

1-1 By: Uresti S.B. No. 1713  
 1-2 (In the Senate - Filed March 9, 2017; March 22, 2017, read  
 1-3 first time and referred to Committee on Finance; April 27, 2017,  
 1-4 reported adversely, with favorable Committee Substitute by the  
 1-5 following vote: Yeas 12, Nays 1; April 27, 2017, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7 Nelson	X			
1-8 Hinojosa	X			
1-9 Bettencourt		X		
1-10 Birdwell			X	
1-11 Hancock	X			
1-12 Huffman	X			
1-13 Kolthorst	X			
1-14 Nichols	X			
1-15 Schwertner	X			
1-16 Seliger	X			
1-17 Taylor of Galveston	X			
1-18 Uresti	X			
1-19 Watson	X			
1-20 West	X			
1-21 Whitmire			X	

1-23 COMMITTEE SUBSTITUTE FOR S.B. No. 1713 By: Uresti

1-24 A BILL TO BE ENTITLED  
 1-25 AN ACT

1-26 relating to the collection of, and notices and reports regarding,  
 1-27 state sales and use taxes; providing an administrative penalty.  
 1-28 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:  
 1-29 SECTION 1. Section 151.008(b), Tax Code, is amended to read  
 1-30 as follows:

1-31 (b) "Seller" and "retailer" include:  
 1-32 (1) a person in the business of making sales at auction  
 1-33 of tangible personal property owned by the person or by another;  
 1-34 (2) a person who makes more than two sales of taxable  
 1-35 items during a 12-month period, including sales made in the  
 1-36 capacity of an assignee for the benefit of creditors or receiver or  
 1-37 trustee in bankruptcy;  
 1-38 (3) a person regarded by the comptroller as a seller or  
 1-39 retailer under Section 151.024;  
 1-40 (4) a hotel, motel, or owner or lessor of an office or  
 1-41 residential building or development that contracts and pays for  
 1-42 telecommunications services for resale to guests or tenants;  
 1-43 (5) a person who engages in regular or systematic  
 1-44 solicitation of sales of taxable items in this state by the  
 1-45 distribution of catalogs, periodicals, advertising flyers, or  
 1-46 other advertising, by means of print, radio, or television media,  
 1-47 or by mail, telegraphy, telephone, computer data base, cable,  
 1-48 optic, microwave, or other communication system for the purpose of  
 1-49 effecting sales of taxable items; ~~and~~  
 1-50 (6) a person who, under an agreement with another  
 1-51 person, is:  
 1-52 (A) entrusted with possession of tangible  
 1-53 personal property with respect to which the other person has title  
 1-54 or another ownership interest; and  
 1-55 (B) authorized to sell, lease, or rent the  
 1-56 property without additional action by the person having title to or  
 1-57 another ownership interest in the property; and  
 1-58 (7) a person who is a marketplace provider as provided  
 1-59 by Section 151.013.  
 1-60 SECTION 2. Subchapter A, Chapter 151, Tax Code, is amended

2-1 by adding Section 151.013 to read as follows:  
2-2 Sec. 151.013. MARKETPLACE PROVIDERS AND MARKETPLACE  
2-3 SELLERS. (a) In this section:

2-4 (1) "Marketplace provider" means a person who, under  
2-5 an agreement with a seller, facilitates the sale of a taxable item  
2-6 by the seller.

2-7 (2) "Marketplace seller" means a person who has an  
2-8 agreement with a marketplace provider under which the marketplace  
2-9 provider will facilitate the sale of a taxable item by the person.

2-10 (b) For purposes of this section:

2-11 (1) a person facilitates the sale of a taxable item if:  
2-12 (A) the person provides the forum, including an  
2-13 Internet website or catalog, in which or by means of which the sale  
2-14 takes place or the offer of sale is accepted; and

2-15 (B) the person or an affiliate of the person  
2-16 collects, or contracts with another person to collect, the amount  
2-17 paid by the purchaser to the seller; and

2-18 (2) two persons are affiliated if:

2-19 (A) one person has a direct or indirect ownership  
2-20 interest in the other person of more than five percent; or

2-21 (B) another person or group of affiliated persons  
2-22 has a direct or indirect ownership interest in each of the two  
2-23 persons of more than five percent.

