facilitators with a high volume of sales. Unless a marketplace facilitator can demonstrate that a failure to collect and remit applicable taxes was due to receiving ...

Gail Cole • Feb. 07, 2022

Marketplace facilitators: an interesting business model with unique tax compliance challenges. Many are run by tech entrepreneurs who have little to no experience with sales tax, yet getting sales tax right is critical to the marketplace business model.

Most marketplace transactions are subject to sales tax in most states, and

(Washington law offers an example.)

The following five tips can help marketplace facilitators get sales tax compliance right.

1. Keep marketplace facilitator regulations and economic nexus laws top of mind

Sales tax registration requirements for marketplace facilitators are governed primarily by marketplace facilitator and economic nexus laws. Though these vary by state, like other sales tax laws, they can be broadly defined as follows.

Marketplace facilitator laws make the marketplace facilitator the retailer responsible for tax on all transactions made through the platform — both direct sales and sales by third-party sellers. These rules apply to marketplace facilitators that have a physical presence in the state, such as a fulfillment center, and to marketplace facilitators that have economic nexus with the state.

Economic nexus laws base a sales tax collection obligation on economic activity in the state rather than physical presence. However, not every remote business is subject to every state's economic nexus law because all economic nexus laws provide an exception for businesses selling under the state's economic nexus threshold.

Thresholds vary by state. For example:

California: $500,000 in total combined sales of tangible personal property delivered into the state by the retailer and all persons related to the retailer in the current or previous year

Florida: $100,000 in taxable sales of tangible personal property delivered physically into the state in the current or previous calendar year

New York: $500,000 in cumulative total gross receipts from taxable and nontaxable

It's important for marketplace facilitators and sellers to understand which sales count toward each state's economic nexus threshold; some states count specified digital products or exempt transactions, some do not. States generally require marketplace *facilitators* to count all sales made through their platform, but some allow marketplace *sellers* to exclude sales made through a registered marketplace.

Thresholds and other aspects of both economic nexus and marketplace facilitator laws are subject to change. Maine is one of several states that's eliminated its transaction threshold (while keeping the sales threshold). And the first iteration of Nevada's marketplace facilitator law didn't specify how it applies to delivery network companies; Nevada is now in the process of refining that and other aspects of the law.

2. Register for sales tax where required, when required

Marketplace facilitators that have physical presence or economic nexus with a state must register for a sales tax permit (also known as a seller's permit, etc.). Once registered, they may need to certify to marketplace sellers that they'll collect and remit sales tax on their behalf; this is required in Texas.

Some states, like Idaho, require marketplace facilitators to obtain separate permits for third-party sales and direct sales. In other states, only one permit is needed. Connecticut allows marketplace facilitators to report their sales together with third-party sales, or to obtain a separate tax registration sub-number for marketplace sales. See our state-specific registration requirements for marketplace facilitators and marketplace sellers for more details.

Understanding how soon you need to register after establishing economic nexus with a state is critical. In some cases, the state mandates registration as soon as the economic nexus threshold has been crossed, as in, by the next transaction. Other states give businesses a bit more time to register, such as 30 or 60 days. Most want

- Different products can be subject to different tax rates
- 37 states have local sales taxes on top of state sales tax (and Alaska has local sales tax but not state sales tax)
- Rates are subject to change

Examples of product taxability complexity: Certain sweetened beverages are subject to a higher rate of tax than non-sweetened beverages in the city of Seattle — and throughout the entire state of Vermont — and what does and doesn't qualify as a sweetened beverage may surprise you. Clothing priced less than $110 is exempt from state sales tax in New York but may be subject to local sales tax. In Texas, taxable information services are taxed at 80% of the billing amount, rather than 100%. And so on.

Another complicating factor is that more than 15 states typically hold one or more sales tax holidays each year. Numerous normally taxable items are temporarily exempt during these tax-free periods, which usually last from one day to one week. During Florida's 2021 Freedom Week, the temporary exemption applied only to a portion of the sales price of a variety of items, not the full cost. Getting tax compliance right during sales tax holidays can be extremely challenging without the use of sales tax software.

Marketplace facilitators need to track and comply with all such sales tax regulations and requirements. In addition, they must validate any exempt sales made through the platform by collecting and maintaining a valid exemption certificate from the purchaser, then keep all documents straight.

4. Remit sales tax to the proper tax authority

Once sales tax has been collected as required, it must be remitted on time with a sales tax return to the proper tax authority. Filing requirements vary by state, and in some states, by locality.

Some states require marketplace facilitators to identify their own sales separately

for remote sellers or marketplace facilitators with a high volume of sales nationwide.

For example, marketplace facilitators are now responsible for collecting West Virginia's hotel occupancy tax, which must be remitted to the county or municipality because the state doesn't administer hotel occupancy tax. While in Louisiana, remote sellers and marketplace facilitators may need to register and remit to numerous local tax authorities in addition to the Louisiana Department of Revenue.

Home rule states are working to streamline compliance for remote sellers. To that end, Alabama created a Simplified Sellers Use Tax (SSUT), Colorado developed a new Sales and Use Tax System (SUTS) and local governments in Alaska built a remote sales tax information portal. But change takes time. For Louisiana to change its system, it will likely need to amend its state constitution.

5. Comply with a world of tax requirements

In addition to navigating tax requirements throughout the United States, global marketplace facilitators must understand and comply with growing tax requirements in other countries.

The United Kingdom made marketplace facilitators the deemed supplier liable for collecting, remitting, and reporting VAT on certain sales effective January 1, 2021. The European Union followed suit starting July 1, 2021. In the EU, the deemed supplier rule affects two types of cross-border transactions:

- Goods valued below €150 imported by EU or non-EU sellers and sold to EU customers
- Goods of any value sold by a non-EU seller to an EU customer

Marketplace facilitators based outside of the EU can streamline VAT compliance for low-value goods by using the EU's new electronic portal, Import One-Stop Shop

(IOSS). Using IOSS can expedite customs clearance and streamline logistics, among

The above just scratches the surface of what marketplaces are dealing with today. They're also facing ongoing supply chain issues, a rise in railroad theft, and growing demands that they do more to prevent people from selling stolen goods through the marketplaces.

To learn more about these and other issues affecting sales tax compliance for marketplace facilitators, check out our annual report, Avalara Tax Changes 2022.

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