AN ACT concerning taxation; relating to sales and compensating use taxes; requiring collection and remittance by marketplace facilitators; nexus; amending K.S.A. 79-3702 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. The provisions of sections 1 through 10, and amendments thereto, shall be part of and supplemental to the Kansas retailers' sales tax act.

New Sec. 2. As used in this act:

(a) "Act" means sections 1 through 10, and amendments thereto.

(b) "Affiliated person" means a person that, with respect to another person: (1) Has an ownership interest of more than 5%, whether direct or indirect, in the other person; or (2) is related to the other person because a third person, or group of third persons who are affiliated persons with respect to each other, holds an ownership interest of more than 5%, whether direct or indirect, in the related persons.

(c) "Cumulative gross receipts" means gross receipts as defined in K.S.A. 79-3602, and amendments thereto, and includes the gross receipts received by the marketplace facilitator from its own direct sales combined with the gross receipts received from sales it facilitates for sellers or marketplace sellers.

(d) "Department" means the Kansas department of revenue.

(e) (1) "Marketplace facilitator" means a person that, pursuant to an agreement with a marketplace seller, facilitates sales by such marketplace seller through a physical or electronic marketplace operated by the person, and:

(A) Engages directly or indirectly, through one or more affiliated persons in any of the following:

(i) Transmitting or otherwise communicating the offer or acceptance between a buyer and marketplace seller;

(ii) owning or operating the infrastructure, electronic or physical, or technology that brings buyers and marketplace sellers together;

(iii) providing a virtual currency that buyers are allowed or required to use to purchase products from the marketplace seller; or

(iv) software development or research and development activities related to any of the activities described in this subsection, if such
the referer's platform.

(i) "Referrer" means a person, other than a person engaging in the
business of printing a newspaper or publishing a newspaper, who contracts
or otherwise agrees with a seller or marketplace seller to list or advertise
for sale one or more items in any medium, including a website or catalog;
receives a commission, fee or other consideration from the seller for the
listing or advertisement; transfers, via telephone, internet link, or other
means, a purchaser to a seller, marketplace seller or an affiliated person to
complete the sale; and does not collect receipts from the purchasers for the
transaction.

(2) "Referrer" does not include a person that:

(A) Provides internet advertising services; and

(B) does not ever provide either the seller's or marketplace seller's
shipping terms or advertise whether the seller or marketplace seller
charges sales tax.

(j) "Sale" or "sales" shall have the same meaning as defined in K.S.A.
79-3602(kk), and amendments thereto, whether or not such sales qualify
for a sales tax exemption.

(k) "Seller" shall have the same meaning as defined in K.S.A. 79-
3602(mm), and amendments thereto, and includes marketplace facilitators,
whether making sales in the seller's own right or on behalf of marketplace
sellers.

(l) "Tax" means the sales tax imposed under K.S.A. 79-3603, and
amendments thereto, or the use tax imposed under K.S.A. 79-3703, and
amendments thereto.

(m) "Transaction" means a sale of tangible personal property or a
service by a marketplace seller including, but not limited to, all such
marketplace seller's transactions for tangible personal property or a
service, however consummated, including transactions completed on a
website operated by: (1) The marketplace seller; (2) an affiliated person; or
(3) a contract party, including a marketplace facilitator.

(n) The meaning ascribed to words and phrases in K.S.A. 79-3602,
and amendments thereto, insofar as practicable, shall be applicable herein
unless otherwise provided.

New Sec. 3. (a) On and after July 1, 2020, any marketplace facilitator
that meets the criteria in subsection (b) or that has a physical presence in
this state, must collect and remit retail sales or use tax on all taxable retail
sales made or facilitated by the marketplace facilitator into this state
pursuant to this act. Marketplace facilitators must begin collecting state
and local retail sales or use taxes on taxable retail sales made or facilitated
by the marketplace facilitator sourced to this state beginning on the first
day of the next calendar month that is at least 30 days from the date that
the marketplace facilitator met the threshold described in subsection (b).

, or the prepaid wireless 911 fee imposed under K.S.A.
12-5371, and amendments thereto

On and after July 1, 2021, any marketplace facilitator that is
obligated to collect the taxes imposed under this act, shall
also collect and remit to the department applicable prepaid
wireless 911 fees imposed under K.S.A. 12-5371, and
amendments thereto.