

A motion by South Dakota and Michigan on behalf of the State and Local Advisory Council

Disclosed Practice Number 8 – Collection and Remittance Requirements Related to Remote Sellers, Marketplace Sellers, and Marketplace Facilitators/Providers (Adopted May 20, 2021)

Note: These tax administration practices address how a member state administers its sales and use tax economic nexus, remote seller, and marketplace facilitator/provider statutes. The United States Supreme Court (SCOTUS) ruled in *South Dakota v. Wayfair* on June 21, 2018, that states can require sellers to collect and remit sales or use tax on sales delivered to locations within their state even if the seller does not have a physical presence in the state.

The purpose of these disclosed practices is to provide general guidance and assist sellers and Marketplace Facilitators/Providers in determining their sales and use tax registration, collection, and remittance responsibilities in each of the Member States. The disclosed practices do not apply to other State taxes or other regulatory registration requirements.

Disclosed Practice 8.1 – Remote Sellers

Definition: As used in this disclosed practice, the following general definition applies:

“**Remote Seller**” is generally a seller that does not have any physical presence in a state (no property or employees) but who sells products or services for delivery into that state.

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 conform to this definition in concept/practice. **A state may allow a seller to have limited physical presence in the state and still treat the seller as a remote seller.**

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

The State 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 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) and/or (B) may also apply)

Example:

The seller, physically located in State A, makes direct sales and sales through a Marketplace Facilitator. The Marketplace Facilitator 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 warehouse. State B still treats the seller as a remote seller even though the seller has inventory in the Marketplace Facilitator’s warehouse in State B since the Marketplace Facilitator controls that inventory.

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

The State 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 and the seller controls the movement of the inventory. (Note: The exception in (A)(1) and/or (B) may also apply.)

Example:

The seller, physically located in State A, only makes direct sales to its customers. Seller obtains warehouse space owned by a third party 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 which the seller controls.

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

The State 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. (Note: The exception in (A) may also apply)

Example:

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.

Disclosed Practice 8.1.a. – What is the State's Remote Seller Monetary Economic Nexus Threshold?

Explanation:

The SCOTUS indicated in *Wayfair* that South Dakota's law "...affords small merchants a reasonable degree of protections. **The law at issue requires a merchant to collect the tax only if it does a considerable amount of business of in the State;** the law is not retroactive; and South Dakota is a party to the Streamlined Sales and Use Tax Agreement..." SST member states have established monetary thresholds to set forth a small seller exception in their state. (Note: A Remote Seller that does not meet a State's economic nexus threshold may still register with the State to collect the state's sales or use tax on behalf of the Remote Seller's customer.)

8.1.a.i. The State's Remote Seller monetary economic nexus threshold is "\$100,000" (i.e., either \$100,000 or more" or "more than \$100,000") in sales. The definition of "types of sales" is addressed in 8.1.b.

- If "Yes", the State will indicate in the Comment column if the State's monetary economic nexus threshold is:
 - "\$100,000 or more" or
 - "More than \$100,000".
- If "No" – The State will indicate in the Comment column the dollar amount of the State's monetary economic nexus threshold and whether it is:
 - "\$X or more" or
 - "More than \$X".
- If the State does not have a monetary economic threshold, the State will indicate "No Threshold".

Disclosed Practice 8.1.b What Type of Products Does the State Include in its Economic Nexus Threshold Calculation?

Explanation: Some states may only include sales of certain types of products in their economic nexus threshold calculation, such as only sales of tangible personal property and not include sales of services or digital goods.

8.1.b.i. The State includes sales of all types of products (e.g., sales of tangible personal property, sales of digital goods, sales of services) in its economic nexus threshold calculation.

If no, the State will indicate in the Comment column which types of product sales it includes in its economic nexus threshold computation.

Example:

State X only includes transactions involving sales of tangible personal property in its threshold computation. State X answers this question “no” and indicates “Only sales of tangible personal property are considered for purposes of determining if a seller meets or exceeds the economic nexus threshold.”

