

BILL ANALYSIS

Senate Research Center
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S.B. 1053
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Finance
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Businesses rely on clear statutory guidance regarding sales tax administration. Recently, some confusion has arisen regarding certain statutory definitions surrounding "marketplace" sales.

Under current statute, a "marketplace" is a physical or electronic medium through which someone other than the owner or operator of the platform makes sales of taxable items. The term includes a store, website, software application, or catalog. (See Section 151.0242, Tax Code).

A "marketplace provider" means a person who owns or operates a marketplace and directly or indirectly processes sales or payments for marketplace sellers. Examples of marketplace providers include Amazon, eBay, and Etsy.

A "marketplace seller" is an individual, other than the marketplace provider, who makes a sale of taxable items through a marketplace.

These terms were appropriately defined in H.B. 1525 (86R). According to testimony given by the Comptroller of Public Accounts of the State of Texas before the House Ways and Means Committee, H.B. 1525 (86R) would ensure that state sales tax was collected from these usually small, third-party sellers utilizing marketplaces. Such sellers up until that time had not consistently been collecting and remitting sales tax in Texas.

Recently, some have reported confusion regarding who is and who is not a "marketplace seller," specifically whether related entities sharing a platform constitutes a marketplace provider and marketplace sellers.

S.B. 1053 seeks to clarify this confusion consistent with the original intent of H.B. 1525 (86R). S.B. 1053 clarifies that a person who controls, is controlled by, or under common control, i.e. an "affiliate," as defined by the Business Organizations Code, is not a "marketplace seller," because marketplace sellers are unaffiliated third party entities.

As proposed, S.B. 1053 amends current law relating to the definition of marketplace seller for purposes of sales and use taxes.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 151.0242(a)(3), Tax Code, as follows:

(3) Redefines "marketplace seller" to mean a seller, other than the marketplace provider or its affiliate as defined by Section 1.002 (Definitions), Business Organizations Code, who makes a sale of a taxable item through a marketplace.

SECTION 2. Provides that the change in law made by this Act does not affect tax liability accruing before the effective date of this Act. Provides that that liability continues in effect as if

this Act had not been enacted, and the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability for those taxes.

SECTION 3. Effective date: September 1, 2023.