

SUBJECT: Specifying collection of certain fees and taxes by marketplace providers

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 10 ayes — Meyer, Thierry, Button, Cole, Guerra, Martinez Fischer, Murphy, Noble, Sanford, Shine

0 nays

1 absent — Rodriguez

WITNESSES: For — John Kroll, AEG and AXS Tickets; (*Registered, but did not testify:* Colin Parrish, Amazon)

Against — None

On — (*Registered, but did not testify:* Karey Barton, Comptroller of Public Accounts)

BACKGROUND: Tax Code sec. 151.0242 defines a "marketplace" as a physical or electronic medium through which persons other than the owner or operator sell taxable items. The term includes a store, website, software application, or catalogue. A "marketplace provider" is the owner or operator of a marketplace.

Health and Safety Code sec. 361.138 requires a wholesale or retail battery dealer who sells a lead-acid battery to collect a fee of two to three dollars, depending on the capacity of the battery.

Tax Code sec. 771.0712 imposes a prepaid wireless 911 emergency services fee of two percent of the purchase price of a prepaid wireless telecommunications service, which must be collected by the seller.

Tax Code sec. 151.304 exempts from sales and use taxes the occasional sale of a taxable item in certain circumstances, including when one or two sales are made in a year by a person who does not habitually engage in

retail.

DIGEST: CSHB 2398 would specify the fees and taxes that marketplace providers were required to collect. The bill would require a marketplace provider to collect and remit in the same manner as other sellers, effective July 1, 2022:

- the lead-acid battery fee; and
- the prepaid wireless 911 emergency service fee.

A seller who placed a ticket or other admission document for sale through a marketplace would have to certify to the marketplace provider that the sales and use taxes imposed on the original purchase of the ticket or document were paid. A provider who in good faith accepted the certification could deduct the adjusted value of the ticket or document purchased for resale from taxable sales reported.

State law governing occasional sales would not apply to the sale of a taxable item made by a seller through a marketplace.

The bill would take effect October 1, 2021, except as otherwise provided, and would not affect tax liability accruing before that date.

SUPPORTERS SAY: CSHB 2398 would bring uniformity to the way marketplace providers and other sellers collect certain taxes and fees. Last session, the Legislature enacted a bill requiring marketplace providers to collect and remit to the comptroller sales and use taxes. This bill simply would clarify the law by requiring providers to collect certain fees on batteries and telecommunications services at the same time that they collected sales and use taxes on those items. The bill also would make clear the process by which marketplace providers could accept certification from sellers that taxes had been paid on the resale of tickets through the marketplace and deduct those costs from their taxable sales.

The bill rightly would state that the occasional seller exemption did not apply to taxable sales made through a marketplace, which is current

policy. Marketplaces are often set up for the express purpose of retail, so those sales should not receive the exemption. Furthermore, it would be impractical and administratively difficult to determine if a marketplace seller was an occasional seller.

**CRITICS
SAY:**

CSHB 2398 wrongly would exclude marketplace sellers from the tax exemption on occasional sales. Since this sales tax exemption is otherwise available for sellers in different venues, online and marketplace sellers also should benefit from the exemption.