

### Disclosed Practice 8.1 – Remote Sellers

For purposes of Disclosed Practice 8.1, a “Remote Seller” is a **generally** seller that does not have any physical presence in a state (i.e., no property or employees) but who sells products or services for delivery into that state. **This definition applies unless otherwise described in the following questions.**

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A remote seller includes a “marketplace seller” that does not have a physical presence in the state.

Although the member state may not use the term “Remote Seller” in its statutory or regulatory language, member states must conform to this definition in concept and practice.

**Note:** A state may allow a seller to have limited physical presence in the state and still treat the seller as a remote seller as provided in (A), ~~and (B)~~ and (C).

### Disclosed Practice 8.1.(A) – Remote Seller – Inventory in 3<sup>rd</sup>-Party Warehouse

The State still treats a seller as a remote seller if the seller’s only physical presence in the state is inventory owned by the seller that is in a third-party’s warehouse.

#### Disclosed Practice 8.1.(A)(1) – Remote Seller – Inventory in 3<sup>rd</sup>-Party Warehouse (Inventory controlled by third-party)

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The state still treats a seller as a “remote seller” if the seller’s only physical presence in the state is inventory owned by that seller that is in a third party’s warehouse which the seller does not control the movement of the inventory (e.g, **Marketplace Facilitator/Provider** controls the movement of inventory). (Note: the exception in (A)(2), (B) **and/or (C)** may also apply).

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**Example:** The seller, physically located in State A, **sells products directly** and through a **Marketplace Facilitator/Provider**. The **Marketplace Facilitator/Provider** has a warehouse in State B. Seller does not have any other property or employees in State B, except for inventory in the **Marketplace Facilitator’s/Provider’s** warehouse. State B still treats the seller as a Remote Seller even though the seller has inventory in the **Marketplace Facilitator’s/Provider’s** warehouse in State B since the **Marketplace Facilitator/Provider** controls that inventory.

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#### Disclosed Practice 8.1.(A)(2) – Remote Seller – Inventory in 3<sup>rd</sup>-Party Warehouse (Inventory controlled by seller)

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The state still treats a seller as a **Remote Seller** if the seller’s only physical presence in the state is inventory owned by that seller in a third party’s warehouse and the seller controls the movement of the inventory. (Note: The exception in (A)(1), (B) **and/or (C)** may also apply.)

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**Example:** The seller, physically located in State A, only **sells products directly to** customers **and uses a third-party’s warehouse** in State B to store inventory. State B still treats the seller as a **Remote Seller** even though the seller has inventory in a third-party’s warehouse in State B.

#### **Disclosed Practice 8.1.(B) – Remote Seller - Non- Sales Related Employee in State**

The State still treats a seller as a Remote Seller if its only physical presence in the state is an employee that is not involved in making sales. If for purposes of Disclosed Practice 8.1.(B) the State distinguishes between retail and wholesale sales, the State will indicate it in the Comment column.

**Example 1:** The seller is physically located in State A. The seller has an employee who works out of his home in State B. The employee is only responsible for human resource services. Since the employee is not engaged in making sales, State B still treats the seller as a Remote Seller even though the seller has an employee located in State B. (Note: The exception in (A) or (C) may also apply)

#### **Disclosed Practice 8.1.(C)(1) – Remote Seller - Attendance at Events (Trade show, conferences or other similar events), but not an Exhibitor at the Event**

- A. The state still treats the seller as a Remote Seller if the seller's only physical presence in the state is merely attending an event without soliciting sales.

If the answer depends on the number of days or events the Remote Seller attends merely as an attendee (or other conditions solely related to the seller attending an event as an attendee that could impact seller's Remote Seller status), indicate "No" and provide a comment in the Comment column indicating the conditions or number of days or events and the measurement period, which if exceeded, will cause the seller to lose its Remote Seller status.

If yes, the state still treats the seller as a Remote Seller regardless of the number of days or events the Remote Seller attends merely as an attendee .