For purposes of Disclosed Practice 8.1.c., the sales of the type of products identified in 8.1.b. are the sales to be considered when computing the state’s economic nexus thresholds.

Disclosed Practice 8.1.c. – How is the State’s Remote Seller Monetary Economic Nexus Threshold Calculated? Only one answer should be “yes”.

Explanation: A State may base its monetary economic nexus threshold on gross sales, gross revenues, gross receipts, retail sales, taxable sales or on some other basis.

8.1.c.i. The State’s Remote Seller monetary economic nexus threshold is based on **GROSS** sales, gross revenue, or gross receipts from all sales.

If the threshold is calculated based on “**gross** sales”, all sales and transactions into the state are included in determining whether the remote seller meets or exceeds the threshold, including sales for resale and other exempt or nontaxable sales.

Example:

Company A has \$400,000 (400 transactions) in total sales to State 1 for the calendar year that are made up of the following:

- \$220,000 (220 transactions) of those sales are to wholesalers that provided exemption certificates claiming sales for resale.
- \$75,000 (75 transactions) of those sales are to purchasers claiming exemption for purposes other than resale (use in manufacturing, exemption certificate on file, sales to exempt entities).
- \$10,000 (10 transactions) of those sales are sales that qualify for product exemptions.
- \$95,000 (95 transactions) are taxable sales to purchasers

Company A has \$400,000 (400 transactions) in GROSS sales for purposes of computing the thresholds.

8.1.c. ii. The State’s Remote Seller monetary economic nexus threshold is based only on **RETAIL** sales (only excludes sales for resale)

“**Retail** sales” are defined in the SSUTA, in part, as any sale other than a sale for resale. Since sales for resale are specifically excluded from the definition of “retail sale,” they are not included in the threshold computation. However, sales that are not taxable because of the provision of an exemption certificate or that are exempt due to a product exemption, such as food in certain states, are included in the computation.

Example:

Company A has \$400,000 (400 transactions) in total sales to State 1 for the calendar year that are made up of the following:

- \$220,000 (220 transactions) of those sales are to wholesalers that provided exemption certificates claiming sales for resale.
- \$75,000 (75 transactions) of those sales are to purchasers claiming exemption for purposes other than resale (use in manufacturing, sales to exempt entities).
- \$10,000 (10 transactions) of those sales are sales that qualify for product exemptions.
- \$95,000 (95 transactions) are taxable sales to purchasers.

Company A has \$180,000 (180 transactions) in RETAIL sales for purposes of computing the thresholds.

8.1.c.iii. The State’s Remote Seller monetary economic nexus threshold is based only on **TAXABLE** sales (all sales and transactions that are taxable).

“**Taxable** sales” means all transactions that are (or should be) taxed. Transactions that are not taxed due to the provision of an exemption certificate or other documentation on the part of the purchaser are not included in “taxable sales.”

Example:

Company A has \$400,000 (400 transactions) in total sales to State 1 for the calendar year that are made up of the following:

- \$220,000 (220 transactions) of those sales are to wholesalers that provided exemption certificates claiming sales for resale.
- \$75,000 (75 transactions) of those sales are to purchasers claiming exemption for purposes other than resale (use in manufacturing, sales to exempt entities).
- \$10,000 (10 transactions) of those sales are sales that qualify for product exemptions.
- \$95,000 (95 transactions) are taxable sales to purchasers.

Company A has \$95,000 (95 transactions) in TAXABLE sales for purposes of computing the thresholds.

8.1.c. iv. If the State calculates the monetary economic nexus threshold based on something other than Gross, Retail or Taxable sales, the State should indicate what the State’s monetary economic nexus threshold is based on.

Disclosed Practice 8.1.d. - What is the State’s Remote Seller Transactional Economic Nexus Threshold?

Explanation: The SCOTUS indicated in *Wayfair* that South Dakota’s law “...affords small merchants a reasonable degree of protections. **The law at issue requires a merchant to collect the tax only if it does a considerable amount of business of in the State;** the law is not retroactive; and South Dakota is a party to the Streamlined Sales and Use Tax Agreement...” In addition to monetary thresholds, some States have also established transactional thresholds.

