

JAN 18 2019

A BILL FOR AN ACT

RELATING TO MARKETPLACE FACILITATORS.

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

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

4 "§237- Marketplace facilitators. (a) A marketplace
5 facilitator shall be deemed the seller of tangible personal
6 property and the seller on whose behalf the sale is made shall
7 be deemed to be making a sale at wholesale pursuant to section
8 237-4.

9 (b) For purposes of section 237-3, a marketplace
10 facilitator's gross income or gross proceeds of sale include
11 receipts from sales on behalf of other sellers under subsection
12 (a).

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



- 1 (1) Post a conspicuous notice on its forum that informs
2 purchasers intending to purchase tangible personal
3 property for delivery to a location in this State that
4 the purchaser is required to pay use tax if the sale
5 is made from an unlicensed seller;

- 6 (2) Provide a written notice to each purchaser at the time
7 of each sale of tangible personal property for
8 delivery to a location in this State that the
9 purchaser may be required to remit use tax directly to
10 the department and provide instructions for obtaining
11 additional information from the department on whether
12 and how to remit use tax to the department; and

- 13 (3) No later than the twentieth day of the fourth month
14 following the close of the taxable year, submit a
15 report to the department that includes, with respect
16 to each purchaser of tangible personal property
17 delivered to a location in this State, all of the
18 following:
 - 19 (A) The purchaser's name, billing address, and
20 mailing address;



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

3 (C) The aggregate dollar amount of the purchaser's
4 purchases from the seller; and

5 (D) The name and address of the seller that made the
6 sale to the purchaser;

7 provided that the person, in lieu of complying with the notice
8 and reporting requirements in this subsection, may elect to be
9 deemed the seller of tangible personal property as provided in
10 subsection (a).

11 (d) Any person who fails to comply with subsection (b) and
12 has not elected to be deemed the seller of tangible personal
13 property, unless it is shown that the failure is due to
14 reasonable cause and not due to neglect, shall be assessed a
15 penalty of \$1,000 if the failure is for not more than one month,
16 with an additional \$1,000 for each additional month or fraction
17 thereof during which the failure continues, not exceeding
18 \$12,000 in the aggregate."

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



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

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

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

9 (2) Collecting payment from the purchaser and transmitting
10 the payment, in full or in part, to the person selling
11 the property."

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

13 "Representative" means any salesperson, commission agent,
14 manufacturer's representative, broker or other person who is
15 authorized or employed by [~~an unlicensed~~] a seller to assist
16 [~~such~~] the seller in selling property for use in the State, by
17 procuring orders for [~~such~~] the sales or otherwise, and who
18 carries on [~~such~~] those activities in the State, it being
19 immaterial whether [~~such~~] the activities are regular or
20 intermittent[~~, but the~~]. The term "representative" [~~does~~] shall
21 not include [~~a~~]:



1 (1) A manufacturer's representative whose functions are
2 wholly promotional and to act as liaison between an
3 unlicensed seller and a seller or sellers, and [~~which~~]
4 that do not include the procuring, soliciting or
5 accepting of orders for property or the making of
6 deliveries of property, or the collecting of payment
7 for deliveries of property, or the keeping of books of
8 account concerning property orders, deliveries or
9 collections transpiring between an unlicensed seller
10 and a seller or sellers [~~. Any unlicensed seller who~~
11 ~~in person carries on any such activity in the State~~
12 ~~shall also be classed as a representative.]; and~~

13 (2) A marketplace facilitator."

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

16 1. By adding a new definition to be appropriately inserted
17 and to read:

18 "Marketplace facilitator" shall have the same meaning as
19 in section 237-1."

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



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

3 (1) The importation into the State of property, services,
4 or contracting owned, purchased from an unlicensed
5 seller, or however acquired, from any other part of
6 the United States or its possessions or from any
7 foreign country, whether in interstate or foreign
8 commerce, or both; [~~and~~]

9 (2) The sale and delivery of property owned, purchased
10 from an unlicensed seller, or however acquired, by a
11 seller who is or should be licensed under the general
12 excise tax law from an out-of-state location to an in-
13 state purchaser, regardless of the free on board point
14 or the place where title to the property transfers to
15 the purchaser[-]; and

16 (3) The sale of tangible personal property by a licensed
17 marketplace facilitator on behalf of an unlicensed
18 seller for delivery to a purchaser in the State."

19 SECTION 4. If any provision of this Act, or the
20 application thereof to any person or circumstance, is held
21 invalid, the invalidity does not affect other provisions or



1 applications of the Act that can be given effect without the
2 invalid provision or application, and to this end the provisions
3 of this Act are severable.

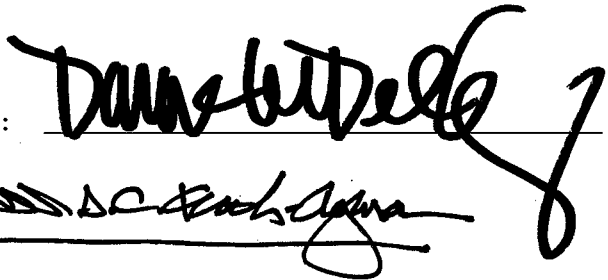
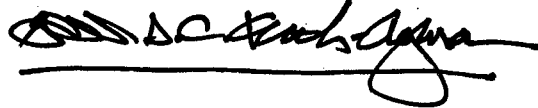
4 SECTION 5. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 6. This Act shall take effect on January 1, 2020.

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INTRODUCED BY:

A large, stylized handwritten signature in black ink, possibly reading "Dan Butterfield".
A smaller handwritten signature in black ink, possibly reading "D. C. ...".

Report Title:

General Excise Tax; Use Tax; Tangible Personal Property;
Marketplace Facilitators

Description:

Establishes marketplace facilitators as the sellers of tangible personal property. Requires other persons who provide a forum for listing of tangible personal property and the taking or processing of orders to report information about purchasers to the Department of Taxation.

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