

SENATE No. 1762

The Commonwealth of Massachusetts

PRESENTED BY:

Michael J. Rodrigues

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 relative to the marketplace collection of sales tax.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Michael J. Rodrigues</i>	<i>First Bristol and Plymouth</i>	
<i>Paul A. Schmid, III</i>	<i>8th Bristol</i>	<i>1/23/2019</i>

SENATE No. 1762

By Mr. Rodrigues, a petition (accompanied by bill, Senate, No. 1762) of Michael J. Rodrigues and Paul A. Schmid, III for legislation relative to the marketplace collection of sales tax. Revenue.

The Commonwealth of Massachusetts

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

An Act relative to the marketplace collection of sales tax.

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 of the General Laws, as appearing in the 2016
2 Official Edition, is hereby amended by adding the following definitions:-

3 “Delivery”, the method by which a vendor delivers tangible personal property or a
4 service that it has sold to a purchaser, however effected, including through electronic delivery;
5 provided, however, that delivery includes a delivery made by the vendor itself, a related person
6 or a contract party.

7 “Delivery company”, an unrelated person who, pursuant to an agreement with a vendor,
8 delivers tangible personal property or services sold by such vendor and may also provide
9 additional services, including order fulfillment, order management, return processing, the
10 preparation of sales reports or other analytics and consumer access to customer service.

11 “Marketplace facilitator”, a person who, pursuant to an agreement with a vendor, for
12 compensation facilitates sales by such vendor through a physical or electronic marketplace

13 operated by the person, and engages: (a) directly or indirectly, through one or more related
14 persons in any of the following: (i) transmitting or otherwise communicating the offer or
15 acceptance between a buyer and vendor; (ii) owning or operating the infrastructure, electronic or
16 physical, or technology that brings buyers and vendors together; (iii) providing a virtual currency
17 that buyers are allowed or required to use to purchase products from the vendor; or (iv) software
18 development or research and development activities related to any of the activities described in
19 (b), if such activities are directly related to a physical or electronic marketplace operated by the
20 person or a related person; and (b) in any of the following activities with respect to the vendor's
21 products: (i) payment processing services; (ii) fulfillment or storage services; (iii) listing
22 products for sale; (iv) setting prices; (v) branding sales as those of the marketplace facilitator;
23 (vi) order taking; (vii) advertising or promotion; or (viii) providing customer service or
24 accepting or assisting with returns or exchanges.

25 "Marketplace seller", a vendor that makes retail sales through any physical or electronic
26 marketplaces operated by a marketplace facilitator.

27 SECTION 2. Chapter 64H of the General Laws, as appearing in the 2014 Official
28 Edition, is hereby amended by adding the following section:-

29 Section 3B. Notwithstanding any general or special law, any vendor or marketplace
30 facilitator with a principal place of business located outside the commonwealth not otherwise
31 subject to the tax imposed by this chapter or chapter 64I who is selling or facilitating the sale of
32 tangible personal property or services, the gross receipts from the retail sale of which are
33 required to be included in the measure of the tax imposed by this chapter or chapter 64I, for
34 delivery into the commonwealth is engaged in business in the commonwealth making taxable

35 sales subject to chapter 64H and 64I shall: (i) register, collect and remit all applicable sales or
36 use tax under this chapter and chapter 64I with respect to its Massachusetts sales; and (ii) follow
37 all applicable procedures and requirements in accordance with this chapter and chapter 64I,
38 provided that the vendor or marketplace facilitator meets the following criteria in the previous
39 calendar year or the current calendar year:

40 (A) if a vendor, the vendor makes sales of tangible personal property or services for use
41 in the commonwealth for delivery into the commonwealth exceeding \$100,000; or

42 (B) if a marketplace facilitator, the marketplace facilitator makes or facilitates the sale of
43 tangible personal property or services for use in the commonwealth, on its own behalf or on
44 behalf of one or more marketplace sellers, for delivery into the Commonwealth exceeding
45 \$100,000.

46 SECTION 3. Chapter 64H of the General Laws, as appearing in the 2014 Official
47 Edition, is hereby amended by adding the following section:-

48 Section 3C. (a) A marketplace facilitator engaged in business in the Commonwealth shall
49 register, collect and remit the sales or use tax on all taxable sales to purchasers in the
50 commonwealth on sales that are made or facilitated by the marketplace facilitator, regardless of
51 whether the marketplace seller for whom a sale is made or facilitated has or is required to
52 register to collect and remit sales tax in the Commonwealth, or would have been required to
53 collect sales and use tax had the sale not been facilitated by the marketplace facilitator, and
54 regardless of the amount of the sales price or purchase price that will ultimately accrue to or
55 benefit the marketplace facilitator, the marketplace seller, or any other person. The sales and use
56 tax collection responsibility of a marketplace facilitator applies but shall not be limited to sales

57 facilitated through a computer software application, commonly referred to as in-app purchases,
58 or through another specified digital product.

59 (b) Marketplace facilitators shall report the sales and use tax described in this chapter
60 separately from any sales or use tax collected on taxable sales made directly by the marketplace
61 facilitator, or affiliates of the marketplace facilitator, to purchasers in the Commonwealth using a
62 separate marketplace facilitator return to be published by the department.

63 (c) No class action may be brought against a marketplace facilitator in any court of the
64 Commonwealth on behalf of purchasers arising from or in any way related to an overpayment of
65 sales or use tax collected on sales facilitated by the marketplace facilitator, regardless of whether
66 that claim is characterized as a tax refund claim. Nothing in this section affects a purchaser's
67 right to seek a refund as provided for in this chapter.

68 (d) Nothing in this section affects the obligation of any purchaser to remit sales or use tax
69 for any taxable transaction for which a marketplace facilitator or seller does not collect and remit
70 sales or use tax.

71 (e) Nothing in this section shall prohibit the department from auditing marketplace
72 facilitators or marketplace sellers, except the department is prohibited from assessing: (i)
73 marketplace facilitators to the extent that the marketplace seller collected and remitted sales tax;
74 and (ii) marketplace sellers to the extent that the marketplace facilitator collected and remitted
75 sales tax and was audited for such sales unless the marketplace facilitator is seeking relief of
76 liability under subsection (c) of this section.

77 (f) The commissioner of revenue shall issue instructions or forms, or promulgate rules or
78 regulations, necessary for the implementation of this section.

79 SECTION 4. No obligation to collect the sales and use tax required by this Act may be
80 applied retroactively.

81 SECTION 5. Notwithstanding any general or special law, the commissioner of revenue
82 shall promulgate rules or regulations necessary for the establishment and implementation of a
83 vendor discount to provide reasonable compensation for the incremental expenses incurred by a
84 vendor in collecting and remitting sales and use taxes in jurisdictions outside of the
85 Commonwealth. The discount shall only be made available to those vendors who file returns in a
86 timely manner as required by section 16 of 62C.

87 SECTION 6. If any provision of this act, or the application of such provision to any
88 person or circumstance, is held to be unconstitutional, then the remainder of this act, and the
89 application of the provisions of such to any person or circumstance, shall not be affected thereby.