



Senate Bill No. 417

Public Act No. 18-152

AN ACT CONCERNING THE DEPARTMENT OF REVENUE SERVICES' RECOMMENDATIONS REGARDING STATE TAXATION AND COLLECTION.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subsection (a) of section 12-829 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2018*):

(a) (1) On or after January 1, 2012, but prior to July 1, 2018, when any person redeems a winning lottery ticket worth five thousand dollars or more at the central office of the Connecticut Lottery Corporation, the Connecticut Lottery Corporation shall check the name and other identifying information of such person against a list of taxpayers who are delinquent, supplied by the Commissioner of Revenue Services.

(2) On or after July 1, 2018, when any person redeems a winning lottery ticket worth two thousand dollars or more at the central office of the Connecticut Lottery Corporation, the Connecticut Lottery Corporation shall check the name and other identifying information of such person against a list of taxpayers who are delinquent, supplied by the Commissioner of Revenue Services.

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Sec. 2. Subdivision (12) of subsection (a) of section 12-407 of the 2018 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective December 1, 2018*):

(12) "Retailer" includes:

(A) Every person engaged in the business of making sales at retail or in the business of making retail sales at auction of tangible personal property owned by the person or others;

(B) [every] Every person engaged in the business of making sales for storage, use or other consumption or in the business of making sales at auction of tangible personal property owned by the person or others for storage, use or other consumption;

(C) [every] Every operator, as defined in subdivision (18) of this subsection;

(D) [every] Every seller rendering any service described in subdivision (2) of this subsection;

(E) [every] Every person under whom any salesman, representative, peddler or canvasser operates in this state, or from whom such salesman, representative, peddler or canvasser obtains the tangible personal property that is sold;

(F) [every] Every person with whose assistance any seller is enabled to solicit orders within this state;

(G) [every] Every person making retail sales from outside this state to a destination within this state [and not maintaining a place of business in this state] who engages in regular or systematic solicitation of sales of tangible personal property in this state (i) by the display of advertisements on billboards or other outdoor advertising in this state, (ii) by the distribution of catalogs, periodicals, advertising flyers or

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other advertising by means of print, radio or television media, or (iii) by mail, telegraphy, telephone, computer data base, cable, optic, microwave, Internet or other communication system, for the purpose of effecting retail sales of tangible personal property, provided such person has gross receipts of at least two hundred fifty thousand dollars and made [one] two hundred or more retail sales from outside this state to destinations within this state during the twelve-month period ended on the September thirtieth immediately preceding the monthly or quarterly period with respect to which such person's liability for tax under this chapter is determined;

(H) [any] Any person owned or controlled, either directly or indirectly, by a retailer engaged in business in this state which is the same as or similar to the line of business in which such person so owned or controlled is engaged;

(I) [any] Any person owned or controlled, either directly or indirectly, by the same interests that own or control, either directly or indirectly, a retailer engaged in business in this state which is the same as or similar to the line of business in which such person so owned or controlled is engaged;

(J) [any] Any assignee of a person engaged in the business of leasing tangible personal property to others, where leased property of such person which is subject to taxation under this chapter is situated within this state and such assignee has a security interest, as defined in subdivision (35) of subsection (b) of section 42a-1-201, in such property;

(K) [every] Every person making retail sales of items of tangible personal property from outside this state to a destination within this state [and not maintaining a place of business in this state] who repairs or services such items, under a warranty, in this state, either directly or indirectly through an agent, independent contractor or subsidiary;

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[and]

(L) [every] Every person making sales of tangible personal property or services through an agreement with another person located in this state under which such person located in this state, for a commission or other consideration that is based upon the sale of tangible personal property or services by the retailer, directly or indirectly refers potential customers, whether by a link on an Internet web site or otherwise, to the retailer, provided the cumulative gross receipts from sales by the retailer to customers in the state who are referred to the retailer by all such persons with this type of an agreement with the retailer, is in excess of two hundred fifty thousand dollars during the preceding four quarterly periods ending on the last day of March, June, September and December; and

(M) Any marketplace facilitator, as defined in section 4 of this act.