2-24 (c) The facilitation of a sale by a marketplace provider  
2-25 that results in a sale by a marketplace seller is considered the  
2-26 making of a sale by the marketplace provider for purposes of  
2-27 Sections 151.008(a), 151.052, and 151.103 if:

2-28 (1) the marketplace provider holds a permit issued  
2-29 under Subchapter F; or

2-30 (2) the marketplace provider holds a registration  
2-31 under Section 151.106 and the marketplace seller does not hold a  
2-32 permit under Subchapter F.

2-33 (d) Subject to Subsection (f), a marketplace provider is not  
2-34 subject to liability under Subchapter L for failing to collect and  
2-35 remit the appropriate amount of tax imposed on a sale if the  
2-36 marketplace provider can show that, in determining the amount, the  
2-37 marketplace provider relied exclusively on information provided by  
2-38 the marketplace seller. This subsection does not apply if the  
2-39 marketplace provider and the marketplace seller are affiliated.

2-40 (e) Subject to Subsection (f), a marketplace seller is not  
2-41 required to collect and remit the tax imposed on a sale and is not  
2-42 subject to liability under Subchapter L for failing to collect and  
2-43 remit the appropriate amount of tax imposed on the sale if:

2-44 (1) the sale is considered to be made by a marketplace  
2-45 provider under Subsection (c);

2-46 (2) the marketplace seller enters into an agreement  
2-47 with the marketplace provider, as provided by comptroller rule,  
2-48 under which the marketplace provider is obligated to collect and  
2-49 remit the tax due on the sale; and

2-50 (3) the marketplace seller can show that any failure  
2-51 by the marketplace provider to collect and remit the tax on the sale  
2-52 was not caused by the marketplace seller providing incorrect  
2-53 information to the marketplace provider.

2-54 (f) A marketplace provider and marketplace seller that are  
2-55 affiliated are jointly and severally liable for any tax the  
2-56 marketplace provider fails to collect and remit that is imposed in  
2-57 connection with a sale of a taxable item by the marketplace seller  
2-58 that is facilitated by the marketplace provider.

2-59 (g) Notwithstanding Subsection (a), a person described by  
2-60 Section 151.108(b) or (c) is not a marketplace provider or  
2-61 marketplace seller with respect to the activities described by  
2-62 Section 151.108(b) or (c).

2-63 (h) The comptroller may adopt rules necessary to implement  
2-64 and administer this section, including rules establishing the  
2-65 requirements for a person to be considered a marketplace provider.

2-66 SECTION 3. Chapter 151, Tax Code, is amended by adding  
2-67 Subchapter D-1 to read as follows:

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SUBCHAPTER D-1. NOTICE AND REPORT BY RETAILERS WHO DO NOT COLLECT USE TAX

Sec. 151.121. APPLICABILITY. (a) This subchapter applies only to the sale of a taxable item for storage, use, or consumption in this state by a retailer who:

(1) does not hold a permit under Subchapter F;  
(2) does not collect the use tax due from the purchaser under this chapter; and

(3) in the previous calendar year had:  
(A) total receipts of more than \$250,000 from the sale of taxable items for storage, use, or consumption in this state; or

(B) at least 500 sales of taxable items for storage, use, or consumption in this state.

(b) For purposes of Subsection (a), the sale of a taxable item delivered to a purchaser in this state is presumed to be the sale of a taxable item for storage, use, or consumption in this state.

(c) This subchapter applies to a retailer regardless of whether the retailer has a physical presence in this state.

