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KPMG report: Remote sellers and marketplace facilitators update (D.C., Georgia, Iowa, Kansas, Maryland, Nebraska)

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.

District of Columbia, Georgia, Iowa, Kansas—in brief

- The D.C. City Council is considering a proposal to extend the District's False Claims Act to cover certain matters involving income and sales taxes.
- The Georgia General Assembly has sent to the governor House Bill 276—a carryover bill from last year that would impose sales and use tax collection obligations on marketplace facilitators effective April 1, 2020.
- The Iowa governor proposed in her "condition of the state" address to increase the state sales tax rate from 6% to 7% and use the proceeds primarily to offset an average 10% reduction in state income taxes.
- The Kansas governor recommended that the state tax code be amended to impose the sales tax on various digital products, applications, and services as well as online streaming services, and also proposed a measure to require collection of sales tax by marketplace facilitators.

Maryland

Senate Bill 2 has been introduced to create a gross receipts tax on revenues derived from digital advertising services in the state. Digital advertising services would be defined as "advertisement services on a digital interface," with any type of software, website, or application being considered as a digital interface. Digital advertising revenues would be sourced to Maryland if the advertising appeared on a device: (1) with an IP address indicating that the device is located in the state; or (2) if the user of the device is known or reasonably suspected to be using the device in Maryland.

The tax would apply to companies that have: (1) global annual gross revenues of $100 million or more; and (2) digital advertising revenues sourced to Maryland of $1 million or more.

Using a four-tiered rate regime based on global revenue, the tax on the Maryland-derived digital advertising revenue would range from 2.5% up to 10%, with a requirement that every company expecting to be subject to the tax make quarterly estimated tax payments.

Nebraska

Legislative Bill 989 was introduced to impose the sales tax on gross receipts received from digital advertisements.

The bill defines a digital advertisement as "an advertising message delivered over the Internet that markets or promotes a particular good, service, or political candidate or message," but provides no mechanism for the sourcing of digital advertisements to Nebraska.

The Nebraska legislature is also considering Legislative Bill 946 which would expand the scope of what constitutes a taxable service. Currently, only services enumerated in the sales tax statute are taxable (e.g., building maintenance and installation and repair of tangible personal property). Legislative Bill 946 would remove most specific enumerations and replace them with a provision that presumes all services are taxable unless a specific exemption applies.

Services would be defined broadly to include activities engaged in for other persons for consideration (other than services provided to an employer as an employee) that involve predominantly the performance of a service, as distinguished from selling or leasing tangible personal property. Service transactions would be sourced to the place of "first use."

The bill would also remove the existing exemption for services that become a component part of a service that is sold at retail. The bill, if enacted, would be effective October 1, 2021. At that time, the state sales tax rate would be reduced from 5.5% to 4.0%. The rate would be adjusted over the next four quarters so that revenues from the sales tax would be equivalent to what would have been generated had the bill not been enacted.

For more information, contact a KPMG State and Local Tax professional:

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