8.1.d.i. The State’s Remote Seller transactional economic nexus threshold is “200” (i.e., either “200 or more” or “more than 200”) separate transactions. (What constitutes a “transaction” is explained in 8.1.f.)

- If “Yes” – The State will indicate in the Comment column if the transactional economic nexus threshold is:
 - “200 or more transactions” or
 - “More than 200 transactions”.
- If “No” – The State will indicate in the Comment column the State’s transactional economic nexus threshold and whether it is:
 - “X transactions or more” or
 - “More than X transactions”.

- If the State does not have a transactional economic nexus threshold the State will indicate “No Threshold”.

Disclosed Practice 8.1.e. - Which Transactions Are Used to Determine if a Seller Has Met a State’s Transactional Economic Nexus Threshold?

Explanation: The transactions and sales included in the transactional economic nexus threshold calculation may be the same transactions and sales used in the monetary economic nexus threshold calculation.

8.1.e.i. The State’s Remote Seller transactional economic nexus threshold is calculated using the same sales and transactions that are used to calculate the State’s monetary economic nexus threshold as indicated in Disclosed Practice 8.1.b.

If the state uses different transactions to calculate the transactional economic nexus threshold, indicate which transactions are used in the Comment column.

Disclosed Practice 8.1.f. - For Purposes of Computing the State’s Transactional Economic Nexus Threshold, what is Considered a “Transaction”? Only one answer should be “Yes” for i, ii, or iii.

Explanation: A state may base its transactional economic nexus threshold on several factors. This calculation can be on the number of invoices, on the number of orders placed, or on the quantity of items sold.

8.1.f.i. The State’s Remote Seller transactional economic nexus threshold is based on the number of **invoices**.

Example 1:

Customer places an order for 3 distinct items which are all fulfilled at different times. The customer receives one invoice that covers the purchase of all 3 items. This would count as one transaction.

Example 2:

Customer places an order for 3 distinct items which are all fulfilled at different times. The customer receives an invoice for each item as it is fulfilled (i.e., 3 separate invoices). This would count as three transactions.

8.1.f.ii. The State’s Remote Seller transactional economic nexus threshold is based on **the number of orders placed** (i.e., if a single order is placed but it is delivered in three (3) separate shipments each with its own invoice, it is considered one (1) transaction).

Example:

Customer places an order for 3 distinct items which are all fulfilled at different times. The customer receives 3 shipments and 3 invoices that were generated separately from the one order. This would count as one transaction.

8.1.f.iii. The State’s Remote Seller transactional economic nexus threshold is based on **the quantity of items sold** (each item on a single invoice is considered a separate transaction).

Example 1:

An invoice shows 20 orange widgets, 10 brown widgets, and 50 clear widgets. The total of the number of transactions used in calculating the transactional economic nexus threshold is 80.

Example 2:

A prepackaged box of the same product is one item (box of 12 pencils); however, multiple purchases of the same product are separate items (12 individual pencils).

8.1.f.iv. An invoice that includes items to be delivered into multiple states is considered a transaction in the state if any of the items on the invoice are delivered into the State.

Example:

- Customer purchases 2 taxable items for \$1,000 each
- One item is being shipped to State A and one item is being shipped to State B
- The customer is given one invoice for \$2,000 that covers both items

Result:

- State A would count this as one invoice/transaction
- State B would count this as one invoice/transaction
- State A would consider this to be \$1,000 toward their dollar threshold
- State B would consider this to be \$1,000 toward their dollar threshold

Disclosed Practice 8.1.g. – Transaction With Multiple Payments

A transaction with multiple payments (e.g., monthly payments) is considered one transaction for purposes of the State’s Remote Seller transactional economic nexus threshold (i.e., each payment is not considered a separate transaction). Both examples should result in the same response.

Example 1:

Customer signs an annual subscription agreement and is billed monthly. This is considered one transaction and not twelve transactions.

Example 2:

Customer enters into a monthly subscription agreement lasting 30 days. There is automatic renewal at the end of each month unless cancelled. Over the course of the year, this will count as twelve transactions, not one.

