Section 1. Nexus Standard for Sales and Use Tax Collection

Notwithstanding any other provision of law, any ______ [vendor, seller, marketplace facilitator, or appropriate state-law term] selling or facilitating the sale of tangible personal property ______ [and/or other property or services subject to sales tax in the State] for delivery into [State] is [“doing business in this state”], is subject to _______ [pertinent sales tax code sections], shall [collect and remit/pay] applicable sales or use tax 1, and shall follow all applicable procedures and requirements of law, provided the [seller, vendor, marketplace facilitator] meets the following criteria in the previous calendar year:

A. If a [seller], the [seller] makes sales of tangible personal property [and/or other property or services subject to sales or use tax in the State] for delivery into this state exceeding [100,000] dollars.

B. If a [marketplace facilitator], the [marketplace facilitator] makes or facilitates the sale of tangible personal property [and/or other property or services subject to sales tax in the State], on its own behalf or on behalf of one or more marketplace sellers, for delivery into this State exceeding [100,000] dollars.

C. [The Department] may grant a waiver from the requirements of this section if a marketplace facilitator demonstrates, to the satisfaction of [the Department] that substantially all of its marketplace sellers already are [registered sellers] under [cite code section]. If such waiver is granted, the tax levied under [cite code section] shall be collectible from the marketplace seller. [The Department] shall develop guidelines that establish the criteria for obtaining a waiver pursuant to this section, the process and procedure for a marketplace facilitator to apply for a waiver, and the process for providing notice to an affected marketplace facilitator and marketplace seller of a waiver obtained pursuant to this subsection.

D. Nothing herein shall prohibit the marketplace facilitator and the marketplace seller from contractually agreeing to have the marketplace seller collect and remit all applicable taxes and fees where the marketplace seller:

1. Has annual U.S. gross sales over [$1 billion], including the gross sales of any related entities, and in the case of franchised entities, including the combined sales of all franchisees of a single franchisor;

2. Provides evidence to the marketplace facilitator that it is registered under [cite code section] in this state; and,

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1 To the extent a state imposes other taxes and fees on the consumer for sales of products and services included in their marketplace facilitator legislation the state needs to determine whether, when, to what extent, and how such other taxes and fees should be incorporated into marketplace collection requirements.
3. Notifies [the Department] in a manner prescribed by [the Department] that the marketplace seller will collect and remit all applicable taxes and fees on its sales through the marketplace and is liable for failure to collect or remit applicable taxes and fees on its sales.

Section 2. Imposition of Sales and Use Tax Collection on Marketplace Facilitators

A. "Marketplace facilitator" means a person, including any affiliate of the person, that:
   1. Contracts or otherwise agrees with marketplace sellers to facilitate for consideration, regardless of whether deducted as fees from the transaction, the sale of the marketplace seller's products through a physical or electronic marketplace operated, owned, or otherwise controlled by the person; and,
   2. Either directly or indirectly through contracts, agreements, or other arrangements with third parties, collects the payment from the purchaser and transmits all or part of the payment to the marketplace seller.

B. "Marketplace seller" means a seller that makes sales through any physical or electronic marketplace operated, owned, or controlled by a marketplace facilitator.

C. Except as provided in Section 1.C. and 1.D., a marketplace facilitator [doing business in the state under Section 1] is required to [collect and remit/pay] the [sales or use tax] on

2 According to the National Conference of State Legislatures, the following state impose statewide sales taxes on lodging: AR, CO, FL, GA, HI, ID, IN, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NJ, NM, NY, NC, ND, OH, OK, RI, SC, SD, TN, UT, VA, WA, WV, WI, and WY.
all taxable sales made by the marketplace facilitator or facilitated for marketplace
sellers to customers in this state regardless of whether the marketplace seller for whom
sales are facilitated has a sales tax permit or would have been required to collect sales
or use tax had the sale not been facilitated by the marketplace facilitator. For the
purposes of [cite this law or appropriate sales and use tax code], a marketplace
facilitator has the same rights and duties as a seller. Marketplace facilitators and
marketplace sellers may enter into agreements with each other regarding fulfillment of
the requirements of this [Chapter]; however, the marketplace facilitator remains the
party that is liable to the state for fulfilling these requirements.

D. A marketplace facilitator shall either:

1. Report the sales and use tax described in [this section] separately from any sales
   or use tax collected on taxable [retail sales] made directly by the marketplace
   facilitator, or affiliates of the marketplace facilitator, to customers in this state
   using a separate marketplace facilitator [return/report/form] to be published by
   the [department]; or,

2. Report the sales and use tax described in [this section] combined with any sales
   or use tax collected on taxable [retail sales] made directly by the marketplace
   facilitator, or affiliates of the marketplace facilitator.

E. No class action may be brought against a marketplace facilitator in any court of this
   state on behalf of customers arising from or in any way related to an overpayment of
   sales or use tax collected on sales facilitated by the marketplace facilitator, regardless of
   whether that claim is characterized as a tax refund claim. Nothing in this subsection
   affects a customer’s right to seek a refund as provided under section [cite code section].

F. Nothing in this section affects the obligation of any consumer to remit sales or use tax
   for any taxable transaction for which a marketplace facilitator or seller does not collect
   and remit sales or use tax.

G. The [department] shall solely audit the marketplace facilitator for sales made by
   marketplace sellers but facilitated by the marketplace facilitator, except with respect to
   transactions that are subject to Section 1.C or 1.D. The [department] will not audit or
   otherwise assess tax against marketplace sellers for sales facilitated by a marketplace
   facilitator except to the extent the marketplace facilitator seeks relief under section (H)
   or with respect to transactions that are subject to Section 1.C or 1.D.

H. A marketplace facilitator shall be relieved of liability under this [section] for failure to
   collect and remit the correct amount of tax to the extent that the error was due to
   incorrect or insufficient information on the nature of the product or service given to the
   marketplace facilitator by the marketplace seller, provided that the marketplace
   facilitator can demonstrate it made a reasonable effort to obtain correct and sufficient
   information from the marketplace seller. Provided, however, this [subsection] shall not
   apply if the marketplace facilitator and the marketplace seller are related as defined in
   [cite code section].
I. The [department] may waive penalties and interest if a marketplace facilitator seeks liability relief and the department rules that a reasonable cause exists.

J. A marketplace facilitator shall be relieved of liability under this [section] if it can prove, to the satisfaction of the [department], that the tax levied under this [chapter/title/article] on a sale facilitated by the marketplace facilitator was paid to the [department] by the marketplace seller.

Section 3. No Retroactive Application

No obligation to collect the sales and use tax required by this Act may be applied retroactively.

Section 4. Severability

If any provision of this act, or the application of such provision to any person or circumstance, is held to be unconstitutional, then the remainder of this act, and the application of the provisions of such to any person or circumstance, shall not be affected thereby.