



TaxNewsFlash

United States



No. 2020-446
July 13, 2020

KPMG report: Remote seller, marketplace facilitator update (Mississippi, North Carolina, Rhode Island, Tennessee)

More U.S. state and local governments continue to address the sales tax obligations for remote sales and transactions involving marketplace facilitators.

Specifically, tax legislation was recently enacted in Mississippi, North Carolina, Rhode Island, and Tennessee.

Mississippi

House Bill 379 (enacted June 30, 2020) imposes tax collection responsibilities on marketplace facilitators. The effective date is July 1, 2020.

Under the legislation, a “marketplace facilitator” is defined as any person who facilitates a retail sale by a seller by: (1) listing or advertising for sale by the retailer in any forum, tangible personal property, services or digital goods that are subject to tax; and (2) directly or indirectly through agreements or arrangements with third parties collects payment from the customer and transmits that payment to the retailer.

A marketplace facilitator, similar to a remote seller, is deemed to be doing business in state if it has in-state sales that exceed \$250,000 in any consecutive 12-month period. A sale made through a marketplace facilitator is a sale of the marketplace facilitator and not the sale of a marketplace seller for purposes of determining whether a person exceeds the \$250,000 in sales threshold.

The legislation also permits a marketplace facilitator and marketplace seller to enter into a contractual arrangement whereby the marketplace seller remains responsible for collecting and remitting the applicable taxes and fees. However, the ability to contract applies only if the marketplace seller (including its related entities and franchisees) has annual gross sales in the United States of more than \$1 billion; the marketplace seller provides evidence to the facilitator that it is registered in Mississippi; and the marketplace facilitator informs the Department of Revenue that the marketplace seller will be

collecting and remitting the applicable taxes and will be liable for any failure to collect or remit. The legislation excludes from the definition of “retail sale” any sales by a third-party food delivery service that delivers food from an unrelated restaurant to a customer, regardless of whether the customer orders and pays for the food through the delivery service or whether the delivery service adds fees or upcharges to the price of the food.

North Carolina

House Bill 1079 provides statutory clarification that tax is not imposed on “sales of a digital audio work or digital audiovisual work that consists of nontaxable service content when the electronic transfer of the digital audio work or digital audiovisual work occurs contemporaneously with the provision of the nontaxable service in real time.” Additionally, with respect to taxpayers making sales of digital audio/audiovisual works for continuing education approved by a licensing board or for professional development for school board members, administrators or staff, the Department of Revenue will not take assessment action for any sales and use tax due for a filing period beginning on or after October 1, 2019, and ending prior to August 1, 2020.

Rhode Island

Two bills (House Bill 7532A and Senate Bill 2650A) were enacted to expand the imposition of sales tax on specified digital products. Previously, sales tax was imposed on the sale, storage, use or other consumption of specified digital products. The legislation amends the statute to specify that tax is also due on the right to use specified digital products on a permanent or less than permanent basis and regardless of whether the purchaser is required to make continued payments for the right. This also includes any license, lease or rental of the specified digital products. The measures are intended so that Rhode Island can remain in compliance with the Streamlined Sales and Use Tax Agreement and can apply its sales tax to streaming services and other digital products in which the right of use is less than permanent.

Tennessee

Senate Bill 2932 lowers the economic nexus threshold for dealers and marketplace facilitators. The threshold is now \$100,000 in total sales over a 12-month period (previously a \$500,000 in sales threshold). This provision is effective October 1, 2020—which is also the date when Tennessee’s marketplace facilitator provisions become effective.

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

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