

The House Committee on Ways and Means offers the following substitute to SB 128:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales  
2 and use tax, so as to revise the definition of dealer; to require the collection and remittance  
3 of sales tax by certain persons that facilitate certain retail sales; to define marketplace  
4 facilitators and marketplace sellers; to prohibit certain class action suits; to provide for  
5 related matters; to provide for an effective date and applicability; to repeal conflicting laws;  
6 and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales and use tax,  
10 is amended in Code Section 48-8-2, relating to definitions, by revising subparagraph (M.1)  
11 and by adding a new subparagraph to paragraph (8) and by adding two new paragraphs to  
12 read as follows:

13 "(M.1) Obtains gross revenue, in an amount exceeding ~~\$250,000.00~~ \$100,000.00 in the  
14 previous or current calendar year, from conducting retail sales of tangible personal  
15 property to be delivered electronically or physically to a location within this state to be  
16 used, consumed, distributed, or stored for use or consumption in this state;"

17 "(M.3) Acts as a marketplace facilitator to facilitate retail sales that are taxable under  
18 this chapter to be delivered, held for pickup, used, consumed, distributed, stored for use  
19 or consumption, or rendered as a service within this state, if the total value of the sales  
20 price of all such retail sales, combined across all its marketplace sellers and the  
21 marketplace facilitator itself, equals or exceeds \$100,000.00 in aggregate in the  
22 previous or current calendar year;"

23 "(18.1) 'Marketplace facilitator' means a person that contracts with a seller in exchange  
24 for any form of consideration to make available or facilitate a retail sale that is taxable  
25 under this chapter on behalf of such seller by directly or through any agreement or  
26 arrangement with another person:

27 (A) Providing a service that makes available or facilitates such retail sale in any  
 28 manner, including, but not limited to, promoting, marketing, advertising, taking orders  
 29 or reservations for, providing the physical or electronic infrastructure that brings  
 30 purchasers and marketplace sellers together for, or otherwise similarly assisting the  
 31 seller in making such retail sale, or transmitting or otherwise similarly communicating  
 32 the offer and acceptance between the marketplace seller and the purchaser for, or  
 33 otherwise similarly assisting the seller for such retail sale, but excluding merely  
 34 processing the payments for such retail sale; and

35 (B) Collecting, charging, processing, or otherwise similarly facilitating payment for  
 36 such retail sale on behalf of the marketplace seller.

37 (18.2) 'Marketplace seller' means a person that conducts a retail sale through or  
 38 facilitated by any physical or electronic marketplace or platform operated directly or  
 39 indirectly by a marketplace facilitator, regardless of whether such marketplace seller is  
 40 required to be registered with the department pursuant to Code Section 48-8-59."

#### 41 **SECTION 2.**

42 Said chapter is further amended in Code Section 48-8-30, relating to imposition of tax, rates,  
 43 and collection, by repealing and reserving subsection (c.2) of said Code section.

#### 44 **SECTION 3.**

45 Said chapter is further amended in said Code section by adding a new subsection to read as  
 46 follows:

47 "(c.3)(1) A marketplace facilitator that meets the definition of a dealer provided in  
 48 subparagraph (M.3) of paragraph (8) of Code Section 48-8-2 shall constitute the dealer  
 49 and retailer for each retail sale taxable under this chapter at retail that it facilitates within  
 50 or outside this state on behalf of a marketplace seller if such retail sale is sourced, as  
 51 provided in Code Section 48-8-77, to a location within this state.

52 (2)(A) All taxes levied or imposed by this chapter on retail sales described in  
 53 paragraph (1) of this subsection shall be paid by the purchaser to the marketplace  
 54 facilitator that facilitates the retail sale on behalf of a marketplace seller.

55 (B) The marketplace facilitator shall remit such taxes to the commissioner as provided  
 56 in this article and, when received by the commissioner, the taxes shall be credited  
 57 against the taxes imposed on the retail sale.

58 (C) Each marketplace facilitator shall be liable for the full amount of taxes levied or  
 59 imposed by this chapter on all retail sales described in paragraph (1) of this subsection  
 60 or the amount of tax collected by such marketplace facilitator from all purchasers on  
 61 all such retail sales, whichever is greater.

62 (3) For the purposes of this subsection, it shall be prima-facie evidence that a retail sale  
 63 is sourced to a location within this state if it is to be held for pickup, used, consumed,  
 64 distributed, stored for use or consumption, or rendered as a service within this state.

65 (4) No retail sale that is not taxable to the purchaser at retail shall be taxable to the  
 66 marketplace facilitator. Taxes collected and remitted by a marketplace facilitator  
 67 pursuant to this subsection shall be subject to the credit otherwise granted by this article  
 68 for like taxes previously paid in another state. This subsection shall not be construed to  
 69 require a duplication in the payment of any tax.

70 (5) A marketplace seller shall not be obligated to collect and remit or be liable for the  
 71 taxes levied or imposed by this chapter on any retail sale for which its marketplace  
 72 facilitator is obligated and liable.

73 (6) The department may bring an action for a declaratory judgment in any superior court  
 74 against any person that meets the definition of a dealer as provided in subparagraph (M.3)  
 75 of paragraph (8) of Code Section 48-8-2, in order to establish that the collection  
 76 obligation and liability established by this subsection is applicable and valid under state  
 77 and federal law with respect to such a dealer. If such action presents a question for  
 78 judicial determination related to the constitutionality of the imposition of taxes upon such  
 79 a dealer, the court shall, upon motion, enjoin the state from enforcing the collection  
 80 obligation against such a dealer. The superior court shall act on such declaratory  
 81 judgment action and issue a final decision in an expeditious manner.

82 (7) No class action may be brought against a marketplace facilitator in any court of this  
 83 state on behalf of customers arising from or in any way related to an overpayment of sales  
 84 or use tax collected on sales facilitated by the marketplace facilitator, regardless of  
 85 whether that claim is characterized as a tax refund claim. Nothing in this subsection  
 86 affects a customer's right to seek a refund."

87 **SECTION 4.**

88 This Act shall become effective upon its approval by the Governor or upon becoming law  
 89 without such approval, provided, however, that Sections 1 and 3 of this Act shall become  
 90 effective on January 1, 2020, and shall apply to all sales occurring on or after  
 91 January 1, 2020.

92 **SECTION 5.**

93 All laws and parts of laws in conflict with this Act are repealed.