Disclosed Practice 8.1.h. – Does a Remote Seller who makes sales through a Marketplace Facilitator/Provider need to include the sales made through the marketplace in determining if it meets a State’s economic nexus threshold?

8.1.h.i. A Remote Seller shall include sales made through a Marketplace Facilitator/Provider that **is registered** in the State when determining if it meets or exceeds the State’s economic nexus threshold.

8.1.h.ii.

A Remote Seller shall include its sales made through a Marketplace Facilitator/Provider that **is not registered** in the State when determining if it meets or exceeds the State’s economic nexus threshold.

Disclosed Practice 8.1.i. - What period of time does the State base its a remote seller economic nexus threshold on? – Only one answer should be yes.

Background:

States differ on the measurement period a remote seller uses to determine if the economic nexus threshold has been met. The most common measurement period is the previous calendar year or current calendar year. States also have measurement periods of just the previous calendar year, just the current calendar year or the previous twelve-month period. There should only be one “yes” response in this section.

8.1.i.i. The State's economic nexus threshold is based on a Remote Seller exceeding the threshold in **either** the previous calendar year or current calendar year.

8.1.i.ii. The State's economic nexus threshold is based on a Remote Seller exceeding the threshold **only in the previous** calendar year.

8.1.i.iii. The State's economic nexus threshold is based on a different period of time. (Provide the basis in the Comment column.)

Disclosed Practice 8.1.j. - When does the State require a remote seller to register and begin collecting and remitting the applicable tax? – Only one answer should be yes.

Background:

Generally, if the economic nexus threshold was not reached in the previous calendar year, but is reached part way through the current calendar year, the seller is required to register and begin collecting and remitting the tax on transactions and sales that occur after the threshold is met for the remaining part of the current calendar year. The seller is not responsible for collecting and remitting the tax on transactions that occurred prior to meeting the economic nexus threshold. Some states allow a grace period for requiring the registration and collection of the tax once the threshold is met.

8.1.j.i. The State requires a Remote Seller to register and begin collecting and remitting the tax on the **next transaction after meeting or exceeding the threshold.**

8.1.j.ii. The State requires a Remote Seller to register and begin collecting and remitting the tax **no later than the first day of the calendar month that begins at least X days** after meeting or exceeding the threshold. The State will indicate in the Comment column the number of days after the threshold is met that the seller is required to register and begin collecting and remitting the tax.

Example:

If a State indicates X = 30 days and the seller reaches the threshold on May 28, the seller is required to register and begin collecting July 1.

8.1.j.iii. Other. If the State's answer to j.i and j.ii is "no" indicate in the Comment column when a Remote Seller must register and begin collecting and remitting the tax.

Disclosed Practice 8.1.k. - When is a remote seller who falls below a state's economic nexus threshold allowed to cancel its registration and stop collecting and remitting the tax?

8.1.k.i. A Remote Seller that falls below the State's Remote Seller economic nexus threshold(s) during the measurement period (See 8.1.i.) may cancel its registration or request inactive status any time after the measurement period ends.

- If yes, indicate in the Comment column if the Remote Seller can:
 - Cancel the registration, or
 - Request inactive status.
- If the answer is no, indicate in the Comment column when a Remote Seller can cancel their registration or request inactive status.

Example 1:

State A has a measurement period of **current or prior calendar year**. Seller exceeded the economic nexus threshold in 2019 but did not in 2020. The seller will be eligible to cancel its registration as of 1/1/21. If the seller exceeds the threshold during 2021, it will be required to register as provided in Disclosed Practice 8.1.j.

Example 2:

State A has a measurement period of **current or prior calendar year**. Seller exceeded the economic nexus threshold in 2019 and 2020. The seller will be required to continue collecting tax through at least all of 2021.

Example 3:

State A has a measurement period of just the **prior calendar year**. Seller exceeded the economic nexus threshold in 2019 but did not in 2020. The seller will be eligible to cancel its registration as of 1/1/21. If the seller exceeds the threshold during 2021, the seller will be required to register as of 1/1/22.

