

JAN 19 2018

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# A BILL FOR AN ACT

RELATING TO TAXATION.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Chapter 237, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4           "§237- Obligations of marketplace providers. (a) Any  
5 marketplace provider that facilitated over \$100,000 in taxable  
6 retail sales to customers in the State for taxable year 2018 for  
7 one or more marketplace participants shall collect and remit  
8 general excise taxes on all taxable retail sales that the  
9 marketplace provider facilitates for marketplace participants to  
10 customers in the State.

11           (b) Any marketplace provider that does not meet the  
12 requirements pursuant to subsection (a) shall begin collecting  
13 general excise taxes on taxable retail sales that the  
14 marketplace provider facilitates for marketplace participants to  
15 customers in the State after the marketplace provider has  
16 facilitated over \$100,000 in taxable retail sales to customers  
17 in the State for one or more marketplace participants.



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1 Marketplace providers shall begin collecting general excise  
2 taxes as required pursuant to this subsection on the first day  
3 of the calendar month following the month in which the  
4 marketplace provider meets the \$100,000 sales threshold.

5 (c) Once a marketplace provider has been required to  
6 collect general excise taxes under subsection (a) or (b), such  
7 collection shall continue for at least twelve months. If after  
8 the expiration of the twelve-month period the marketplace  
9 provider can demonstrate to the department that during the  
10 twelve-month period the marketplace provider's total taxable  
11 retail sales facilitated for one or more marketplace  
12 participants was less than or equal to \$100,000, the marketplace  
13 provider may elect to cease collecting tax until such time as  
14 collection is required pursuant to subsection (b).

15 (d) Marketplace providers shall not be required to collect  
16 and remit general excise taxes on all taxable retail sales  
17 pursuant to this section if the marketplace provider requests  
18 and maintains a copy of the marketplace participant's  
19 registration to collect general excise taxes in the State.

20 (e) Marketplace providers shall report the general excise  
21 taxes pursuant to this section separately from any general



1 excise taxes collected on taxable retail sales made directly by  
2 the marketplace provider, or affiliates of the marketplace  
3 provider, to customers in the State using a separate marketplace  
4 provider form to be made available by the department.

5 (f) A marketplace provider shall not be subject to audit  
6 by the department with respect to the retail sales for which it  
7 is required to collect and remit general excise taxes pursuant  
8 to this section. Nothing in this subsection shall preclude the  
9 department from auditing marketplace participants with respect  
10 to sales facilitated by marketplace providers.

11 (g) Marketplace providers may rely in good faith on  
12 information, including nexus determinations and product  
13 categorizations, provided by a marketplace participant. A  
14 marketplace provider shall not be liable for the failure to  
15 collect and remit the correct amount of general excise tax if:

16 (1) The error was due to incorrect or insufficient  
17 information given to the marketplace provider by the  
18 marketplace participant; or

19 (2) The marketplace participant or customer has remitted  
20 the general excise tax at issue;



1 provided that this subsection shall not apply if the marketplace  
2 provider and the marketplace participant are related.

3 (h) Marketplace providers shall be allowed a credit  
4 against the general excise taxes required to be collected and  
5 remitted on behalf of marketplace participants pursuant to this  
6 section in an amount equal to an amount determined by the  
7 department. Nothing in this section shall preclude the  
8 department from auditing the credit taken against the general  
9 excise taxes collected by marketplace providers on behalf of  
10 marketplace participants.

11 (i) No class action shall be brought against a marketplace  
12 provider in any court of the State on behalf of customers  
13 arising from or in any way related to an overpayment of general  
14 excise taxes collected on sales facilitated by the marketplace  
15 provider, regardless of whether that claim is characterized as a  
16 tax refund claim. Nothing in this section affects a customer's  
17 right to seek a refund directly from the department.

18 (j) Nothing in this section shall affect the obligation of  
19 any consumer to remit general excise taxes for any taxable  
20 transaction for which a marketplace provider or seller does not  
21 collect and remit general excise taxes.



