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KPMG report: States impose tax collection for marketplace facilitators (California, Connecticut, Illinois, Indiana, Pennsylvania, Wisconsin)

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

In addition to legislation, some state taxing departments have issued guidance with regard to remote sellers and "marketplace facilitators."

California

The California Department of Tax and Fee Administration (CDTFA) issued special notices in light of recently enacted Senate Bill 92.

- The first notice provides that the operative date for the new district use tax collection requirement for retailers exceeding the \$500,000 sales threshold is now April 25, 2019. Previously, the effective date for the collection requirement was April 1, 2019, as enacted under Assembly Bill 147 (which was not signed by the governor until April 25, 2019). This change eliminates the retroactivity of Assembly Bill 147 with regard to the district use tax collection requirement. For purposes for the state use tax collection requirement also enacted under Assembly Bill 147, the effective date of April 1, 2019 remains unchanged.
- The second notice provides that a "qualifying retailer" engaged in business in California solely because it used a marketplace facilitator to make sales, and the marketplace facilitator stored the seller's inventory in California will be relieved of penalties associated with the seller's failure to collect and remit sales and use tax for sales made from April 1, 2016, to March 31, 2019. The qualifying retailer must register, file completed returns for all applicable tax periods, and pay all taxes due or apply for an installment agreement by September 25, 2019.

Connecticut

House Bill 7373 delays the use tax reporting requirement for referrers.

Previously, referrers were required to provide quarterly notices to sellers to whom they referred customers no later than July 1, 2019, and annual reports to the Commissioner of Revenue Services of sellers to whom they referred customers, beginning no later than January 31, 2020. Under HB 7373, the effective dates are delayed to January 1, 2020, and January 31, 2021, respectively.

Illinois

The governor signed into law Senate Bill 690 that includes provisions requiring the Department of Revenue to create certain electronic databases for remote retailers and to make the services of certified service providers (CSPs) available to remote retailers by July 1, 2020.

The databases are to include: (1) the taxability of various product categories; (2) the local tax rates in each jurisdiction; and (3) the appropriate tax rate for each delivery address in the state.

Under the new law, remote retailers are to collect and remit tax “on an even basis” with in-state retailers. Beginning July 1, 2020, remote retailers with cumulative gross receipts from sales of tangible personal property to in-state purchasers of \$100,000 or more, or with 200 or more separate transactions for the sale of tangible personal property to in-state purchasers, will be liable for state and local retailers’ occupation taxes (rather than use taxes). For purposes of determining the correct local retailers’ occupation tax rate, sales by remote retailers are deemed to be made at the Illinois location to which the tangible personal property is delivered to the purchaser. The legislation retains origin sourcing, however, for all sales by retailers that maintain a physical presence in the state.

Currently, sales delivered into Illinois that meet certain criteria are subject only to a 6.25% statewide use tax (that is shared by the state and local jurisdictions). The local tax treatment of sales facilitated by marketplace facilitators under this regime is not clear at this point.

Indiana

The Department of Revenue issued guidance (Bulletin No. 89) providing details on the sales tax obligations of remote sellers and marketplace facilitators. The bulletin includes a summary of the history of Indiana’s economic nexus law and its application to remote sellers and marketplace facilitators.

Previously, a retail merchant without physical presence in the state was required to begin collecting and remitting sales tax if it exceeded the state’s economic nexus threshold, effective October 1, 2018. The bulletin provides that, effective July 1, 2019, marketplace facilitators are not only required to collect sales tax, but may also be required to collect the county innkeepers tax (CIT) and food and beverage (FAB) taxes.

Pennsylvania

House Bill 262 codifies the economic nexus collection and remittance requirements previously announced by the Department of Revenue.

The Department on January 8, 2019, issued guidance establishing a collection and remittance obligation on remote sellers and marketplace facilitators that have gross sales exceeding \$100,000 in Pennsylvania, applicable to transactions that occurred on or after July 1, 2019. House Bill 262 eliminates the collect or report provisions for remote sellers and marketplace facilitators that had over \$10,000, but not over \$100,000 in gross sales.

Wisconsin

The governor signed into law Assembly Bill 251 imposing a sales and use tax collection and remittance obligation on marketplace facilitators that exceed \$100,000 of annual gross sales into Wisconsin or have 200 or more separate transactions in Wisconsin. These provisions are effective January 1, 2020.

Read a [July 2019 report](#) prepared by KPMG LLP

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