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KPMG report: Economic nexus, marketplace providers collecting tax (Arkansas, Idaho, Indiana)

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

Also, an increasing number of states are imposing a tax collection obligation on "marketplace facilitators" or "marketplace providers." The following summarizes certain remote seller and marketplace collection legislation enacted last week or related administrative guidance.

Arkansas

Senate Bill 576 requires remote sellers and marketplace facilitators to collect and remit sales tax if, in the previous or current calendar year, they had sales exceeding \$100,000 or 200 transactions of tangible personal property, taxable services, a digital code, or specified digital products delivered into Arkansas.

A sale made through a marketplace facilitator is considered the sale by the marketplace facilitator for purposes of determining whether the marketplace meets the economic nexus thresholds. In addition, the marketplace facilitator will be audited for all sales it facilitates.

A marketplace facilitator may not be liable for failing to collect and remit the correct amount of sales tax if any error in collecting and remitting the tax was due to the seller providing insufficient or incorrect information to the marketplace facilitator. This protection does not apply if the seller and the marketplace are related. The remote seller and marketplace provisions are effective July 1, 2019.

Idaho

House Bill 259 requires remote sellers and marketplace facilitators to collect and remit sales tax effective June 1, 2019.

Specifically, the legislation amends the definition of a "retailer engaged in business" in Idaho to include any retailer lacking a physical presence in Idaho that, in the previous or current calendar year, has in excess of \$100,000 in cumulative gross receipts from sales delivered into the state. The economic

nexus standard for marketplace facilitators lacking a physical presence in Idaho is likewise sales exceeding \$100,000.

House Bill 259 specifically states that retailers and marketplace facilitators do not need to collect any local sales tax or any other tax or assessment that is not imposed under the sales tax chapter of the state's law. The law also requires marketplace facilitators to obtain a separate seller's permit to be used to collect and remit tax on transactions facilitated for third-party sellers.

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Indiana

The Department of Revenue, in a post-*Wayfair* sales tax filing requirement ruling involving a seller of exempt items, ruled that a taxpayer making remote sales of pre-packaged brownies and cookies to customers in Indiana was required register with the state and file periodic "zero" returns. Since October 1, 2018, a remote seller with no physical presence in Indiana has been required to collect and remit sales tax if, in the preceding or current calendar year, it has gross revenue exceeding \$100,000 or 200 or more separate transactions from sales delivered in Indiana. The taxpayer in this ruling made sales via its website and through a third-party marketplace. Under the state's economic nexus standard, the sale of exempt items (here, food products) counts towards the economic nexus thresholds. Therefore, if the taxpayer met or exceeded the thresholds, it must register with the Department. Here, because the taxpayer's sales were exempt, the taxpayer would likely need to file monthly "zero" returns, or assuming the taxpayer's tax liability was less than \$1,000, annual "zero" returns.

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