



Marketplace Facilitators

Date Issued: April 4, 2019
Wyoming Department of Revenue

On February 15, 2019, Wyoming Governor Mark Gordon signed into law House Bill 0069/House Enrolled Act 23 (the Act). The Act deals with sales tax obligations of marketplace facilitators who do not have a physical presence in Wyoming. The Act becomes effective July 1, 2019 and may apply to your business from that date forward.

Definitions

A “Marketplace facilitator” means any person that facilitates a sale for a marketplace seller through a marketplace by offering for sale by a marketplace seller and directly or indirectly through any agreement or arrangement with one or more third parties, collecting payment from a purchaser and transmitting the payment to the marketplace seller, regardless of whether the person receives compensation or other consideration in exchange for facilitating the sale or providing any other service

A “Marketplace seller” is a vendor who sells or offers for sale tangible personal property, admissions or services that are subject to tax for delivery into this state through a marketplace that is owned, operated or controlled by a marketplace facilitator. The term “marketplace” means any method through which a marketplace seller may sell or offer for sale tangible personal property, admissions or services subject to sales tax for delivery into this state regardless of

whether the marketplace seller has a physical presence in this state.

Requirements

The marketplace facilitator language is an extension of the Remote Seller’s legislation that was enacted in 2017 W.S. 39-15-501. Enforcement of this legislation was permitted in *State of Wyoming v. Newegg Inc.* which followed the United States Supreme Court’s decision in *South Dakota v. Wayfair Inc.* Remote sellers are required to license as Wyoming vendors provided certain economic thresholds are met. Specifically the requirement exists if the business has \$100,000 in gross sales in Wyoming or 200 individual transactions for delivery in Wyoming during the current or immediately preceding calendar year. Effective July 1, 2019 “marketplace facilitators” under the Act will have the same requirements.

Applying for a Wyoming Sales & Use Tax License

We expect many marketplace facilitators to have obligations in multiple states going forward, therefore we are encouraging

marketplace facilitators to license through the Streamlined Sales Tax Registration System, <https://www.sstregister.org/>, where with one registration the company will not only be able to license in Wyoming but may choose to license in the group's other 24 member states.

Should the business wish to register in Wyoming only, please use the following link; <https://excise-wyifs.wy.gov>

Wyoming Sales/Use Tax Rates

Please use the following links to access Wyoming sales/use tax rates: [Tax Rates](#)

Rate and Boundary Files and information may be found on the Streamlined Sales Tax web site: [Rate and Boundary Files](#)

What is Taxable in Wyoming

We provide a number of educational bulletins and publications on our website: [bulletins and publications](#)

Contact Information

If you have additional questions concerning the taxability of your products or services Please contact the Department at DOR_taxability@wyo.gov

Phone: (307)777-5220
Fax: (307)777-3632
E-mail: dor@wyo.gov

Please be advised that this bulletin addresses issues in general terms and cannot be appropriate or applicable in all situations. If your situation is markedly different or you have concerns about this issue, please do not hesitate to contact this department. You can do so by e-mail directed to:

DOR_taxability@wyo.gov

Supporting Authority:

Effective July 1, 2019, W.S. 39-15-502 states:

(a) A marketplace facilitator shall be considered the vendor for each sale that the facilitator facilitates on its marketplace for a marketplace seller. Each marketplace facilitator shall:

(i) Be responsible for all obligations imposed under chapters 15 and 16 of this title;

(ii) Keep records and information as may be required by the department to ensure proper collection and remittance of sales tax.

(b) Subject to the limitations in W.S. 39-15-501(a), a marketplace facilitator shall collect and remit sales tax on all sales:

(i) The marketplace facilitator makes on its own behalf; and

(ii) The marketplace facilitator facilitates on behalf of all marketplace sellers to customers in Wyoming. The marketplace

facilitator shall collect and remit sales tax on sales facilitated by the marketplace facilitator and sold into Wyoming regardless of whether the marketplace seller has a sales tax permit or otherwise would have been required to collect sales tax if the sale had not been facilitated by the marketplace facilitator.

(c) If a marketplace facilitator fails to collect or remit sales tax under subsection (b) of this section due to incorrect or insufficient information provided by the marketplace seller, the marketplace facilitator shall be relieved of liability for that failure to collect or remit the tax provided that the relief under this subsection shall not exceed five percent (5%) of the total sales tax due from sales made or facilitated in this state by the marketplace facilitator. If a marketplace facilitator is relieved of liability under this subsection, the marketplace seller or the purchaser shall be liable for any amount of uncollected, unpaid or unremitted tax due.

(d) No relief under subsection (c) of this section shall be authorized for sales made by a marketplace seller who is affiliated with the marketplace facilitator. Entities are affiliated under this subsection if:

(i) One (1) entity owns more than five percent (5%) of the other entity; or

(ii) Both entities are subject to the control of a common entity that

owns more than five percent (5%) of each of the entities.

(e) The department shall solely audit the marketplace facilitator for sales made by marketplace sellers but facilitated by the marketplace facilitator. The department shall not audit marketplace sellers except to the extent the marketplace facilitator seeks relief under subsection (c) of this section.

(f) A class action shall not be maintained against a marketplace facilitator by or on behalf of purchasers arising from or in any way related to an overpayment of sales or use tax collected by the marketplace facilitator under this section, regardless of whether the action is characterized as a tax refund claim.

(g) As used in this section:

(i) "Marketplace" means any method through which a marketplace seller may sell or offer for sale tangible personal property, admissions or services which are subject to taxation under chapter 15 or 16 of this title for delivery into this state regardless of whether the marketplace seller has a physical presence in this state;

(ii) "Marketplace facilitator" means any person that facilitates a sale for a marketplace seller through a marketplace by:

(A) Offering for sale by a marketplace seller, by any means, tangible personal

property, admissions or services which are subject to taxation under chapter 15 or 16 of this title for delivery into this state; and

(B) Directly, or indirectly through any agreement or arrangement with one (1) or more third parties, collecting payment from a purchaser and transmitting the payment to the marketplace seller, regardless of whether the person receives compensation or other consideration in exchange for facilitating the sale or providing any other service.

(iii) "Marketplace seller" means a vendor who sells or offers for sale tangible personal property, admissions or services which are subject to taxation under chapter 15 or 16 of this title for delivery into this state through a marketplace that is owned, operated or controlled by a marketplace facilitator.

W.S. 39-15-101(a) As used in this article:

(xv) "Vendor" means any person engaged in the business of selling at retail or wholesale tangible personal property, admissions or services which are subject to taxation under this article. "Vendor" includes a vehicle dealer as defined by W.S. 31-16-101(a)(xviii), and a remote seller to the extent provided by W.S. 39-15-501 and a marketplace facilitator to the extent provided by W.S. 39-15-502;

No marketplace facilitator shall be required to collect or remit sales tax as provided in W.S. 39-15-502 on any sale made prior to the effective date of this act. Nothing in this section shall be deemed to apply to any taxes that are required to be collected or remitted under W.S. 39-15-501 prior to the effective date of this act.