Sec. 151.122. NOTICE IN CONNECTION WITH SALE. A retailer who makes a sale to which this subchapter applies shall provide written notice to the purchaser that use tax is due on certain purchases from the retailer and that the State of Texas requires the purchaser to file a tax report.

Sec. 151.123. ANNUAL NOTICE TO PURCHASER. (a) Not later than January 31 of each year, a retailer shall provide to each person who made in the preceding calendar year one or more purchases to which this subchapter applies a written notice:

(1) stating that the State of Texas requires the purchaser to file a tax report and pay use tax on certain purchases from the retailer;

(2) including the total amount paid by the purchaser in connection with all sales to which this subchapter applies made in the preceding calendar year;

(3) listing each sale to which this subchapter applies made to the purchaser in the preceding calendar year, including, if available:

(A) the date of the sale;

(B) the amount of the sale; and

(C) whether the sale is exempted from the taxes imposed by this chapter, if known by the retailer; and

(4) containing any other information the comptroller requires by rule.

(b) A retailer shall send the notice required by Subsection (a) to each purchaser by first class mail and may not include the notice with any other shipment. The exterior of the mailing must include the name of the retailer and the phrase "Important Tax Document Enclosed."

Sec. 151.124. ANNUAL STATEMENT TO COMPTROLLER. (a) The comptroller by rule may require a retailer to submit to the comptroller an annual statement describing all sales to which this subchapter applies made to each purchaser in a calendar year.

(b) Rules under this section may prescribe the content, form, and format of a statement and the date the statement is due.

Sec. 151.125. ADMINISTRATIVE PENALTY. (a) The comptroller may impose an administrative penalty on a retailer who fails to:

(1) provide the notice required by Section 151.122 in connection with a sale, in an amount not to exceed \$5 for each sale;

(2) provide the notice required by Section 151.123 to a purchaser for a calendar year, in an amount not to exceed \$10 for each purchaser each calendar year; or

(3) submit information required by any rules adopted under Section 151.124 concerning sales made to a purchaser for a calendar year, in an amount not to exceed \$10 for each purchaser each calendar year.

(b) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the

- 4-1 nature, circumstances, extent, and gravity of the violation;
- 4-2 (2) the economic harm caused by the violation;
- 4-3 (3) the history of previous violations;
- 4-4 (4) the amount necessary to deter a future violation;
- 4-5 (5) efforts to correct the violation; and
- 4-6 (6) any other matter that justice may require.

4-7 (c) The enforcement of the penalty may be stayed during the  
 4-8 time the order is under judicial review if the person pays the  
 4-9 penalty to the clerk of the court or files a supersedeas bond with  
 4-10 the court in the amount of the penalty. A person who cannot afford  
 4-11 to pay the penalty or file the bond may stay the enforcement by  
 4-12 filing an affidavit in the manner required by the Texas Rules of  
 4-13 Civil Procedure for a party who cannot afford to file security for  
 4-14 costs, subject to the right of the comptroller to contest the  
 4-15 affidavit as provided by those rules.

4-16 (d) An administrative penalty collected under this section  
 4-17 may be appropriated only to the comptroller for the purpose of  
 4-18 administering this subchapter.

4-19 (e) A proceeding to impose the penalty is considered to be a  
 4-20 contested case under Chapter 2001, Government Code.

4-21 SECTION 4. The change in law made by this Act does not  
 4-22 affect tax liability accruing before the effective date of this  
 4-23 Act. That liability continues in effect as if this Act had not been  
 4-24 enacted, and the former law is continued in effect for the  
 4-25 collection of taxes due and for civil and criminal enforcement of  
 4-26 the liability for those taxes.

4-27 SECTION 5. Section 151.123, Tax Code, as added by this Act,  
 4-28 applies only to sales made on or after the effective date of this  
 4-29 Act. A retailer shall provide the initial notice required by that  
 4-30 section not later than January 31, 2019.

4-31 SECTION 6. This Act takes effect January 1, 2018.

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