Disclosed Practice 8.1.l. – **What type of permit does a remote seller apply for? – Only one answer should be “yes”.**

Explanation: Some states require remote sellers to register to collect sales tax, some state require remote sellers to register to collect seller’s use tax while other states require remote sellers to submit a single application that allows them to collect both sales and use tax. States should include any applicable statutory or legal citation in the Comment column.

8.1.l.i. The State requires a Remote Seller to register to collect sales tax .

8.1.l.ii. The State requires a Remote Seller to register to collect (seller’s) use tax.

8.1.l.iii. The State requires a Remote Seller to register under a single registration to collect both sales and (seller’s) use tax.

8.1.l.iv. The State allows a Remote Seller to register for either a sales tax or use tax permit. If yes, the State should explain in the Comment column any special circumstances.

Disclosed Practice 8.1.m. – **Can a Remote Seller that is not registered or required to be registered in any State provide an exemption certificate claiming sale for resale to a Seller located in this State and can that Seller accept that exemption certificate?**

Explanation: Some Remote Sellers may not be registered or required to be registered in any State. However, those Remote Sellers purchase items from their suppliers that will be resold. The suppliers want to make sure they will not be held liable for the tax on a sale to a Remote Seller that is not registered in any State if they accept an exemption certificate claiming a sale for resale from the Remote Seller. More information on a State’s acceptance of an exemption certificate is available at [Exemptions \(streamlinedsalestax.org\)](https://streamlinedsalestax.org)

8.1.m.i. A Remote Seller that is not registered or required to be registered in any State can issue an exemption certificate to a Seller located in this State claiming resale for those items the Remote Seller will resell and the Seller in this State may accept such exemption certificate.

If yes, the State should indicate in the Comment column what identification number, if any, the Remote Seller is required to put on the exemption certificate.

Example:

Remote Seller A located in State X purchases items for resale from Seller B located in State Y. Remote Seller A is not registered or required to be registered in any State. Seller B is registered in every State. Seller B delivers the items to Remote Seller A in State X. Seller B may accept an exemption certificate from Remote Seller A claiming resale.

8.1.m.ii. A Remote Seller that is not registered or not required to be registered in any State purchasing items for resale from a third-party supplier (drop shipper) who will deliver the items to the Remote Seller’s customer located in this State can issue an exemption certificate claiming resale and the third-party supplier (drop shipper) can accept such exemption certificate. See SSUTA Sec. 317.A.8 for Drop Shipment requirements.

If yes, the State should indicate in the Comment column what identification number, if any, the Remote Seller is required to put on the exemption certificate.

Example:

Remote Seller A located in State X purchases items for resale from Seller B located in State Y. Remote Seller A is not registered or required to be registered in any State. Seller B is registered in State Y. Remote Seller A has Seller B deliver the items to Remote Seller A’s customer located in State Y (e.g., a drop shipment). Remote Seller A may provide Seller B an exemption certificate claiming resale and Seller B may accept that exemption certificate.

Disclosed Practice 8.2 – Marketplace Sellers

Explanation: Many States have enacted Marketplace Facilitator/Provider laws that require the Marketplace Facilitator/Provider to collect and remit tax on sales facilitated on behalf of Marketplace Sellers. These laws related to Marketplace Facilitators/Providers resulted in the creation of “Marketplace Sellers.” The Marketplace Seller may also be required to register and file returns for sales and use tax purposes in a State.

A Marketplace Seller may also be a “Remote Seller.” A Remote Seller is generally a seller that does not have a physical presence in a state but who sells products or services for delivery into that state.

A Remote Seller that sells through a Marketplace Facilitator/Provider and also sells products direct to its customers, is required to register to collect and remit sales tax in the State if its sales in that State meet that State’s **Remote Seller Economic Nexus Threshold**.

If a seller has a physical presence in a State, the seller is not a Remote Seller and is generally required to register in that State regardless of the volume of sales.

Definition: For purposes of Disclosed Practice 8.2, the following general definition applies:

“**Marketplace Seller**” means a seller who sells products or services through a physical or electronic marketplace operated by a Marketplace Facilitator/Provider.

