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KPMG report: Remote sellers and marketplace facilitators update (Alaska, Illinois)

More U.S. state and local governments continue to react in response to the U.S. Supreme Court's decision in "South Dakota v. Wayfair, Inc." and in particular with respect to sales tax obligations for remote sales and transactions involving marketplace facilitators.

Alaska

The Alaska Remote Seller Sales Tax Commission on January 6, 2020, approved a uniform ordinance addressing the sales tax obligations of remote sellers and marketplace facilitators.

The commission was created to administer and enforce sales tax collections on remote sales made into local jurisdictions that are or that become members of the commission. To be a member, jurisdictions must enter into an intergovernmental agreement establishing the commission, and then within 120 days, adopt the uniform sales tax code adopted by the current commission members.

If the locality becomes a member of the commission, a remote seller or a marketplace facilitator would be required to collect the local sales tax if in the previous calendar year, it has at least \$100,000 statewide gross sales from the sale of property, products, or services delivered into Alaska or has made 200 or more separate transactions with Alaska residents. For these purposes, gross sales includes "all sales of goods, property, products, or services rendered within the state of Alaska."

KPMG observation

Although the threshold provisions in the ordinance are ambiguous, it is possible that a remote seller would need to account for not only direct sales into Alaska, but also those sales made through a marketplace facilitator. While the ordinance's goal is to create uniformity with regard to collection and remittance obligations, the applicable sales tax rate and tax base will depend on the sales tax ordinance of the local jurisdiction in which the sale is delivered or received.

In addition, the ordinance addresses filing requirements, estimated tax calculations, refund procedures, audits, and penalties and interest. Note that for purposes of determining tax liability, the commission

would be able to determine and assess tax for a period of six years after the date a return is filed. The ordinance states that a remote seller and marketplace facilitator, meeting or exceeding either threshold, must register with the commission within 30 days of the Code becoming effective. However, the Commission could grant, upon request, extensions not exceeding 90 days.

As of December 23, 2019, 22 local governments were members of the commission; there are roughly 115 localities with sales taxes in Alaska.

Illinois

The Department of Revenue issued guidance addressing the use tax obligations of marketplace facilitators.

Effective January 1, 2020, a marketplace facilitator exceeding the state's economic nexus thresholds is required to collect use tax on sales it facilitates on behalf of a marketplace seller. An [emergency regulation](#) [PDF 179 KB] provides a list of transactions that are excluded for purposes of the economic nexus thresholds. The regulation also clarifies that a marketplace facilitator is not responsible for collection of tax on a transaction it facilitates if the transaction is subject to the retailers' occupation tax (ROT) instead of the use tax. If a marketplace transaction is subject to ROT, the seller is responsible for collection and remittance of the state and local ROT. The marketplace can agree to collect all the taxes due on such ROT transactions and then transmit the collected amounts to the seller for remittance to the state.

Examples in the regulation indicate that if a remote sale (including a marketplace sale) is fulfilled from inventory in the possession of the retailer in Illinois, the sale is considered to be an ROT transaction and not a use tax transaction, meaning collection of the state and local ROT is the seller's responsibility unless the marketplace agrees to collect them for the seller.

Finally, the regulation lists additional requirements—including document retention and filing obligations—that must be satisfied by a marketplace facilitator and a marketplace seller with regard to the use tax and ROT.

The Department also created a resource [webpage](#) for marketplace facilitators, marketplace sellers, and remote sellers. The webpage includes certain relevant materials including a list of "frequently asked questions" ([FAQs](#)).

Read a [January 2020 report](#) prepared by KPMG LLP

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