

## BILL ANALYSIS

Senate Research Center  
87R7021 BEF-F

S.B. 477  
By: Nelson  
Finance  
3/24/2021  
As Filed

### AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In the 86th Legislative Session, in response to decisions by the Supreme Court, the legislature required marketplace providers to collect and remit Texas' state and local sales and use tax on all taxable orders delivered in Texas. Minor changes are necessary to provide clarity to marketplace providers as it relates to certain exemptions and the collection of certain fees and to align the Tax Code so that collection requirements for marketplace providers are in line with those applicable to other types of sellers.

As proposed, S.B. 477 amends current law relating to the administration and collection of sales and use taxes and certain fees applicable to sales involving marketplace providers.

### 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 361.138(a), Health and Safety Code, by adding Subdivision (2-a), as follows:

(2-a) Defines "marketplace provider" for purposes of Section 361.138 (Fee on the Sale of Batteries) to have the meaning assigned by Section 151.0242(a), Tax Code, which defines it as a person who owns or operates a marketplace and directly or indirectly processes sales or payments for marketplace sellers.

SECTION 2. Amends Sections 361.138(b), (c), and (i), Health and Safety Code, to include marketplace providers who process sales of or payments for lead-acid batteries not for resale among the entities required to collect certain fees.

SECTION 3. Amends Section 771.0712, Health and Safety Code, by adding Subsection (e), as follows:

- (e) Requires a marketplace provider, as defined by Section 151.0242(a), Tax Code, to:
- (1) collect on behalf of the seller the fee imposed by Section 771.0712 (Prepaid 9-1-1 Emergency Services Fee) on a sale made through the marketplace; and
  - (2) after making the deduction to offset the cost of administering the fee authorized to be made by a seller under Subsection (a), remit the fee to the comptroller in the same manner a seller remits collected fees under this section.

SECTION 4. Amends Section 151.0242, Tax Code, by adding Subsection (l), as follows:

- (l) Requires a marketplace seller who places a ticket or other admission document for sale through a marketplace to certify to the marketplace provider that the taxes imposed by this chapter on the original purchase of the ticket or admission document were paid. Authorizes a marketplace provider who in good faith accepts a marketplace seller's

certification under this subsection to take the deduction provided by Section 151.432 (Deductions of Tax on Ticket or Admission Document to Amusement Service) on behalf of the marketplace seller.

SECTION 5. Amends Section 151.304, Tax Code, by adding Subsection (h), to provide that Section 151.304 (Occasional Sales) does not apply to the sale of a taxable item made by a marketplace seller through a marketplace, as those terms are defined by Section 151.0242(a).

SECTION 6. Amends Section 321.203(e-1), Tax Code, as follows:

(e-1) Provides that except as otherwise provided by Subsection (f) (relating to sales of natural gas and electricity), (g) (relating to sales of mobile telecommunications services), (g-1) (relating to sales of certain telecommunications services), (g-2) (relating to sales of certain telecommunications services), (g-3) (relating to sales of post-paid calling services), (h) (relating to sales of amusement services), (i) (relating to certain taxable items stored or kept at the time of or just before the use or consumption), (j) (relating to sales of services delivered through a cable system), (k) (relating to sales of certain solid waste collection or removal services), (m) (relating to sales consummated at a place of business as determined by the comptroller), or (n) (relating to certain sales of nonresidential real property services at the location of the job site), a sale of an item subject to municipal sales and use taxation made by a marketplace seller through a marketplace as provided by Section 151.0242 is consummated at the location in Texas to which the item is shipped or delivered or at which possession is taken by the purchaser. Deletes existing text providing that the application of this section is notwithstanding any other provision of this section.

SECTION 7. Amends Section 323.203(e-1), Tax Code, as follows:

(e-1) Provides that except as otherwise provided by Subsection (f) (relating to sales of natural gas and electricity), (g) (relating to sales of mobile telecommunications services), (g-1) (relating to sales of certain telecommunications services), (g-2) (relating to sales of certain telecommunications services), (g-3) (relating to sales of post-paid calling services), (h) (relating to sales of amusement services), (i) (relating to certain taxable items stored or kept at the time of or just before the use or consumption), (j) (relating to sales of services delivered through a cable system), (k) (relating to sales of certain solid waste collection or removal services), (m) (relating to sales consummated at a place of business as determined by the comptroller), or (n) (relating to certain sales of nonresidential real property services at the location of the job site), a sale of an item subject to county sales and use taxation made by a marketplace seller through a marketplace as provided by Section 151.0242 is consummated at the location in Texas to which the item is shipped or delivered or at which possession is taken by the purchaser. Deletes existing text providing that the application of this section is notwithstanding any other provision of this section.

SECTION 8. Provides that the changes in law made by this Act do not affect tax liability accruing before the effective date of this Act. Provides 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 9. Effective date: October 1, 2021.