

2023 Kansas Statutes

79-5602. Collection of taxes and fees; duties of marketplace facilitators. (a) (1) Any marketplace facilitator selling or facilitating the sale of property or services subject to tax in this state shall be required to collect and remit such taxes and follow all applicable procedures and requirements provided by law for the collection and remittance of such taxes. A marketplace facilitator shall only be required to collect and remit such taxes if the following criteria are satisfied during the current or immediately preceding calendar year:

(A) The marketplace facilitator makes sales of property or services otherwise subject to tax in the state in an amount exceeding \$100,000; or

(B) if a marketplace facilitator makes or facilitates the sale of property or services subject to tax in the state, on its own behalf or on behalf of one or more marketplace sellers, for delivery into this state in an amount exceeding \$100,000.

(2) For any marketplace facilitator who satisfies the provisions of this subsection for sales in the current calendar year for the first time, such marketplace facilitator shall be required to collect and remit the tax on any sales in excess of \$100,000 of cumulative gross receipts from sales in the current calendar year for delivery into this state.

(b) 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 collecting and remitting taxes to the department. If such waiver is granted, the taxes levied shall be collectible from the marketplace seller. The department shall promulgate rules and regulations that establish:

(1) The criteria for obtaining a waiver pursuant to this section;

(2) the process and procedure for a marketplace facilitator to apply for a waiver; and

(3) the process for providing notice to an affected marketplace facilitator and marketplace seller of a waiver obtained pursuant to this subsection.

(c) Nothing in this section 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 if the marketplace seller:

(1) Has annual gross sales in the United States over \$1,000,000,000, 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 the marketplace seller is registered pursuant to K.S.A. 79-3608, and amendments thereto; and

(3) notifies the department in the manner prescribed by the department that the marketplace seller will collect and remit all applicable taxes and fees on sales through the marketplace and is liable for failure to collect or remit applicable taxes and fees on such sales.

(d) Prior to April 1, 2022, if a marketplace facilitator sells or facilitates the sale of prepaid wireless service, the provider of such prepaid wireless service is not liable for collection or payment of the prepaid wireless 911 fees imposed under K.S.A. 12-5371, and amendments thereto, unless such prepaid wireless provider is a marketplace seller collecting taxes under the provisions of a waiver granted in subsection (b).

(e) On and after April 1, 2022, 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.

History: L. 2021, ch. 93, § 2; July 1.