

# Principles for imposing sales tax obligations on Marketplaces

Neither the *Wayfair* decision nor SSUTA addresses whether or how states can impose sales tax obligations on online marketplaces or marketplace facilitators.

Some states are adopting laws and regulations to tax marketplaces, in ways that will invite legal challenges for undue or discriminatory burdens per the Constitution's Commerce Clause.

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States seeking to tax marketplace facilitators can significantly reduce their legal risks by adhering to these principles in their legislation and regulation:

- Uniform definitions, rates, and rules for all localities in the state, regarding taxable and exempt products and the duty to collect sales tax for localities.
- A phase-in period for marketplace sellers and facilitators.
- State tax audits of marketplaces should not extend to audits of marketplace sellers. A marketplace facilitator should be relieved of liability for failure to collect and remit the correct amount of tax to the extent that the error was due to incorrect or insufficient information provided by the marketplace seller.
- Marketplace Facilitators should have the ability to separately report sales tax for the marketplace's own sales, apart from sales the facilitator or its affiliates make directly.
- Marketplace facilitators should not be liable for sales tax collection on sales where the marketplace facilitator requests and receives an agreement, certificate, or other form of proof that the seller is collecting the sales tax.
- A marketplace facilitator should not be liable for tax on sales where it receives a tax exemption or resale certificate from the marketplace seller or the marketplace seller's customer.
- State level administration of local taxes, including a single return and audit on behalf all local jurisdictions in a state.
- The safe harbor for small businesses applies to direct sales, via the seller's own website, phone numbers, catalogs, or other remote sales channels.
- Non-streamlined states must also provide adequate compensation to marketplace facilitators who collect tax on behalf of marketplace sellers. Any limits on vendor compensation should be aggregated for marketplace sellers, and not a limit on the marketplace facilitator.
- Marketplace Facilitators should not be obligated to collect sales tax on a seller's sales into the state until that marketplace seller has reached \$10,000 in sales on that marketplace over 12-months ending within the most recently completed calendar quarter.
- Marketplace Facilitator tax obligations for Marketplace Seller transactions should apply only when the facilitator is processing payments for customer transactions. Prohibit class action lawsuits against marketplaces for over-collection of sales tax.
- There should be no imposition of retroactive tax liability for sales prior to the *Wayfair* decision.