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KPMG report: Tax collection requirements, remote sellers (Colorado, Maryland, Oklahoma, Tennessee, Texas)

State lawmakers continue to enact legislation and issue guidance in response to the U.S. Supreme Court's decision in "*South Dakota v. Wayfair, Inc.*"

Certain states are imposing the tax collection obligation on what they are terming "marketplace facilitators" or "marketplace providers."

Colorado

House Bill 1240 eliminates the transactions threshold for remote sellers, imposes a sales tax collection obligation on marketplace facilitators, and codifies the Department of Revenue's destination-based sourcing rules.

Currently, Colorado requires a remote seller to collect sales and use tax if, in the previous or current calendar year, it has $100,000 or more in gross sales or services delivered in Colorado or 200 Colorado transactions.

Effective October 1, 2019, the 200 transactions threshold is eliminated. In addition, marketplace facilitators with Colorado sales exceeding $100,000 are required to begin collecting.

Maryland

House Bill 1301 expands the state's existing economic nexus provisions to marketplace facilitators effective October 1, 2019.

Maryland requires collection and remittance of sales tax if an out-of-state vendor has gross revenue exceeding $100,000 or 200 or more separate transactions from sales of tangible personal property or taxable services delivered in Maryland. House Bill 1301 amends the definition of a "vendor" to include marketplace facilitators (as broadly defined). The legislation includes information on the duties and

obligations of marketplace facilitators, including when the facilitator and the marketplace seller can apply for a waiver of the collection requirement.

Oklahoma

Senate Bill 513 provides that effective November 1, 2019, a remote seller will no longer have the option to comply with the use tax reporting requirements that were enacted in 2018 and instead will have to collect and remit tax if it meets a $100,000 of sales threshold.

The collect-or-report obligation continues to apply to marketplace facilitators and referrers.

Tennessee

House Bill 667 (as enacted) allows the Department of Revenue to enforce its remote seller regulation. The Department's regulation requires remote sellers to collect and remit sales and use tax if the remote seller made over $500,000 of Tennessee sales in the preceding 12 months and engaged in regular or systematic solicitation of consumers in the state. This regulation was challenged in court, with the litigation eventually being dismissed; but the Department was prohibited from enforcing the regulation until authorized by the General Assembly. It is unclear at this time when the Department will begin enforcing the regulation.

Tennessee House Bill 326 (also enacted) eliminates an option in current law for remote sellers to collect a single local tax rate of 2.25% for sales made in Tennessee and requires remote sellers to report certain information to the Department to aid in the distribution of revenue to localities.

Texas

House Bill 1525 (signed into law) provides that a marketplace provider is considered a "seller" or "retailer" and will be required to collect and remit tax for sales made through its marketplace beginning October 1, 2019. The legislation defines a marketplace provider as "a person who owns or operates a marketplace and directly or indirectly processes sales or payments for marketplace sellers."

House Bill 2153 (also signed into law) provides remote sellers an option to collect a single local use tax rate in lieu of collecting the actual local use tax due on each transaction based on the taxing district into which the item purchased is delivered. The single rate option is effective October 1, 2019, and the election must be made in accordance with requirements to be issued by the Comptroller.

The single local use tax rate will be computed and published in the Texas Register annually by the Comptroller. It is intended to reflect the average local tax imposed on all sales in the state. The legislation also permits a purchaser to apply for a refund for any tax paid in excess of the amount the purchaser would have paid if the tax was computed using a combined rate of the applicable local taxes. For the period October 1, 2019, through December 31, 2019, the single local use tax rate is 1.75%.

Read a **June 2019 report** prepared by KPMG LLP

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