



## **SALES AND USE TAX BULLETIN 2018-01**

**Issued: January 26, 2018**

### **Marketplace Sales**

Act 43 of 2017 (“Act”) amended the Tax Reform Code of 1971 (“TRC”) to level the retail playing field by establishing marketplace sales tax collection, notice, and reporting requirements. The TRC will be enforced by the Department consistent with the analysis set forth below, and in accordance with applicable state and federal law.

#### Legal Background

Vendors are required to collect sales tax from purchasers and remit the collected tax to the Commonwealth. 72 P.S. §7202(a). If a taxable sale at retail is made without collection of sales tax, and the purchaser uses the purchased item within the Commonwealth, the purchaser is required to pay use tax directly to the Commonwealth. 72 P.S. §7202(b). Thus, when anyone takes delivery in Pennsylvania of items purchased from a person who maintains no place of business in Pennsylvania, and the items would be taxable if purchased at a store in Pennsylvania, but sales tax is not collected, the purchaser is legally required to accrue and remit use tax directly to the Department. However, it is more efficient and less burdensome for the sales tax to be collected at the time of purchase, and then remitted directly to the Department.

#### Act 43

Act 43 of 2017 adds Part V-A to Article II, giving certain marketplace facilitators, remote sellers, and referrers the option to either collect and remit the sales tax that is due on taxable sales within the Commonwealth, or elect to notify their customers that use tax may be due, and report to the Department the customers names, addresses, and aggregate dollar amounts of each customer’s purchases. 72 P.S. § 7213 et seq.

“Marketplace facilitators” are defined as persons, including vendors, who list or advertise tangible personal property for sale in any forum, directly or indirectly, collect the payment from the purchaser, and transmit the payment to the marketplace seller. 72 P.S. § 7213(c).

A “marketplace seller” is one who uses a marketplace facilitator to facilitate a sale. 72 P.S. § 7213(d).

A “referrer” receives consideration to advertise a seller’s products, and transfers a buyer to the seller, facilitator, or other party to complete a sale, without collecting a receipt from the purchaser. 72 P.S. § 7213(g).

A “remote seller” is anyone other than a marketplace facilitator, marketplace seller, or referrer, who does not maintain a place of business in Pennsylvania, but who sells tangible personal property that would be subject to sales tax here. 72 P.S. § 7213(h).

On or before March 1, 2018, a remote seller, a marketplace facilitator, or a referrer who is not maintaining a place of business within the Commonwealth, but who had aggregate taxable sales in Pennsylvania worth at least \$10,000 in the prior twelve months, must either file an election with the Department to collect and remit sales tax going forward, or comply with the notice and reporting requirements. 72 P.S. § 7213.1(a).

Only those marketplace facilitators who do not maintain a place of business within the Commonwealth are allowed to elect to collect, or give notice and report. 72 P.S. § 7213.1(c). If the marketplace facilitator maintains a place of business within the Commonwealth, the facilitator already is mandated by the TRC to collect sales tax on sales made on its own behalf, and on behalf of any marketplace seller for whom a sale within Pennsylvania is facilitated. 72 P.S. §§ 7201(b), (p) and 7202. If the marketplace facilitator does not maintain a place of business within the Commonwealth but facilitates for a marketplace seller who does, the burden has been and remains on the marketplace seller to collect sales tax on sales made within the Commonwealth. *Id.* Although not covered by this Act, a Pennsylvania marketplace seller also may contract with an out of state facilitator to collect sales tax on his behalf.

For referrers, the option to elect to collect or report applies only to sales at retail from referrals to marketplace sellers who do not maintain places of business in Pennsylvania, sales directly resulting from referrals to remote sellers, and sales of the referrer’s own products if the referrer does not maintain a place of business here. 72 P.S. § 7213.1(d). A referrer can make differing elections for sales resulting from referrals, and sales of its own products. However, a referrer continues to be required to collect sales tax on sales of its own products if the referrer maintains a place of business in the Commonwealth. 72 P.S. §§ 7201(b), (p) and 7202.

Finally, for remote sellers meeting the threshold level of sales in Pennsylvania, there are no circumstances where an election is not required. If a remote seller makes more than \$10,000 of taxable sales within the Commonwealth, he must collect sales tax from his Pennsylvania customers, or notify the customers that they may owe use tax and report all of the Pennsylvania sales to the Department.

Failure to make the required election is deemed an election to comply with the notice and reporting requirements. 72 P.S. § 7213.1(f). An election to provide notice and report can be switched to an election to collect by filing a new election at any time during the fiscal year the notice and report election is valid. 72 P.S. § 7213.1(e).

Additional procedural and technical guidance, as well as forms, will be published on the Department’s website [www.revenue.pa.gov](http://www.revenue.pa.gov).