##### **Example 1:**

GHI Company, physically located in State X, sends an employee to attend four different conferences in State Y. One conference is a 4-day tax conference, one is a 2-day accounting conference, one is a 5-day sales conference, and one is a 3-day product training conference. State Y allows a company to physically attend as many conferences as it wants to as an attendee without it impacting its Remote Seller status in State Y. Therefore, although an employee of GHI Company attended conferences in State Y for a total of 14 days, State Y still treats GHI Company as a Remote Seller. (Note: In this scenario, State Y should complete the disclosed practice by indicating "Yes" and not provide any limitations in the Comment column.)

##### **Example 2:**

ABC Company, physically located in State A, sends an employee to attend a 4-day tax conference in State B to learn more about sales tax administration. State B allows a Remote Seller to physically attend an event(s) in State B for up to three days in a calendar year without it impacting its Remote Seller status. Since the employee of ABC Company was at this event for four days, ABC Company no longer qualifies as a Remote Seller because the employee exceeded the allowable number of days in State B during the calendar year. (Note: In this scenario, State B would complete the

disclosed practice by indicating “No” and entering “Sellers who attend events in the state for more than three days in the calendar year do not qualify as Remote Sellers in the Comment column.”)

- B. The state still treats the seller as a Remote Seller if the seller’s only physical presence in the state is attending an event and soliciting sales at the event.

If the answer depends on the number of days or events the Remote Seller attends as an attendee (or other conditions solely related to the seller attending an event as an attendee that could impact seller’s Remote Seller status), indicate “No” and provide a comment in the Comment column indicating the conditions or number of days or events and the measurement period, which if exceeded, will cause the seller to lose its Remote Seller status.

If yes, the state still treats the seller as a Remote Seller regardless of the number of days or events the Remote Seller attends and solicits sales at such events.

**Example 1:**

GHI Company, physically located in State X, sends an employee to attend four different conferences where they may also be soliciting sales, in State Y. One conference is a 4-day tax conference, one is a 2-day accounting conference, one is a 5-day sales conference, and one is a 3-day product training conference. State Y allows a company to physically attend as many conferences as it wants to as an attendee without it impacting its Remote Seller status. Therefore, although an employee of GHI Company attended conferences and solicited sales in State Y for a total of 14 days, State Y still treats GHI Company as a Remote Seller. (Note: In this scenario, State Y should complete the disclosed practice by indicating “Yes” and not provide any limitations in the Comment column.)

**Example 2:**

ABC Company, physically located in State A, sends an employee to State B to attend a 4-day tax conference where they may also be soliciting sales, in State B to learn more about sales tax administration. State B allows a Remote Seller to physically attend an event(s) in State B for up to three days in a calendar year without it impacting its Remote Seller status. Since the employee of ABC Company was at this event for four days and exceeded the allowable number of calendar days in State B, ABC Company no longer qualifies as a Remote Seller because the employee exceeded the allowable number of days in the state during the calendar year. (Note: In this scenario, State B would complete the disclosed practice by indicating “No” and entering “Sellers who attend events in the state for more than three days in the calendar year do not qualify as Remote Sellers” in the Comment column.)

**Disclosed Practice 8.1.(C)(2) – Remote Seller - Exhibitor at Events (Trade show, conferences or other similar events) At Which No Orders Are Taken and No Sales are Made**

The state still treats the seller as a “Remote Seller” if the seller’s only physical presence in the state is as an exhibitor with a booth at an event at which sales may be solicited but no orders are taken, and no sales are made.

If the answer depends on the number of events or days the Remote Seller is at an event(s) as an Exhibitor during the measurement period or if the state has any other conditions, the state should indicate “No” and provide a comment in the Comment column indicating the number of events, days and/or other conditions, including soliciting sales, in the measurement period which will cause the seller to lose its Remote Seller status .

If yes, the state still treats the seller as a Remote Seller regardless of the number of days or events the Remote Seller can exhibit at the event where no orders are taken and no sales are made.

**Example:**

XYZ Company is physically located in State A. XYZ Company attends a 3-day event in State B as an exhibitor with a booth. The exhibitor does not accept orders and does not make any sales at the event. State B allows XYZ Company to physically attend an event(s) in State B as an exhibitor for up to 3 days in a calendar year without it impacting XYZ Company’s Remote Seller status. Since the employee of XYZ Company was only at the event for 3 days, State B still treats XYZ Company as a Remote Seller because XYZ Company did not exceed the allowable number of days in State B during the calendar year. (Note: In this scenario, State B should complete the disclosed practice by indicating “No” and entering “Sellers who attend events as Exhibitors in the state for more than 3 days during a calendar year do not qualify as Remote Sellers” in the Comment column.)

