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KPMG report: States impose tax collection for marketplace facilitators (Ohio, 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."

Ohio

The governor signed into law House Bill 166 (the state's budget bill) that includes, among other things, provisions addressing the sales and use tax obligations of remote sellers and marketplace facilitators. These provisions were effective July 1, 2019.

Under prior law in Ohio, a seller was presumed to have a collection and remittance obligation if in the previous or current calendar year, it has in excess of $500,000 in gross receipts and "uses in-state software to sell or lease tangible personal property or services to consumers" or "[p]rovides or enters into an agreement with another person to provide a content distribution network in [Ohio] to accelerate or enhance the delivery of the seller's web site to consumers."

Under House Bill 166, the software presence and content distribution-network language is eliminated. Moreover, the legislation reduces the economic nexus threshold to $100,000 in gross receipts and also creates an alternative threshold of 200 or more separate transactions.

Marketplace facilitators

In addition to the remote seller provisions, House Bill 166 also imposes a sales and use tax collection and remittance obligation on marketplace facilitators. In particular, a marketplace facilitator is presumed to have substantial nexus in Ohio if, in the preceding or current calendar year, it has gross receipts exceeding $100,000 from its own sales or sales it facilitates for others or 200 or more separate transaction from sales of tangible personal property or services in Ohio.

The new law specifically excludes sales of lodging by a hotel from the marketplace provisions. In addition, House Bill 166 permits marketplace sellers to seek a waiver from the marketplace provisions if certain conditions are met, including that the seller is a publicly traded company with at least $1 billion in U.S. sales. If the waiver is granted, the marketplace facilitator would no longer be treated as a seller for the sales it facilitates on behalf of that marketplace seller.

KPMG observation

With the provisions of 17-day late budget bill going into effect July 1, 2019, it is unclear how the Department of Taxation will implement the remote seller and marketplace facilitator provisions.

Wisconsin

Guidance has been issued relating to the recently enacted legislation on marketplace providers.

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

Direct comments, including requests for subscriptions, to Washington National Tax. For more information, contact KPMG's Federal Tax Legislative and Regulatory Services Group at + 1 202.533.4366, 1801 K Street NW, Washington, DC 20006-1301.