**§ 105-164.4J. Marketplace-facilitated sales.**

(a) Scope. – This section applies to a marketplace facilitator engaged in business in this State.

(b) Payment of Tax. – A marketplace facilitator subject to this section is considered the retailer of each marketplace-facilitated sale it makes and is liable for collecting and remitting the sales and use tax on all such sales. A marketplace facilitator is required to comply with the same requirements and procedures as all other retailers registered or who are required to be registered to collect and remit sales and use tax in this State. A marketplace facilitator is required to collect and remit sales tax as required by this section regardless of whether a marketplace seller for whom it makes a marketplace-facilitated sale meets any of the following conditions:

(1) Has a physical presence in this State.
(2) Is required to be registered to collect and remit sales and use tax in this State.
(3) Would have been required to collect and remit sales and use tax in this State had the sale not been made through a marketplace.
(4) Would not have been required to collect and remit sales and use tax in this State had the sale not been made through a marketplace.

(c) Report. – A marketplace facilitator must provide or make available to each marketplace seller the information listed in this subsection with respect to marketplace-facilitated sales that are made on behalf of the marketplace seller and that are sourced to this State. The information may be provided in any format and shall be provided or made available no later than 10 days after the end of each calendar month. The required information to be provided or made available to each marketplace seller is as follows:

(1) Gross sales.
(2) The number of separate transactions.

(d) Liability Relief. – The Department shall not assess a marketplace facilitator for failure to collect the correct amount of tax due if the marketplace facilitator can demonstrate to the Secretary's satisfaction that all of the circumstances listed in this subsection apply. This subsection does not apply with regard to a marketplace-facilitated sale for which the marketplace facilitator is the marketplace seller or if the marketplace facilitator and the marketplace seller are affiliates. If a marketplace facilitator is not assessed for tax due under this section, the marketplace seller is liable for the tax due under this section provided the marketplace seller is engaged in business in this State. The circumstances that a marketplace facilitator must demonstrate are as follows:

(1) The failure to collect the correct amount of tax was due to incorrect information given to the marketplace facilitator by the marketplace seller.
(2) The marketplace facilitator did not receive specific written advice from the Secretary for the transaction at issue.

(e) Refund of Tax. – If a purchaser receives a refund on any portion of the sales price from a marketplace facilitator who collected and remitted the tax on the retail sale, the provisions of G.S. 105-164.11A(a) apply.

(f) Class Actions. – No class action may be brought against a marketplace facilitator in any court of this State on behalf of customers arising from or in any way related to an overpayment of sales or use tax collected on facilitated sales by a marketplace facilitator, regardless of whether that claim is characterized as a tax refund claim. Nothing in this subsection affects a customer's right to seek a refund as provided under G.S. 105-164.11.

(g) Agreements. – Nothing in this section shall be construed to interfere with the ability of a marketplace facilitator and a marketplace seller to enter into an agreement with each other regarding the fulfillment of the requirements of this Article, except that an agreement may not require a marketplace seller to collect and remit sales and use tax on marketplace-facilitated sales.

(h) Use Tax Obligation. – Nothing in this section affects the obligation of any purchaser to remit use tax for any taxable transaction for which a marketplace facilitator does not collect and remit sales or use tax.

(i) Limitation. – This section does not apply to an accommodation facilitator, an admission facilitator, or a service contract facilitator whose collection and remittance requirements are set out in G.S. 105-164.4F, 105-164.4G, and 105-164.4I, respectively.

(j) Grace Period. – The Department shall take no action to assess a person for any tax due for a filing period beginning on or after February 1, 2020, and ending prior to October 1, 2020, with respect to any of the circumstances listed in this subsection. This subsection does not apply to (i) a person that received specific written advice from the Secretary for the transactions at issue for the laws in effect for the applicable period, (ii) a person that collected tax and failed to remit it to the Department, or (iii) the retail sale of inventory that was held for resale. The applicable circumstances are:

(1) The person sells tangible personal property on behalf of the owner of the tangible personal property, or the owner's estate, whether by auction or through the pricing of items, and the sale was conducted at the owner's home or farm.

(2) The person sells fixtures and equipment held for use in operating a retail or wholesale business on behalf of a business, whether by auction or through the pricing of items, and the sale is conducted at the business location.

(k) Efficient Administration. – When the Secretary finds it necessary for the efficient administration of this Article to regard any sales representatives, solicitors, representatives, consignees, peddlers, or truckers as agents of the dealers, distributors, consignors, supervisors, employers, or persons under whom they operate or from whom they obtain the items sold by them regardless of whether they are making sales on their own behalf or on behalf of these dealers, distributors, consignors, supervisors, employers, or persons, the Secretary may so regard them and may regard the dealers, distributors, consignors, supervisors, employers, or persons as "marketplace facilitators" for the purpose of this Article and may treat the sales they make as "marketplace-facilitated sales" and the sellers as "marketplace sellers." (2019-246, s. 4(c); 2020-6, s. 1(d); 2020-58, s. 3.3(a); 2023-12, s. 2.2.)