

**Response of Steve DelBianco, NetChoice**

To: Marketplace Facilitator Work Group

From: Richard Cram, Multistate Tax Commission Staff

Date: October 23, 2018

Follow-up Survey Request re Issue #2 and proposed language submitted by Jerry Johnson (TaxCloud)

**Issue #2: Are registration and return filing requirements in conflict or duplicative? If the marketplace facilitator is required to register, collect and remit the sales/use tax on facilitated sales, then is there a need for the marketplace seller to register or report those same sales?**

During the Work Group call yesterday, proposed language submitted by Jerry Johnson (on behalf of TaxCloud) was discussed. The proposed language applied to Options 2 and 3 listed on the prior survey concerning Issue #2 dated September 28, 2018. Please indicate whether you would support the proposed language (shown as underlined) for each of the options shown below by marking “X” next to “yes” or “no.” Also, please feel free to add any comments. Email your response (one response per state, other work group participants are welcome to submit responses as well) to [rcram@mtc.gov](mailto:rcram@mtc.gov) by COB of Tuesday, October 23, 2018. The results of this survey will be summarized and distributed to the Work Group prior to the next Work Group telephonic meeting, to be held on October 24, 2018 at 2:30 pm EDT (call-in number 1-719-234-0214, passcode# 102826).

Option 2

2. The marketplace facilitator is required to register, collect and remit sales/use tax on behalf of all of its marketplace sellers, unless a marketplace seller has opted to register, collect and remit sales/use tax on its sales made through that marketplace facilitator and has provided to the marketplace facilitator a copy of its registration with the state.

Proposed language (underlined) for Option 2:

(a) A marketplace provider shall collect sales and use taxes and remit them to the commissioner under [applicable statute] for all facilitated sales for a retailer, and is subject to audit on the retail sales it facilitates unless either:

(1) the retailer provides a copy of the retailer's registration to collect sales and use tax in this state to the marketplace provider before the marketplace provider facilitates a sale; or (2) upon inquiry by the marketplace provider or its agent, the commissioner discloses that the retailer is registered to collect sales and use taxes in this state.

(b) Nothing in this subdivision shall be construed to interfere with the ability of a marketplace provider and a retailer to enter into an agreement regarding fulfillment of the requirements of this chapter.

(c) If a marketplace provider is the responsible party for collecting and remitting the sales and use tax under paragraph (a) of this subdivision, the marketplace provider shall provide to the retailer such information as is necessary for the retailer to identify the transactions on which the marketplace provider is reporting to enable the retailer to accurately and timely meet it's obligations for reporting and remitting for non facilitated sales.

(d) If a retailer is the responsible party for collecting and remitting the sales and use tax under paragraph (a) of this subdivision, the marketplace provider shall provide to the retailer such information as is necessary on facilitated sales to enable the retailer to verify the correct amount of tax was collected for each applicable taxing jurisdiction and to accurately and timely meet it's obligations for reporting and remitting sales and use taxes.

**Please indicate whether you would support the proposed underlined language:**

**yes**

**no**

Please add any comments.

NetChoice notes that most sellers list items on multiple marketplaces, in addition to making sales on their own website, over the phone, at their own stores, at craft fairs, etc. Tax collection by a marketplace facilitator does not relieve these multi-channel sellers of having to administer, collect, and file in up to 46 states (and possibly hundreds of local tax authorities in states like Louisiana and Colorado).

This makes it clear that states should not include marketplace sales when determining if a small seller has reached the small business threshold. Sales where the platform handles sales tax should not count towards the small seller threshold for the seller's own sales, where they have to handle all tax administration burdens.

### Option 3

3. The marketplace facilitator is required to register, collect and remit sales/use tax on behalf of all of its marketplace sellers, without exception.

Proposed language (underlined) for Option 3

(A) A marketplace provider shall collect state and local sales and use tax on all sales made through the marketplace to purchasers in this state whether or not the marketplace seller:

(1) has or is required to have a sales and use tax permit, or

(2) would have been required to collect and remit state and local sales and use tax had the sale not been made through the marketplace provider.

(B) The marketplace provider shall provide to the marketplace seller such information as necessary for the retailer to identify the transactions on which the marketplace provider is reporting to enable the retailer to accurately and timely meet its obligations for reporting and remitting for non facilitated sales.

**Please indicate whether you would support the proposed underlined language:**

yes

no

Please add any comments.

NetChoice notes that legal challenges are likely against states that impose sales tax liability on marketplace facilitators who are not the seller-of-record. There are particular legal questions regarding laws imposing tax liability on a facilitator who does not process the purchase transaction.