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# A BILL FOR AN ACT

RELATING TO TAX ON SALES OF TANGIBLE PERSONAL PROPERTY.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Chapter 237, Hawaii Revised Statutes, is  
2 amended by adding two new sections to be appropriately  
3 designated and to read as follows:

4           "§237-       Sale of tangible personal property; marketplace  
5 facilitators; other forum providers. (a) A marketplace  
6 facilitator who sells or assists in the sale of tangible  
7 personal property shall be deemed the seller of the property and  
8 the seller on whose behalf the sale is made shall be deemed to  
9 be making a sale at wholesale pursuant to section 237-4.

10           (b) Any person, other than a marketplace facilitator, who  
11 provides a forum, whether physical or electronic, in which  
12 sellers list or advertise tangible personal property for sale  
13 and takes or processes sales orders shall:

14           (1) Post a conspicuous notice on its forum that informs  
15 purchasers intending to purchase tangible personal  
16 property for delivery to a location in this State that



1           the purchaser is required to pay use tax if the sale  
2           is made from an unlicensed seller;

3           (2) Provide the following:

4           (A) A written notice to each purchaser at the time of  
5           each sale of tangible personal property for  
6           delivery to a location in this State that the  
7           purchaser may be required to remit use tax  
8           directly to the department; and

9           (B) Instructions for obtaining additional information  
10           from the department on whether and how to remit  
11           use tax to the department; and

12           (3) No later than the twentieth day of the fourth month  
13           following the close of the taxable year, submit a  
14           report to the department that includes, with respect  
15           to each purchaser of tangible personal property  
16           delivered to a location in this State, all of the  
17           following:

18           (A) The purchaser's name, billing address, and  
19           mailing address;

20           (B) The address in this State to which the property  
21           was delivered to the purchaser;



1           (C) The aggregate dollar amount of the purchaser's  
2           purchases from the seller; and  
3           (D) The name and address of the seller that made the  
4           sale to the purchaser;  
5   provided that the person, in lieu of complying with the notice  
6   and reporting requirements in this subsection, may elect to be  
7   deemed the seller of the tangible personal property, as provided  
8   in subsection (a).

9           (c) If a person who is subject to subsection (b) fails to  
10   comply with any of its requirements and has not elected to be  
11   deemed the seller of the subject tangible personal property,  
12   unless it is shown that the failure is due to reasonable cause  
13   and not due to neglect, there shall be assessed a penalty of  
14   \$1,000 if the failure is for not more than one month, with an  
15   additional \$1,000 for each additional month or fraction thereof  
16   during which the failure continues, not exceeding \$12,000 in the  
17   aggregate.

18           §237- Referrers. (a) A referrer shall:

19           (1) Post a conspicuous notice in each of its listings and  
20           advertisements that informs purchasers intending to  
21           purchase tangible personal property for delivery to a



1 location in this State that the purchaser is required  
2 to pay use tax if the sale is made from an unlicensed  
3 seller;

4 (2) Provide the following:

5 (A) A written notice to each unlicensed seller on  
6 whose behalf the referrer lists or advertises  
7 tangible personal property for sale that the  
8 purchaser may be required to remit use tax  
9 directly to the department for tangible personal  
10 property delivered to a location in this State;  
11 and

12 (B) Instructions for obtaining additional information  
13 from the department on whether and how to remit  
14 use tax to the department; and

15 (3) No later than the twentieth day of the fourth month  
16 following the close of the taxable year, provide the  
17 department with:

18 (A) A list of all unlicensed sellers on whose behalf  
19 the referrer lists or advertises tangible  
20 personal property for sale and delivery to a  
21 location within the State; provided that the



1           listing or advertisement states that the seller  
2           does not collect or pay the tax due under chapter  
3           237, in a form that the department shall  
4           prescribe; and

5           (B) An affidavit signed under penalty of perjury by  
6           the referrer or, if the referrer is a business  
7           entity, by an officer of the referrer affirming  
8           that the referrer made reasonable efforts to  
9           comply with the notice and reporting requirements  
10          in this subsection.

11          (b) Any referrer who fails to comply with subsection (a),  
12          unless it is shown that the failure is due to reasonable cause  
13          and not due to neglect, shall be assessed a penalty of \$1,000 if  
14          the failure is for not more than one month, with an additional  
15          \$1,000 for each additional month or fraction thereof during  
16          which the failure continues, not exceeding \$12,000 in the  
17          aggregate."