1        (k) Nothing in this section shall interfere with the  
2 ability of a marketplace provider and a marketplace participant  
3 to enter into an agreement regarding the fulfillment of the  
4 requirements of this section, including an agreement that the  
5 marketplace participant will report and remit any general excise  
6 taxes on retail sales facilitated by the marketplace provider.

7        (l) For the purposes of this section:

8        "Department" means the department of taxation.

9        "Marketplace participant" means any person that sells  
10 tangible personal property or services via the forum provided by  
11 a marketplace provider.

12        "Marketplace provider" means any person who, pursuant to an  
13 agreement with one or more marketplace participants, facilitates  
14 sales for marketplace participants; provided that a marketplace  
15 provider facilitates a sale for a marketplace participant if the  
16 marketplace provider:

17        (1) Provides a forum for the listing for sale of tangible  
18 personal property or taxable services for sale by the  
19 marketplace participant, including a catalog or  
20 internet website; and



1        (2) Either directly or indirectly, through agreements or  
2        arrangements with marketplace participants, collects  
3        receipts from the customer and transmits those  
4        receipts to the marketplace participant, regardless of  
5        whether the marketplace provider receives compensation  
6        or other consideration in exchange for its services.

7        "Related" means connected by legal guardianship,  
8        trusteeship, blood, or marriage.

9        "Taxable retail sales" means any sales of tangible personal  
10       property or services that are subject to general excise taxes  
11       under this chapter."

12       SECTION 2. Chapter 238, Hawaii Revised Statutes, is  
13       amended by adding a new section to be appropriately designated  
14       and to read as follows:

15       "§238- Obligations of marketplace providers. (a) Any  
16       marketplace provider that facilitated over \$100,000 in taxable  
17       retail sales to customers in the State for taxable year 2018 for  
18       one or more marketplace participants shall collect and remit use  
19       taxes on all taxable retail sales that the marketplace provider  
20       facilitates for marketplace participants to customers in the  
21       State.



1        (b) Any marketplace provider that does not meet the  
2 requirements pursuant to subsection (a) shall begin collecting  
3 use taxes on taxable retail sales that the marketplace provider  
4 facilitates for marketplace participants to customers in the  
5 State after the marketplace provider has facilitated over  
6 \$100,000 in taxable retail sales to customers in the State for  
7 one or more marketplace participants. Marketplace providers  
8 shall begin collecting use taxes as required pursuant to this  
9 subsection on the first day of the calendar month following the  
10 month in which the marketplace provider meets the \$100,000 sales  
11 threshold.

12        (c) Once a marketplace provider has been required to  
13 collect use taxes under subsection (a) or (b), such collection  
14 shall continue for at least twelve months. If after the  
15 expiration of the twelve-month period the marketplace provider  
16 can demonstrate to the department that during the twelve-month  
17 period the marketplace provider's total taxable retail sales  
18 facilitated for one or more marketplace participants was less  
19 than or equal to \$100,000, the marketplace provider may elect to  
20 cease collecting tax until such time as collection is required  
21 pursuant to subsection (b).



1        (d) Marketplace providers shall not be required to collect  
2 and remit use taxes on all taxable retail sales pursuant to this  
3 section if the marketplace provider requests and maintains a  
4 copy of the marketplace participant's registration to collect  
5 use tax in the State.

6        (e) Marketplace providers shall report the use taxes  
7 pursuant to this section separately from any use taxes collected  
8 on taxable retail sales made directly by the marketplace  
9 provider, or affiliates of the marketplace provider, to  
10 customers in the State using a separate marketplace provider  
11 form to be made available by the department.

12        (f) A marketplace provider shall not be subject to audit  
13 by the department with respect to the retail sales for which it  
14 is required to collect and remit use taxes pursuant to this  
15 section. Nothing in this subsection shall preclude the  
16 department from auditing marketplace participants with respect  
17 to sales facilitated by marketplace providers.

18        (g) Marketplace providers may rely in good faith on  
19 information, including nexus determinations and product  
20 categorizations, provided by a marketplace participant. A



1 marketplace provider shall not be liable for the failure to  
2 collect and remit the correct amount of use tax if:

3 (1) The error was due to incorrect or insufficient  
4 information given to the marketplace provider by the  
5 marketplace participant; or

6 (2) The marketplace participant or customer has remitted  
7 the use tax at issue;

8 provided that this subsection shall not apply if the marketplace  
9 provider and the marketplace participant are related.

