

SENATE No. 1637

The Commonwealth of Massachusetts

PRESENTED BY:

Viriato M. deMacedo

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act ensuring marketplace fairness in taxation.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Viriato M. deMacedo</i>	<i>Plymouth and Barnstable</i>	
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>1/23/2019</i>
<i>Kathleen R. LaNatra</i>	<i>12th Plymouth</i>	<i>1/23/2019</i>

SENATE No. 1637

By Mr. deMacedo, a petition (accompanied by bill, Senate, No. 1637) of Viriato M. deMacedo, Jason M. Lewis and Kathleen R. LaNatra for legislation to ensure marketplace fairness in taxation. Revenue.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act ensuring marketplace fairness in taxation.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 1 of Chapter 64H, as appearing in the 2016 Official Edition, is
2 hereby amended in line 43 by inserting after the word "America" the following:-

3 "No seller shall be considered to be engaged in business in the commonwealth whose
4 sole nexus with the commonwealth is through a marketplace facilitator or fulfillment service of a
5 marketplace facilitator."

6 SECTION 2. Said section is hereby further amended in 105 by inserting after the words
7 "tax imposed by this chapter" the following:-

8 "every person operating as a marketplace facilitator;"

9 SECTION 3. Said section is hereby further amended by inserting the following new
10 definitions:-

11 "Marketplace facilitator", any person who (A) facilitates retail sales of at least two
12 hundred fifty thousand dollars during the prior twelve-month period by marketplace sellers by
13 providing a forum that lists or advertises tangible personal property subject to tax under chapters
14 64H or 64I of the general laws or taxable services, including digital goods, for sale by such
15 marketplace sellers, (B) directly or indirectly through agreements or arrangements with third
16 parties, collects receipts from the customer and remits payments to the marketplace sellers, and
17 (C) receives compensation or other consideration for such services.

18 "Marketplace seller", any person who has an agreement with a marketplace facilitator
19 regarding retail sales of such person, whether or not such person is required to obtain a
20 registration under section 7 of this chapter.

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

24 SECTION 4. Chapter 64H of the General Laws, as appearing in the 2016 Official
25 Edition, is hereby amended by inserting the following new section:-

26 "Section 34. Marketplace Sales

27 (a) A marketplace facilitator shall be considered the retailer of each sale such facilitator
28 facilitates on its forum for a marketplace seller. Each marketplace facilitator shall (1) be required
29 to collect and remit for each such sale any tax imposed under chapter 64H and 64I of the general
30 laws, (2) be responsible for all obligations imposed under chapters 64H and 64I of the general
31 laws as if such marketplace facilitator was the retailer of such sale, and (3) keep such records and

32 information as may be required by the Commissioner of Revenue to ensure proper collection and
33 remittance of said tax.

34 (b) Any marketplace seller who is a retailer with a valid registration issued under section
35 7 of this chapter shall not be required to collect the tax imposed under chapters 64H and 64I of
36 the general laws for a particular sale and shall not include the receipts from such sale in its
37 taxable receipts for purposes of its return, if: (1) The marketplace seller can show that such sale
38 was facilitated by a marketplace facilitator (A) with whom the marketplace seller has a contract
39 that explicitly provides that the marketplace facilitator will collect and remit sales tax on all
40 taxable sales such facilitator facilitates for such seller, or (B) from whom such seller requested
41 and received in good faith a properly completed certificate of collection certifying that such
42 facilitator is registered to collect sales tax and will collect sales tax on all taxable sales by such
43 seller and facilitated by such facilitator; and (2) any failure of such facilitator to collect the
44 proper amount of tax for such sale was not the result of such seller providing such facilitator with
45 incorrect information. The commissioner of revenue shall administer the provisions of this
46 subsection.

47 (c) Any purchaser of tangible personal property or taxable services who overpaid sales or
48 use tax to a marketplace facilitator may submit a claim for refund with the commissioner of
49 revenue in such form and manner as the commissioner prescribes. No such purchaser shall have
50 a cause of action against a marketplace facilitator for the recovery of any such overpayment
51 under any provision of the general laws.