18          SECTION 2. Section 237-1, Hawaii Revised Statutes, is  
19          amended as follows:

20            1. By adding two new definitions to be appropriately  
21          inserted and to read:



1       "Marketplace facilitator" means any person who sells or  
2 assists in the sale of tangible personal property on behalf of  
3 another seller by:

4       (1) Providing a forum, whether physical or electronic, in  
5 which sellers list or advertise tangible personal  
6 property for sale; and

7       (2) Collecting payment from the purchaser and transmitting  
8 the payment, in full or in part, to the person on  
9 whose behalf the sale is made.

10       "Referrer" means any person who:

11       (1) Contracts or otherwise enters into an agreement with a  
12 seller to list or advertise the seller's tangible  
13 personal property for sale in any medium, including an  
14 internet website or catalog; provided that the listing  
15 or advertisement states whether the seller collects or  
16 pays the tax due under chapter 237;

17       (2) Receives a commission, fee, or other consideration  
18 from the seller for the listing or advertisement;

19       (3) Transfers, via telephone, internet link, or other  
20 means, a potential purchaser to the seller or an  
21 affiliated person; and



1       (4) Does not take or process sales orders for the seller  
2       or collect payment from the purchaser for the  
3       transaction."

4       2. By amending the definition of "representative" to read:

5        "Representative" means any salesperson, commission agent,  
6 manufacturer's representative, broker or other person who is  
7 authorized or employed by [~~an unlicensed~~] a seller to assist  
8 such seller in selling property for use in the State, by  
9 procuring orders for such sales or otherwise, and who carries on  
10 such activities in the State, it being immaterial whether such  
11 activities are regular or intermittent [~~, but the~~]. The term  
12 "representative" does not include [a]:

13       (1) A manufacturer's representative whose functions are  
14       wholly promotional and to act as liaison between an  
15       unlicensed seller and a seller or sellers, and which  
16       do not include the procuring, soliciting or accepting  
17       of orders for property or the making of deliveries of  
18       property, or the collecting of payment for deliveries  
19       of property, or the keeping of books of account  
20       concerning property orders, deliveries or collections  
21       transpiring between an unlicensed seller and a seller



1 or sellers [~~. Any unlicensed seller who in person~~  
2 ~~carries on any such activity in the State shall also~~  
3 ~~be classed as a representative.~~]; or

4 (2) A marketplace facilitator."

5 SECTION 3. Section 238-1, Hawaii Revised Statutes, is  
6 amended as follows:

7 1. By adding a new definition to be appropriately inserted  
8 and to read:

9 "Marketplace facilitator" has the same meaning as defined  
10 in section 237-1."

11 2. By amending the definition of "import" to read:

12 "Import" (or any nounal, verbal, adverbial, adjective, or  
13 other equivalent of the term) includes:

14 (1) The importation into the State of tangible property,  
15 services, or contracting owned, purchased from an  
16 unlicensed seller, or however acquired, from any other  
17 part of the United States or its possessions or from  
18 any foreign country, whether in interstate or foreign  
19 commerce, or both; [and]

20 (2) The sale and delivery of tangible personal property  
21 owned, purchased from an unlicensed seller, or however





1           acquired, by a seller who is or should be licensed  
2           under the general excise tax law from an out-of-state  
3           location to an in-state purchaser, regardless of the  
4           free on board point or the place where title to the  
5           property transfers to the purchaser[-]; and

6           (3) The sale of tangible personal property by a  
7           marketplace facilitator on behalf of an unlicensed  
8           seller for delivery to a purchaser in the State."

9           SECTION 4. If any provision of this Act, or the  
10          application thereof to any person or circumstance, is held  
11          invalid, the invalidity does not affect other provisions or  
12          applications of the Act that can be given effect without the  
13          invalid provision or application, and to this end the provisions  
14          of this Act are severable.

15          SECTION 5. Statutory material to be repealed is bracketed  
16          and stricken. New statutory material is underscored.

17          SECTION 6. This Act shall take effect upon its approval.



**Report Title:**

General Excise Tax; Use Tax; Tangible Personal Property;  
Marketplace Facilitator; Referrer

**Description:**

Clarifies that a person or company who meets the qualifications of being a marketplace facilitator is the seller of tangible personal property for general excise tax and use tax purposes. Defines "marketplace facilitator" and "referrer". Establishes reporting requirements and penalties for marketplace facilitators and referrers. (SD1)

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