10 (h) Marketplace providers shall be allowed a credit  
11 against the use taxes required to be collected and remitted on  
12 behalf of marketplace participants pursuant to this section in  
13 an amount equal to an amount determined by the department.

14 Nothing in this section shall preclude the department from  
15 auditing the credit taken against the use taxes collected by  
16 marketplace providers on behalf of marketplace participants.

17 (i) No class action shall be brought against a marketplace  
18 provider in any court of the State on behalf of customers  
19 arising from or in any way related to an overpayment of use  
20 taxes collected on sales facilitated by the marketplace  
21 provider, regardless of whether that claim is characterized as a



1 tax refund claim. Nothing in this section affects a customer's  
2 right to seek a refund directly from the department.

3 (j) Nothing in this section shall affect the obligation of  
4 any consumer to remit use taxes for any taxable transaction for  
5 which a marketplace provider or seller does not collect and  
6 remit use taxes.

7 (k) Nothing in this section shall interfere with the  
8 ability of a marketplace provider and a marketplace participant  
9 to enter into an agreement regarding the fulfillment of the  
10 requirements of this section, including an agreement that the  
11 marketplace participant will report and remit any use tax on  
12 retail sales facilitated by the marketplace provider.

13 (l) For the purposes of this section:

14 "Department" means the department of taxation.

15 "Marketplace participant" means any person that sells  
16 tangible personal property or services via the forum provided by  
17 a marketplace provider.

18 "Marketplace provider" means any person who, pursuant to an  
19 agreement with one or more marketplace participants, facilitates  
20 sales for marketplace participants; provided that a marketplace



1 provider facilitates a sale for a marketplace participant if the  
2 marketplace provider:

3 (1) Provides a forum for the listing for sale of tangible  
4 personal property or taxable services for sale by the  
5 marketplace participant, including a catalog or  
6 internet website; and

7 (2) Either directly or indirectly, through agreements or  
8 arrangements with marketplace participants, collects  
9 receipts from the customer and transmits those  
10 receipts to the marketplace participant, regardless of  
11 whether the marketplace provider receives compensation  
12 or other consideration in exchange for its services.

13 "Related" means connected by legal guardianship,  
14 trusteeship, blood, or marriage.

15 "Taxable retail sales" means any sales of tangible personal  
16 property or services that are subject to use taxes under this  
17 chapter."

18 SECTION 3. Nothing in this Act shall override, alter, or  
19 limit the department of taxation's ability to bring an action  
20 against any person for uncollected or unpaid taxes when the  
21 person, wilfully or unknowingly, fails to meet an obligation to



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1 collect retail taxes prior to the enactment of this Act because  
 2 the person held the person's self out to be a marketplace  
 3 provider, marketplace facilitator, or any other business not  
 4 required to collect or pay retail taxes under state law, even  
 5 though the person would have been considered a retailer or  
 6 vendor pursuant to the laws in effect prior to the enactment of  
 7 this Act.

8 SECTION 4. If any provision of this Act, or the  
 9 application thereof to any person or circumstance, is held  
 10 invalid, the invalidity does not affect other provisions or  
 11 applications of the Act that can be given effect without the  
 12 invalid provision or application, and to this end the provisions  
 13 of this Act are severable.

14 SECTION 5. This Act shall apply to taxable years beginning  
 15 after December 31, 2017.

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INTRODUCED BY:

*[Signature]*  
 Michelle Sidani  
 Mail  
 to  
 Lorraine R. Frouge



# S.B. NO. 2282

**Report Title:**

Marketplace Provider; Marketplace Participant; General Excise Tax; Use Tax; Collect

**Description:**

Requires marketplace providers to collect general excise and use tax on taxable retail sales that the marketplace provider facilitates for marketplace participants to customers after a certain threshold. Applies to taxable years after December 31, 2016.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

