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KPMG report: Economic nexus update, marketplace facilitators' tax collection obligations

State lawmakers continue to enact economic nexus legislation to take advantage of the authorization contained in the U.S. Supreme Court's decision in "South Dakota v. Wayfair, Inc."

Marketplace facilitators

In addition, certain states are imposing the tax collection obligation on what they are terming marketplace facilitators or marketplace providers. The definitions of "marketplace facilitator" or "marketplace provider" vary from state to state, but as a general matter, they include persons and entities that provide a forum for displaying and advertising for sale the products of multiple sellers, and either directly or by contract or affiliation, provide payment processing services for transactions conducted via the marketplace.

In addition, many of the bills provide extensive details on the obligations of marketplaces and marketplace sellers and the protections provided to marketplaces should they collect and remit the wrong amount of tax. Marketplace sellers need to consider and review these bills, and also examine the bills carefully to determine any documentation that may relieve them of the obligation to collect tax, among other issues.

Legislation imposing a collection obligation on marketplaces is enrolled/or pending signature in New York (budget bills A. 2009-C and S. 1509C), Maryland (Senate Bill 728), and Idaho (House Bill 259).

The following discussion briefly outlines certain recently enacted marketplace collection legislative measures.

Hawaii

Senate Bill 396 was signed into law on April 4, 2019. Under this bill, a marketplace facilitator is deemed to be the seller of tangible personal property, intangible property, or services and the seller on whose behalf the sale is made is deemed to be making a wholesale sale. Persons, other than marketplace facilitators, who provide a forum in which sellers list or advertise goods, services or intangibles for sale

and take or process sales orders, must comply with certain use tax notice and reporting requirements. The bill takes effect on January 1, 2020.

Nebraska

The Department of Revenue issued guidance in light of recently enacted Legislative Bill 284 (signed into law on March 21, 2019), that imposes a sales and use tax collection and remittance obligation on marketplace facilitators. Marketplace facilitators with over \$100,000 in receipts or facilitating more than 200 transactions in the previous or current calendar year must begin collecting tax on April 1, 2019.

New Mexico

The governor signed House Bill 6—a comprehensive tax reform legislation that includes provisions requiring remote sellers and marketplace providers to collect and remit the gross receipts tax effective July 1, 2019. A remote seller or a marketplace lacking a physical presence in New Mexico is considered to be engaged in business in the state if, in the previous calendar year, it had at least \$100,000 in total taxable gross receipts. Under the new law, the marketplace provider will be responsible for collection and remittance of tax on sales they facilitate, and marketplace sellers will be allowed a deduction from gross receipts for such sales facilitated provided they have documentation that the marketplace provider is registered for tax collection.

Rhode Island

The governor signed two bills (Senate Bill 251 and House Bill 5278) that impose a sales tax collection and remittance obligation on remote sellers, marketplace facilitators, and referrers effective July 1, 2019. The economic nexus standard incorporated into the bills is gross revenue equal to or exceeding \$100,000 or 200 separate transactions from the sale of tangible personal property, prewritten computer software delivered electronically or by load and leave, vendor-hosted prewritten software, or taxable services delivered into Rhode Island.

Under current Rhode Island law, certain entities (including non-collecting retailers) are subject to various use tax reporting requirements if they do not collect tax on sales into the state. The Department of Taxation's quarterly newsletter provides some guidance on the bills, and clarifies that entities collecting tax need to continue to do so. Entities providing notices to consumers also need to continue to provide the required notices through June 30, 2019. After that time, assuming the entity meets the economic nexus standards, it must collect and remit use tax. The newsletter reminds use tax reporting entities that they may have use tax reports to file in early 2020 based on taxable transactions occurring from January 1, 2019, through June 30, 2019.

Utah

Effective October 1, 2019, Senate Bill 168 (signed April 1, 2019) expands the state's economic nexus provisions to marketplace facilitators. In particular, the bill imposes a sales tax collection and remittance obligation on a marketplace facilitator that, in the previous or current calendar year, exceeds \$100,000 in gross revenue from Utah sales or has 200 or more sales transactions measured by both the marketplace's own sales and sales facilitated for others.

West Virginia

House Bill 2813 (signed March 27, 2019) codifies the Department of Revenue's existing economic nexus standards for remote sellers that have been in effect since January 1, 2019. In addition, effective July 1, 2019, the bill extends the collection and remittance obligation to marketplace facilitators and referrers (as defined) that meet the \$100,000 or more in gross revenue or 200 or more West Virginia sale transactions threshold.

Read an [April 2019 report](#) prepared by KPMG LLP

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