



# TaxNewsFlash

United States



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## KPMG report: Marketplace guidance, sales and use tax (California, Maine, Massachusetts, Texas)

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."

### **California**

The California Department of Tax and Fee Administration (CDTFA) issued a [proposed regulation](#) and accompanying issue paper that addresses marketplace sales. The proposed regulation contains examples of transactions in which a company would be considered "facilitat[ing]" a sale for purposes of the marketplace law, including a few examples addressing the "carve-out" from the marketplace rules for entities that merely advertise goods for sale and refer purchasers to a seller. The proposed regulation also addresses the election available to a delivery network company to be considered a marketplace.

### **Maine**

The Maine Revenue Services issued "frequently asked questions" (FAQs) for marketplace facilitators that address registration, reporting and filing requirements. The FAQs provide that "Maine sales" for purposes of the economic nexus thresholds include both taxable and exempt sales. In addition, a marketplace facilitator must account for its own sales, and sales facilitated and delivered into Maine on behalf of others. Marketplace facilitators, per the FAQs, are required to provide marketplace sellers with a written statement identifying the sales for which the facilitator will collect and remit tax.

### **Massachusetts**

The Department of Revenue adopted an emergency regulation addressing the sales and use tax obligations of remote sellers and marketplace facilitators. The regulation discusses, among other things, the procedures by which a marketplace facilitator can seek a waiver from its collection obligation. The regulation also provides guidance on registration, return and payment requirements.

### **Texas**

The Texas Comptroller issued guidance for remote sellers and marketplace facilitators, which includes information on registration and reporting requirements. In determining whether a seller or marketplace facilitator has exceeded the \$500,000 economic nexus threshold, the guidance confirms that remote sellers must include taxable sales of tangible personal property and services, sales for resale, and sales

to exempt entities. Separately stated handling, transportation, installation, and similar fees collected are also included in determining whether the thresholds are met. The guidance explains that remote sellers must collect and remit local taxes in Texas. However, remote sellers (not marketplace facilitators) may elect to use a single local tax rate by notifying the Comptroller of the election.

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

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