Sec. 3. Subdivision (15) of subsection (a) of section 12-407 of the 2018 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective December 1, 2018*):

(15) (A) "Engaged in business in the state" means and, to the extent not prohibited by the Constitution of the United States, includes, but shall not be limited to, the following acts or methods of transacting business: (i) Selling in this state, or any activity in this state in connection with selling in this state, tangible personal property for use, storage or consumption within the state; (ii) engaging in the transfer for a consideration of the occupancy of any room or rooms in a hotel, lodging house or bed and breakfast establishment for a period of thirty consecutive calendar days or less; (iii) rendering in this state any service described in any of the subparagraphs of subdivision (2) of this subsection; (iv) maintaining, occupying or using, permanently or temporarily, directly or indirectly, through a subsidiary or agent, by whatever name called, any office, place of distribution, sales or sample

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room or place, warehouse or storage point or other place of business or having any representative, agent, salesman, canvasser or solicitor operating in this state for the purpose of selling, delivering or taking orders; (v) notwithstanding the fact that retail sales are made from outside this state to a destination within this state, [and that a place of business is not maintained in this state,] engaging in regular or systematic solicitation of sales of tangible personal property in this state by the display of advertisements on billboards or other outdoor advertising in this state, by the distribution of catalogs, periodicals, advertising flyers or other advertising by means of print, radio or television media, or by mail, telegraphy, telephone, computer data base, cable, optic, microwave, Internet or other communication system, for the purpose of effecting retail sales of tangible personal property, provided [one] at least two hundred fifty thousand dollars of gross receipts are received and two hundred or more retail sales from outside this state to destinations within this state are made during the twelve-month period ended on the September thirtieth immediately preceding the monthly or quarterly period with respect to which liability for tax under this chapter is determined; (vi) being owned or controlled, either directly or indirectly, by a retailer engaged in business in this state which is the same as or similar to the line of business in which the retailer so owned or controlled is engaged; (vii) being owned or controlled, either directly or indirectly, by the same interests that own or control, either directly or indirectly, a retailer engaged in business in this state which is the same as or similar to the line of business in which the retailer so owned or controlled is engaged; (viii) being the assignee of a person engaged in the business of leasing tangible personal property to others, where leased property of such person is situated within this state and such assignee has a security interest, as defined in subdivision (35) of subsection (b) of section 42a-1-201, in such property; (ix) notwithstanding the fact that retail sales of items of tangible personal property are made from outside this state to a destination within this state, [and that a place of

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business is not maintained in this state,] repairing or servicing such items, under a warranty, in this state, either directly or indirectly through an agent, independent contractor or subsidiary; and (x) selling tangible personal property or services through an agreement with a person located in this state, under which such person located in this state, for a commission or other consideration that is based upon the sale of tangible personal property or services by the retailer, directly or indirectly refers potential customers, whether by a link on an Internet web site or otherwise, to the retailer, provided the cumulative gross receipts from sales by the retailer to customers in the state who are referred to the retailer by all such persons with this type of agreement with the retailer is in excess of two hundred fifty thousand dollars during the four preceding four quarterly periods ending on the last day of March, June, September and December.

(B) A retailer who has contracted with a commercial printer for printing and distribution of printed material shall not be deemed to be engaged in business in this state because of the ownership or leasing by the retailer of tangible or intangible personal property located at the premises of the commercial printer in this state, the sale by the retailer of property of any kind produced or processed at and shipped or distributed from the premises of the commercial printer in this state, the activities of the retailer's employees or agents at the premises of the commercial printer in this state, which activities relate to quality control, distribution or printing services performed by the printer, or the activities of any kind performed by the commercial printer in this state for or on behalf of the retailer.

(C) A retailer not otherwise [a retailer] engaged in business in the state who purchases fulfillment services carried on in this state by a person other than an affiliated person, or who owns tangible personal property located on the premises of an unaffiliated person other than a marketplace facilitator, as defined in section 4 of this act, performing

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fulfillment services for such retailer, shall not be deemed to be engaged in business in [the] this state. For purposes of this subparagraph, (i) persons are affiliated persons with respect to each other where one of such persons has an ownership interest of more than five per cent, whether direct or indirect, in the other, or where an ownership interest of more than five per cent, whether direct or indirect, is held in each of such persons by another person or by a group of other persons who are affiliated persons with respect to each other, [For purposes of this subparagraph,] and (ii) "fulfillment services" means services that are performed by a person on its premises on behalf of a purchaser of such services and that involve the receipt of orders from the purchaser of such services or an agent thereof, which orders are to be filled by the person from an inventory of products that are offered for sale by the purchaser of such services, and the shipment of such orders outside this state to customers of the purchaser of such services.