**Disclosed Practice 8.1.(C)(3) – Remote Seller - Exhibitor at Event (Trade show, conferences or other similar events) Where Sales Are Made**

**A. Seller/Exhibitor Responsible for Tax Collection at the Event –**

1.Except for sales made at an event, the state still treats the seller as a Remote Seller if the seller’s only physical presence in the state is as an exhibitor at an event at which the exhibitor makes sales.

If the answer depends on conditions or the number of days or events within the measurement period the Remote Seller is at an event(s) as an Exhibitor making sales, indicate No and provide a comment in the Comment column indicating the conditions or limit to number of days or events, which if exceeded, will cause the seller to lose its Remote Seller status.

If yes, the Remote Seller only requirement should be collecting tax for sales made at the event.

If no, seller is not a Remote Seller and is required to register and collect tax for sales made at the event and any sale made into the state after the event. Skip to B.

2. Is the Remote Seller required to obtain a special event or temporary permit for sales made at the event?

If yes, indicate in the Comment column the type of permit required.

**Example 1:**

MNO Company is physically located in State A. MNO Company participates as an exhibitor with a booth at a 3-day sports memorabilia show in State B. MNO Company makes sales at the show. State B requires MNO Company to obtain a temporary permit for the dates of the show and MNO Company is responsible for remitting the sales tax on its sales made during the show.

**Example 2:**

PQR Company is physically located in State A. PQR Company participates as an exhibitor with a booth at 4-day sports memorabilia show in State B. Seller PQR makes sales at the show. PQR Company is in State B for more than three days in the calendar year, however, State B requires PQR Company to obtain a permanent permit and collect and remit tax on all its sales into State B once it exceeds the three days allowed per calendar year. At the end of the year, PQR Company will need to review its activities and State B's requirements to see if it qualifies as a Remote Seller. Since the employee of PQR was at the event for more than the three days allowed per calendar year, State B no longer treats Seller PQR as a Remote Seller for any sales made into State B by the Seller PQR. (Note: In this scenario, State B should complete the disclosed practice by indicating "No" and entering "Sellers who attend events as Exhibitors making sales in the state for more than three days in a calendar year must obtain a permanent permit and collect tax on their sales for the days of the event and the remainder of the year" in the Comment column.)

**B. Promoter Responsible for Tax Collection At the Event -**

Except for sales made at an event, the state still treats the seller as a Remote Seller if the seller's only physical presence in the state is as an exhibitor at an event at which the exhibitor makes sales and the **event promoter is responsible for the remittance of tax on sales.**

If the answer depends on conditions or the number of days the Remote Seller is at an event(s) as an Exhibitor making sales which the promoter reports, indicate "No" and provide a comment in the Comment column indicating the number of days, number of events, days and/or other conditions, which if exceeded, will cause the seller to lose its Remote Seller status.

If "Yes," the state still treats the seller as a Remote Seller regardless of the number of days or other conditions the Remote Seller can exhibit and makes sales at such events.

**Example 1:**

STU Company is physically located in State A. STU Company's only physical presence in State B is when it participates as an exhibitor with a booth at 3-day sports memorabilia show in State B. STU Company makes sales at the show. State B requires the promoter of the memorabilia show to remit the sales tax on all sales by all exhibitors made during the show. State B does not require STU Company to obtain a permit for the dates of the show since the promoter is responsible for remitting the sales tax on all sales made during the show. STU Company is still treated as a Remote Seller in State B for any sales made into State B unrelated to the sport memorabilia show.

**Example 2:**

XYZ Company is physically located in State A. XYZ Company participates as an exhibitor with a booth at 4-day sports memorabilia show in State B. XYZ Company does not make any sales at the show. The promoter of the memorabilia show is required to remit the sales tax on all sales by all exhibitors made during the show. State B does not require XYZ Company to obtain a permit for the dates of the show since the promoter is responsible for remitting the sales tax on all sales made during the show. However, State B considers XYZ Company to have established nexus and XYZ Company must register and collect tax for any sales made into State B by the Seller that are not reported by the exhibitor.