advertising or promotion; or

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

(57) “Marketplace seller” means a person who has an agreement with a marketplace facilitator and makes retail sales of tangible personal property, taxable services, or digital goods through a marketplace owned, operated, or controlled by a marketplace facilitator, even if the person would not be required to collect and remit the sales tax had the sale not been made through the facilitated marketplace.

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

(59) "Affiliated person" means a person who, with respect to another person:

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

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

*Sec. 4. 32 V.S.A. § 9713 is added to read:*

§ 9713. MARKETPLACE FACILITATORS AND MARKETPLACE

SELLERS

(a) Marketplace facilitators shall collect and remit the sales tax on retail sales by marketplace sellers through a marketplace. Marketplace sellers shall collect and remit the sales tax on any retail sales within this State that are not made through a marketplace.

(b) A marketplace facilitator shall certify to its marketplace sellers that it will collect and remit the sales tax under this chapter on the sale of taxable items made through its marketplace. A marketplace seller that accepts a certification from a marketplace facilitator in good faith shall exclude sales made through the marketplace from its obligation as a vendor under this chapter.

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

\* \* \* Sales Tax; Veterinary Supplies \* \* \*

Sec. 5. 32 V.S.A. § 9741 is amended to read:

§ 9741. SALES NOT COVERED

Retail sales and use of the following shall be exempt from the tax on retail sales imposed under section 9771 of this title and the use tax imposed under section 9773 of this title.

\* \* \*

(3) Agriculture feeds, seed, plants, baler twine, silage bags, agricultural wrap, sheets of plastic for bunker covers, liming materials, breeding and other livestock, semen breeding fees, baby chicks, turkey poults, agriculture chemicals other than pesticides, ~~veterinary supplies~~, and bedding; and fertilizers and pesticides for use and consumption directly in the production for sale of tangible personal property on farms, including stock, dairy, poultry, fruit and truck farms, orchards, nurseries, or in greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities for sale.

\* \* \*

(53) Prescription drugs intended for animal use, and durable medical equipment and prosthetics intended for animal use, and veterinary supplies intended for animal use. As used in this subdivision, “prescription drugs intended for animal use” means a drug dispensed only by or upon the lawful written order of a licensed veterinarian, and “veterinary supplies” mean tangible personal property therapeutic in nature, not normally used absent illness or injury, and not intended for repeated usage.

*\* \* \* Statewide Education Property Tax Yields and Nonresidential Rate \* \* \**

*Sec. 6. PROPERTY DOLLAR EQUIVALENT YIELD, INCOME*

*DOLLAR EQUIVALENT YIELD, AND NONRESIDENTIAL  
RATE FOR FISCAL YEAR 2020*

(a) Pursuant to 32 V.S.A. § 5402b(b), for fiscal year 2020 only, the property dollar equivalent yield shall be \$10,648.00.

(b) Pursuant to 32 V.S.A. § 5402b(b), for fiscal year 2020 only, the income dollar equivalent yield shall be \$13,081.00.

(c) Notwithstanding any other provision of law, the nonresidential rate for fiscal year 2020 shall be \$1.594 per \$100.00 of equalized education property value under 32 V.S.A. § 5402(a)(1).

(d) Notwithstanding any other provision of law, when making recommendations for fiscal year 2021 under 32 V.S.A. § 5402b, the

Commissioner shall disregard any undesignated surplus in the Education Fund.

*\* \* \* Effective Dates \* \* \**

*Sec. 7. EFFECTIVE DATES*

(a) This section shall take effect on passage.

(b) Secs. 1–2 (nonhomestead) shall take effect on January 1, 2020 and apply to grand lists lodged after that date.

(c) Secs. 3–4 (marketplace facilitators) shall take effect on June 1, 2019.

(d) Sec. 5 (veterinary supplies) shall take effect July 1, 2019.

(e) Sec. 6 (yields and nonresidential rate) shall take effect on July 1, 2019 and apply to fiscal year 2020.