(D) A retailer not otherwise [a retailer] engaged in business in this state that participates in a trade show or shows at the convention center, as defined in subdivision (3) of section 32-600, shall not be deemed to be engaged in business in this state, regardless of whether the retailer has employees or other staff present at such trade shows, provided the retailer's activity at such trade shows is limited to displaying goods or promoting services, no sales are made, any orders received are sent outside this state for acceptance or rejection and are filled from outside this state, and provided further that such participation is not more than fourteen days, or part thereof, in the aggregate during the retailer's income year for federal income tax purposes.

Sec. 4. (NEW) (*Effective December 1, 2018*) (a) As used in this section:

(1) "Marketplace facilitator" means any person who (A) facilitates retail sales of at least two hundred fifty thousand dollars during the prior twelve-month period by marketplace sellers by providing a

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forum that lists or advertises tangible personal property subject to tax under chapter 219 of the general statutes or taxable services, including digital goods, for sale by such marketplace sellers, (B) directly or indirectly through agreements or arrangements with third parties, collects receipts from the customer and remits payments to the marketplace sellers, and (C) receives compensation or other consideration for such services;

(2) "Marketplace seller" means any person who has an agreement with a marketplace facilitator regarding retail sales of such person, whether or not such person is required to obtain a permit under section 12-409 of the general statutes; and

(3) "Forum" means a physical or electronic place, including, but not limited to, a store, a booth, an Internet web site, a catalog or a dedicated sales software application, where tangible personal property or taxable services are offered for sale.

(b) A marketplace facilitator shall be considered the retailer of each sale such facilitator facilitates on its forum for a marketplace seller. Each marketplace facilitator shall (1) be required to collect and remit for each such sale any tax imposed under section 12-408 of the general statutes, (2) be responsible for all obligations imposed under chapter 219 of the general statutes as if such marketplace facilitator was the retailer of such sale, and (3) in accordance with the provisions of subdivision (3) of section 12-426 of the general statutes, keep such records and information as may be required by the Commissioner of Revenue Services to ensure proper collection and remittance of said tax.

(c) Any marketplace seller who is a retailer with a valid permit issued under section 12-409 of the general statutes shall not be required to collect the tax imposed under chapter 219 of the general statutes for a particular sale and shall not include the receipts from

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such sale in its taxable receipts for purposes of its return under section 12-414 of the general statutes, if: (1) The marketplace seller can show that such sale was facilitated by a marketplace facilitator (A) with whom the marketplace seller has a contract that explicitly provides that the marketplace facilitator will collect and remit sales tax on all taxable sales such facilitator facilitates for such seller, or (B) from whom such seller requested and received in good faith a properly completed certificate of collection certifying that such facilitator is registered to collect sales tax and will collect sales tax on all taxable sales by such seller and facilitated by such facilitator; and (2) any failure of such facilitator to collect the proper amount of tax for such sale was not the result of such seller providing such facilitator with incorrect information. The commissioner shall administer the provisions of this subsection in a manner consistent with section 12-410 of the general statutes and as if the language of said section had expressly referred to a certificate of collection under this section.

(d) Any purchaser of tangible personal property or taxable services who overpaid sales or use tax to a marketplace facilitator may submit a claim for refund with the commissioner in accordance with the provisions of section 12-425 of the general statutes, in such form and manner as the commissioner prescribes. No such purchaser shall have a cause of action against a marketplace facilitator for the recovery of any such overpayment under any provision of the general statutes.

Sec. 5. (NEW) (*Effective December 1, 2018*) (a) As used in this section, "marketplace facilitator" and "marketplace seller" have the same meanings as provided in section 4 of this act.

