



February 28, 2018
Pennsylvania Sales and Use Tax
No. SUT-18-001
Marketplace Sales

ISSUE:

Does either Taxpayer qualify as a "referrer" as defined in the Tax Reform Code of 1971 ("TRC") that is required to comply with the Marketplace Sales Act (72 P.S. §§7213-7213.6)?

CONCLUSION:

Neither Taxpayer qualifies as a "referrer" as defined in the Tax Reform Code of 1971 ("TRC") that is required to comply with the Marketplace Sales Act.

FACTS:

Taxpayers are a computer software and services company and an online search and display advertising business. Advertisements placed with Taxpayers include hyperlinks that transfer the user to the advertisers' websites. Taxpayers do not sell the advertised products or services. All sales are made through the advertisers' websites. Taxpayers, pursuant to agreements or arrangements with sellers, advertise sellers' products on their electronic medium, receive consideration from the sellers, transfer potential purchases to the sellers' websites, but do not collect receipts from purchases.

Advertisements may contain product descriptions and pricing, but Taxpayers do not leverage user data to display shipping or tax charges applying to the user. Advertisers may include generic statements regarding shipping and taxes such as "plus applicable taxes" or "free shipping on orders over \$50." Taxpayers advertising policies prohibit language that promotes no collection of tax. However, in order to determine what taxes, if any, will be collected, or whether a purchase qualifies for free shipping, a customer will have to transfer to the advertiser's website to learn such details.

DISCUSSION:

The TRC defines "referrer" as:

(g) "Referrer." A person, other than a person engaging in the business of printing or publishing a newspaper, that, pursuant to an agreement or arrangement with a marketplace seller or remote seller, does the following:

- (1) Agrees to list or advertise for sale at retail one or more products of the marketplace seller or remote seller in a physical or electronic medium.
- (2) Receives consideration from the marketplace seller or remote seller from the sale offered in the listing or advertisement.
- (3) Transfers by telecommunications, Internet link or other means, a purchaser to a marketplace seller, remote seller or affiliated person to complete a sale.
- (4) Does not collect a receipt from the purchaser for the sale. The term does not include a person that:
 - (1) provides Internet advertising services; and
 - (2) does not provide the marketplace seller's or remote seller's shipping terms or advertise whether a marketplace seller or remote seller collects a sales or use tax.The term includes a person that may also be a vendor.

72 P.S. § 7213(g).

Here, Taxpayers meet the four criteria of a "referrer" as listed in the first part of the definition. They are excluded from the definition, however, by the second part. Taxpayers do not provide sellers' shipping terms or advertise whether those sellers collect sales tax.

Therefore, Taxpayers do not have to comply with the provisions of the Marketplace Sales Act that would require an election to collect and remit sales tax on the advertised sales, or provide notice to sellers' customers and a report to the Department.