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KPMG report: Marketplace guidance, sales and use tax (Maryland, Wisconsin)

State taxing authorities continue to issue guidance to implement remote seller and marketplace nexus rules, following the U.S. Supreme Court's decision in "South Dakota v. Wayfair, Inc."

Maryland

The Comptroller of Maryland issued [Tax Alert 09-19](#) [PDF 135 KB] providing guidance on the tax collection obligations of marketplace facilitators. The guidance provides that the term "marketplace facilitator" does not include internet advertising service providers, payment processors, peer-to-peer car sharing programs, or delivery services companies that deliver tangible personal property. For purpose of the economic nexus thresholds, the guidance requires that marketplace facilitators account for both taxable and nontaxable sales and for all sales made directly by the marketplace and facilitated on behalf of a marketplace seller. The guidance contains information on registering and reporting sales, requests for waivers, and the procedures for dealing with returned or cancelled orders.

Wisconsin

The Wisconsin Department of Revenue issued proposed guidance in the form of "frequently asked questions" ([FAQs](#)) for marketplace providers and marketplace sellers. In the proposed FAQs, the Department takes the position that the marketplace sales and use tax collection obligations are effective on or after October 1, 2018, rather than January 1, 2020 (the date the marketplace law goes into effect). According to the Department, the legislative measures effective January 1, 2020 merely clarify that marketplace providers are required to collect tax—a position the Department had taken in guidance issued before passage of the legislation.

The proposed FAQs further provide that marketplace providers will be responsible for not only the state sales and use tax, but also for county and stadium sales and use taxes. Moreover, a marketplace provider may be required to collect premier resort area taxes, local exposition taxes, and the state rental vehicle fee.

The tax base upon which a marketplace provider must collect is the entire amount charged to the purchaser, including any amounts charged by the marketplace provider for facilitating the sale.

Information in the FAQs also addresses registration, document retention, filing returns, requests for waivers, and claiming a bad debt deduction.

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

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