

April 20, 2025

The Honorable Morgan Meyer
Chair, House Ways & Means Committee
Texas House of Representatives
P.O. Box 2910 Austin, TX 78768-2910

The Honorable Trey Martinez Fischer,
Vice Chair, House Ways & Means Committee
Texas House of Representatives
P.O. Box 2910 Austin, TX 78768-2910

Subject: Support for HB 1681 - Clarifying Tax Law for Marketplace Fees

Dear Chairman Meyer, Vice Chairman Martinez Fischer, and Honorable Members of the Committee,

On behalf of the Marketplace Industry Association (MIA), representing a diverse array of online marketplace platforms, including several headquartered in Texas, I am writing to express our strong support for House Bill 1681.

HB 1681 provides essential clarification to Texas tax law by specifying that fees charged by marketplace providers for facilitating sales or processing payments on behalf of sellers do not constitute taxable "data processing services". This clarification resolves significant uncertainty under current law regarding the tax treatment of these common fees.

Treating these essential marketplace service fees as taxable data processing services would be incorrect and harmful for several key reasons:

1. **Prevents Excessive Taxation:** Marketplace fees are already implicitly included in the base for the state's margins tax paid by providers, and sales tax is collected from the consumer on the underlying retail transaction. Adding a third layer of tax by classifying these fees as "data processing services" creates undue tax pyramiding, which increases the cost of doing business in Texas and raises consumer prices.
2. **Ensures Fair Competition:** Similar fees for services provided by offline intermediaries, such as auctioneers or consignors, are not separately taxed as data processing services. HB 1681 ensures that marketplace fees are appropriately *not* subject to sales tax, thereby maintaining a level playing field between online platforms and traditional brick-and-mortar businesses.
3. **Protects Small and Medium-Sized Texas Businesses:** Thousands of small and mid-sized Texas sellers rely on online marketplaces to reach customers efficiently. Imposing sales

tax on marketplace fees would inevitably increase costs for these sellers, cutting into thin margins and placing them at a competitive disadvantage. This bill helps maintain the viability of the marketplace model for Texas entrepreneurs.

4. **Avoids Violating Federal Law:** The federal Internet Tax Freedom Act (ITFA) prohibits discriminatory state taxes on electronic commerce. Texas does not tax comparable commissions earned by offline intermediaries. Because online marketplace fees serve the same essential function, taxing these fees while exempting their offline equivalents would likely violate ITFA and expose Texas to legal challenges. HB 1681 ensures compliance with federal law by preventing this discriminatory taxation.

HB 1681 is a necessary clarification that prevents excessive taxation, promotes fair competition, protects Texas small businesses, and ensures compliance with federal law. The Marketplace Industry Association strongly supports this measure and urges the Committee to vote favorably on HB 1681.

Thank you for your time and consideration.

Sincerely,



Jeremy Gottschalk
Executive Director
Marketplace Industry Association