(b) For a taxable sale occurring on or after December 1, 2018, but on or before December 31, 2019, if a marketplace facilitator incurs liability for failure to collect the tax due under chapter 219 of the general statutes on a taxable sale, the commissioner shall limit such liability in accordance with the provisions of subdivision (1) of subsection (c) of

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this section if such facilitator can show to the satisfaction of the Commissioner of Revenue Services that (1) such facilitator and the marketplace seller are not affiliated persons, as described in subparagraph (C) of subdivision (15) of subsection (a) of section 12-407 of the general statutes, as amended by this act, (2) the failure to collect sales tax due was not due to an error in sourcing the sale, and (3) such sale occurred on or before December 31, 2019. The commissioner shall prescribe the form and manner in which a marketplace facilitator may request the relief in this subsection.

(c) (1) The commissioner shall limit the liability of a marketplace facilitator who the commissioner deems to have satisfied the provisions of subdivisions (1) to (3), inclusive, of subsection (b) of this section by reducing the total amount of tax due under chapter 219 of the general statutes on taxable sales facilitated by such facilitator and sourced to this state by five per cent, reducing the interest due by a corresponding amount and waiving any associated penalties.

(2) The commissioner may limit the liability of a marketplace seller who incurs liability for tax due under chapter 219 of the general statutes on a taxable sale that was made through a marketplace facilitator to the same extent as provided under subdivision (1) of this subsection, provided the commissioner deems the provisions of subdivisions (1) to (3), inclusive, of subsection (b) of this section to be satisfied.

Sec. 6. (NEW) (*Effective December 1, 2018*) (a) As used in this section:

(1) "Referral" or "refer" means the transfer by a referrer of a potential purchaser to a seller who advertises or lists tangible personal property for sale on or in the referrer's medium; and

(2) "Referrer" means any person who (A) contracts or otherwise agrees with a seller to list or advertise for sale one or more items of

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tangible personal property by any means, including an Internet web site and a catalog, provided such listing or advertisement includes the seller's shipping terms or a statement of whether the seller collects sales tax, (B) offers a comparison of similar products offered by multiple sellers, (C) receives commissions, fees or other consideration in excess of one hundred twenty-five thousand dollars during the prior twelve-month period from a seller or sellers for such listings or advertisements, (D) refers, via telephone, Internet web site link or other means, a potential customer to a seller or an affiliated person of a seller, as described in subparagraph (C) of subdivision (15) of subsection (a) of section 12-407 of the general statutes, as amended by this act, and (E) does not collect payments from the customer for the seller. For purposes of this subdivision, "shipping terms" does not mean a seller's mere mention of general shipping costs in the seller's own listing or advertisement.

(b) Each referrer shall, to the extent not prohibited by the Constitution of the United States:

(1) Post a conspicuous notice on or in such referrer's medium that informs consumers (A) that sales or use tax is due from Connecticut purchasers on certain purchases, (B) that the seller might not collect and remit sales tax on a purchase, (C) that Connecticut requires Connecticut purchasers to file a use tax return if sales tax is not imposed at the time of the sale by the seller, (D) of the instructions for obtaining additional information from the Department of Revenue Services regarding the remittance of sales and use taxes on purchases made by Connecticut purchasers, and (E) that such notice is being provided pursuant to this section;

(2) Provide, not later than July 1, 2019, a quarterly notice to each seller to whom such referrer transferred during the previous calendar year a potential purchaser located in this state that contains (A) a statement that Connecticut imposes a sales or use tax on sales made to

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Connecticut purchasers, (B) a statement that a seller making sales to Connecticut purchasers must collect and remit sales and use taxes to the Department of Revenue Services, and (C) instructions for obtaining additional information regarding the Connecticut sales and use taxes from said department.

(c) Not later than January 31, 2020, and annually thereafter, each referrer shall submit a report electronically, in a form and manner prescribed by the Commissioner of Revenue Services, to the commissioner that contains (1) the name and address of each seller who received a notice pursuant to subsection (b) of this section in the calendar year immediately preceding, and (2) the name and address of each seller for which the referrer knows that such seller (A) listed or advertised such seller's tangible personal property on or in such referrer's medium, and (B) collected and remitted Connecticut sales and use taxes.

Approved June 14, 2018