Effective 7/1/2025

59-12-107.6 Marketplace facilitator collection, remittance, and payment of sales tax obligation -- Marketplace seller collection, remittance, and payment of sales tax obligation -- Liability for collection.

(1) A marketplace facilitator shall pay or collect and remit taxes imposed by this chapter in accordance with Section 59-12-107:

(a) if the marketplace facilitator meets one or more of the criteria provided for in Subsection 59-12-107(2)(a) or (b); and

(b) on the sales the marketplace facilitator made on the marketplace facilitator's own behalf.

(2)

(a) A marketplace facilitator shall pay or collect and remit taxes imposed by this chapter in accordance with Subsection (3) if the marketplace facilitator, in the previous calendar year or the current calendar year, makes sales of tangible personal property, products transferred electronically, or services on the marketplace facilitator's own behalf or facilitates sales on behalf of one or more marketplace sellers that exceed $100,000.

(b) For purposes of determining if a marketplace facilitator exceeds the threshold described in this Subsection (2), a marketplace facilitator shall separately total:

(i) the marketplace facilitator's sales; and

(ii) any sales the marketplace facilitator makes or facilitates for a marketplace seller.

(c) A marketplace facilitator without a physical presence in this state shall begin collecting and remitting the taxes imposed by this chapter no later than the first day of the calendar quarter that is at least 60 days after the day on which the marketplace facilitator exceeds the threshold described in Subsection (2)(a).

(3) A marketplace facilitator described in Subsection (2) shall pay or collect and remit taxes imposed by this chapter for each sale that the marketplace facilitator:

(a) makes on the marketplace facilitator's own behalf; or

(b) makes or facilitates on behalf of a marketplace seller, regardless of:

(i) whether the marketplace seller has an obligation to pay or collect and remit taxes under Section 59-12-107;

(ii) whether the marketplace seller would have been required to pay or collect and remit taxes under Section 59-12-107 if the marketplace facilitator had not facilitated the sale; or

(iii) the amount of the sales price or the purchase price that accrues to or benefits the marketplace facilitator, the marketplace seller, or any other person.

(4) A marketplace facilitator shall comply with the procedures and requirements in this chapter and Chapter 1, General Taxation Policies, for sellers required to pay or collect and remit taxes except that the marketplace facilitator shall segregate, in the marketplace facilitator's books and records:

(a) the sales that the marketplace facilitator makes on the marketplace facilitator's own behalf; and

(b) the sales that the marketplace facilitator makes or facilitates on behalf of one or more marketplace sellers.

(5)

(a) The commission may audit the marketplace facilitator for sales made or facilitated through the marketplace facilitator's marketplace on behalf of one or more marketplace sellers.

(b) The commission may not audit the marketplace seller for sales made or facilitated through the marketplace facilitator's marketplace on the marketplace seller's behalf.

(6) Nothing in this section prohibits a marketplace facilitator from providing in a marketplace facilitator's agreement with a marketplace seller for the recovery of taxes, and any related

interest or penalties to the extent that a tax, interest, or penalty is assessed by the state in an audit of the marketplace facilitator on a retail sale:

(a) that a marketplace facilitator makes or facilitates on behalf of a marketplace seller; and

(b) for which the marketplace facilitator relied on incorrect or incomplete information provided by the marketplace seller.

(7) A marketplace seller shall pay or collect and remit taxes imposed by this chapter for a sale of tangible personal property, a product transferred electronically, or a service that the marketplace seller makes other than through a marketplace facilitator if:

(a) the sale is sourced to this state; and

(b) the marketplace seller's sales in this state, other than through a marketplace facilitator, in the previous calendar year or the current calendar year exceed $100,000.

(8)

(a) A marketplace seller may not pay or collect and remit taxes imposed by this chapter for any sale for which a marketplace facilitator is required to pay or collect and remit.

(b) A marketplace seller is not liable for a marketplace facilitator's failure to pay or collect and remit, or the marketplace facilitator's underpayment of, taxes imposed by this chapter for any sale for which a marketplace facilitator is required to pay or collect and remit the taxes imposed by this chapter.

(9)

(a) A purchaser of tangible personal property, a product transferred electronically, or a service may file a claim for a refund with the marketplace facilitator if the purchaser overpaid taxes imposed under this chapter.

(b) No person may bring a class action against a marketplace facilitator in any court of the state on behalf of purchasers arising from or in any way related to an overpayment of taxes collected and remitted on sales made or facilitated by the marketplace facilitator on behalf of a marketplace seller, regardless of whether such claim is characterized as a tax refund claim.

(10) Nothing in this section affects the obligation of a purchaser to remit the use tax described in Subsection 59-12-107(2)(f) on any sale for which a marketplace facilitator or marketplace seller failed to collect and remit a tax imposed by this chapter.

Amended by Chapter 293, 2025 General Session