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Florida Enacts New Sales Tax Laws Impacting Nexus and Marketplace Facilitators

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Gail Cole • Apr. 20, 2021

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Governor Ron DeSantis signed Senate Bill 50 on April 19, 2021. Although he's done his best to sidestep the debate over online sales tax since taking office in January 2019, his colleagues in the state House and Senate haven't had that luxury: Florida businesses have urged lawmakers to level the playing field by requiring out-of-state sellers to collect sales tax, as they must. Florida SB 50 does just that.

Safe harbor for small remote sellers

The measure requires retailers with no physical presence in Florida (i.e., remote sellers) to register with the Florida Department of Revenue then collect and remit applicable Florida sales tax — provided they have a "substantial number of remote sales" in the state. This is defined as "any number of taxable remote sales in the previous calendar year in which the sum of the sales prices ... exceeded $100,000."

When determining whether the $100,000 threshold has been met, a remote seller making both direct and marketplace sales should exclude sales made through a marketplace.

Most states with an economic nexus law provide some sort of safe harbor for small sellers, but every state's economic nexus threshold is unique. Many states use a sales threshold (e.g., $100,000 or $500,000) *or* a transactions threshold (e.g., 200 or 100 transactions). Some states have eliminated their transactions threshold, and a few never had one.

Like Florida, the following states use a $100,000 sales threshold and no transactions threshold: Arizona, Colorado, Idaho, Iowa, Massachusetts, New Mexico, North Dakota, Oklahoma, Pennsylvania, South Carolina, Tennessee, Washington, and Wisconsin. Despite that notable similarity, there are critical differences from state to state.

For example, the Massachusetts threshold includes taxable *and* exempt sales of tangible personal property *and* services. On the other hand, North Dakota excludes exempt sales of both goods and services. See this state-by-state guide to economic nexus laws for state-specific details.

Kansas is the only state without an exception for small out-of-state sellers, and it came close to adopting one last week.

Collection requirement for marketplace providers

SB 50 also requires certain marketplace providers (aka, marketplace facilitators) to collect and remit sales tax on behalf of third-party sellers on and after July 1, 2021. This applies to providers that either have a physical presence in the state or meet the $100,000 economic nexus threshold, or both.

Starting April 1, 2022, marketplace providers will also be responsible for collecting and remitting Florida's prepaid wireless E911 fee, lead-acid battery fee, and new tire fee, when applicable. Additional details will be provided by the Florida Department of Revenue as that date approaches.

When selling through an unregistered marketplace — one that has neither economic nexus nor a physical presence in the Sunshine State — a marketplace seller with a physical presence in Florida is responsible for collecting and remitting the tax due.

The rounding rule change

Importantly, SB 50 affects the state's rounding rule.

Florida currently requires businesses to calculate sales tax to the sixth decimal then round up. Effective July 1, 2021, dealers will need to use a rounding algorithm that meets the following criteria:

- The computation of the tax must be carried to the third decimal place; and
- The tax must be rounded to the whole cent using a method that rounds up to the next cent whenever the third decimal place is greater than four.

Businesses may apply the rounding algorithm to the aggregate tax amount computed on all taxable items on an invoice, or to the taxable amount on each individual item on the invoice.

The new rounding rule will make it easier for Florida to join the Streamlined Sales and Use Tax Agreement (SSUTA, or SST), should it decide to do so. This would simplify and possibly reduce the cost of sales and use tax compliance for out-of-state businesses required to collect and remit Florida sales tax under the state's new economic nexus and marketplace provider law.

SST simplifies sales tax compliance for remote retailers

SST was created at the turn of the last century after state efforts to tax remote sales were blocked — more than once — by the Supreme Court of the United States. The court was concerned states' "virtual welter of complicated obligations" would be overly burdensome for out-of-state businesses, and to be fair, it wasn't wrong: Collecting and remitting sales tax in multiple states can be burdensome.

SST helps states simplify and modernize sales and use tax administration, which can substantially reduce the burden of tax compliance for remote sellers. Yet to earn full membership, a state must adopt uniform state and local tax bases, uniform tax base definitions, uniform sourcing rules, and other streamlining measures. See the Streamlined Sales Tax Governing Board for more details.

The existence of SST was one of the reasons the Supreme Court overruled the physical presence rule in South Dakota v. Wayfair, Inc. (June 2018), thereby authorizing states to tax remote sales. In its opinion, the court stated South Dakota's tax system "includes several features that appear designed to prevent discrimination against or under burdens upon interstate commerce." One of these features: "South Dakota is one of more than 20 states that have adopted the Streamlined Sales and Use Tax Agreement."

There are 24 SST member states today: Arkansas, Georgia, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming. One reason Florida has balked at joining in the past is because of its soon-to-be-eliminated rounding rule. That hurdle has now been eliminated.

Like Florida, Ohio once calculated sales tax to the sixth decimal before rounding up, but it changed its rounding rule so it could join SST. Ohio became an associate member of SST in 2005 and a full member on January 1, 2014. After Florida's rounding rule changes on July 1, 2021, Maryland will be the only state in the nation to calculate to the sixth decimal before rounding up.

Motivation to register sooner rather than later

Florida's new economic nexus/marketplace provider law includes a provision to protect non-collecting marketplace sellers that may have had a physical presence in Florida (aka, inventory) prior to July 1, 2021, when the new collection requirement takes effect.

Since the Supreme Court of the United States essentially authorized states to tax remote sales, some states have aggressively pursued marketplace sellers for past sales tax on the grounds that inventory in the state created physical presence nexus and an obligation to collect and remit sales tax. California stands out (not to name names).

Florida's law appears to nip that possibility in the bud. If remote seller with economic nexus registers with the Florida Department of Revenue before October 1, 2021, the seller is "relieved of liability for tax, penalty, and interest due on remote sales that occurred before July 1, 2021."

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Gail Cole is a Senior Writer at Avalara. She's on a mission to uncover unusual tax facts and make complex laws and legislation more digestible for accounting and business professionals.

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