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KPMG report: Remote sellers and marketplace facilitators update (AR, GA, LA, NC)

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.

Arkansas

The Department of Finance and Administration ruled that a **remote seller** of new tires, wheels, and related accessories was required to collect and remit the \$3 Arkansas rim removal fee if it exceeded the state's economic nexus threshold. The taxpayer believed that it would not be required to collect the fee because it did not conduct the removal of tires from the rim as part of its transactions. In the Department's view, the fee must be charged on sales to end-users because the retailer was selling replacement tires that "necessitate[d] the removal of a different tire from the same rim."

The Department noted, however, that in cases when the customer was purchasing the tire for resale, the customer purchasing for resale would be responsible for collecting and remitting the fee when sold to an end-user. The ruling also makes clear that a marketplace facilitator selling new tires to an end-user in Arkansas would also be responsible for the rim removal fee.

The Department also ruled that the taxpayer was not responsible for collecting the \$1 import fee imposed on used tires brought into the state.

Georgia

The legislature passed [House Bill 276](#) [PDF 18 KB] that would create a sales and use tax collection obligation for marketplace facilitators. If signed by the governor, effective April 1, 2020, a marketplace facilitator would be required to collect and remit sales and use tax on sales it facilitates if in the previous or current calendar year it has retail sales of at least \$100,000. A marketplace facilitator would include a person that promotes, markets, advertises, takes orders or reservations for, or otherwise assists a seller in making a retail sale. To be considered a marketplace facilitator, the person must also collect, charge, process, or similarly facilitate payment for such retail sales.

For purposes of the marketplace provisions, Georgia would follow destination-based sourcing rules. A marketplace facilitator would be relieved of liability if it can demonstrate that failure to collect and remit tax was due to insufficient or incorrect information provided by the marketplace seller. If relief is granted, liability would shift to the marketplace seller.

Finally, the bill would exclude certain franchisors and dealers from the marketplace facilitator provisions if: (1) the franchisor/dealer has annual gross sales of at least \$500 million; (2) the franchisee/seller is registered in Georgia; and (3) the franchisee/seller and franchisor/dealer has a contract in which the franchisee/seller is responsible for collecting and remitting the applicable tax.

Louisiana

The Sales and Use Tax Commission for Remote Sellers adopted [regulations](#) [PDF 1.9 MB] requiring mandatory e-filing and payment for remote sellers. For tax periods on or after July 1, 2020, remote sellers required to collect and remit the sales and use tax must file tax returns and make sales and use tax payments electronically.

In addition, the Sales and Use Tax Commission for Remote Sellers adopted regulations that describe the types of policy statements the commission may issue, and that also contain the proper procedures to which the Commission must adhere for issuing the policy statements and guidance. Before it can begin requiring collection, the Commission must publish a notice of enforcement not later than 30 days prior to the effective date.

North Carolina

The Department of Revenue issued technical bulletins addressing certain excise taxes imposed by the state. These taxes include the "white goods" disposal tax, solid-waste disposal tax, alternate highway use tax, scrap-tire disposal tax, and dry-cleaning solvent tax. According to the bulletins, several of these taxes are interpreted by the Revenue to be additional sales or use taxes. Thus, while not explicitly stated, a marketplace facilitator may be required to collect and remit these taxes if it is considered a retailer for state sales and use tax purposes.

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

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