Disclosed Practice 8.2.a. – Does a State require a Marketplace Seller to register in the State when all sales are made through a Marketplace Facilitator/Provider that is registered to collect and remit the tax on behalf of the Marketplace Sellers?

8.2.a.i. The State requires a Marketplace Seller that is a “Remote Seller” that sells exclusively through Marketplace Facilitators/Providers to still register with the State.

8.2.a.ii. The State requires a Marketplace Seller with a physical presence (i.e., not a Remote Seller) that sells exclusively through Marketplace Facilitators/Providers to still register with the State.

Disclosed Practice 8.2.b. Does the State require a Marketplace Seller to include sales (dollars and transactions) made through a Marketplace Facilitator/Provider in determining if it meets or exceeds the State's economic nexus threshold. See Disclosed Practice 8.1.b for which types of transactions must be included.

8.2.b.i. The State requires a Marketplace Seller to include sales (dollars and transactions) made through a Marketplace Facilitator/Provider in determining if it meets or exceeds the State's economic nexus threshold.

Disclosed Practice 8.2.c. Does the State require a Marketplace Seller that is registered and filing in the State to include its marketplace sales in the total sales reported on its tax return and take a deduction as if the sales are exempt?

8.2.c.i. The State requires a Marketplace Seller registered and filing in the State to include its sales through a marketplace facilitator/provider on its tax returns. If the State responds yes to this question, it will provide an explanation in the Comment column on how the deduction is claimed for such sales.

Disclosed Practice 8.2.d. Does the State require a Marketplace Seller to maintain exemption documentation only for its direct sales, and not for sales made through a Marketplace Facilitator/Provider?

8.2.d.i. The State requires a Marketplace Seller to maintain exemption documentation only for its direct sales, and not for sales made through Marketplace Facilitators/Providers.

Disclosed Practice 8.2.e. - Does the State allow a Marketplace Seller to rely upon a customer's exemption documentation for its direct sales, even where the exemption documentation is maintained by a Marketplace Facilitator/Provider?

8.2.e.i. The State allows a Marketplace Seller to rely upon a customer's exemption documentation for its direct sales even though that exemption documentation is maintained by a Marketplace Facilitator/Provider.

Example:

Marketplace Seller has access to the Marketplace Facilitator's/Provider's exemption documentation.

Disclosed Practice 8.2.f - Can a Marketplace Seller that is not registered or not required to be registered in any State provide an exemption certificate to a Seller located in this State claiming sale for resale and can that Seller accept that exemption certificate?

8.2.f.i. A Marketplace Seller that is not registered or required to be registered in any State can issue an exemption certificate to a Seller located in this State claiming resale for those items the Marketplace Seller will resell and the Seller in this State may accept such exemption certificate.

If yes, the State should indicate in the Comment column what identification number, if any, the Marketplace Seller is required to put on the certificate?

Example:

Marketplace Seller A located in State X purchases items for resale from Seller B located in State Y. Marketplace Seller A is not registered or required to be registered in any State. Seller B is registered in every State. Seller B delivers the items to Marketplace Seller A in State X. Seller B may accept an exemption certificate from Marketplace Seller A claiming resale.

8.2.f.ii. A Marketplace Seller that is not registered or not required to be registered in any State purchasing items for resale from a third-party supplier (drop shipper) who will deliver the items to the Marketplace Seller’s customer located in this State can issue an exemption certificate claiming resale and the third-party supplier (drop shipper) can accept such exemption certificate. See SSUTA Sec. 317.A.8 for Drop Shipment requirements.

If yes, the State should indicate in the Comment column what identification number, if any, the Marketplace Seller is required to put on the certificate?

Example:

Marketplace Seller A located in State X purchases items for resale from Seller B located in State Y. Marketplace Seller A is not registered or required to be registered in any State. Seller B is registered in State Y. Marketplace Seller A has Seller B deliver the items to Marketplace Seller A’s customer located in State Y (e.g., a drop shipment). Marketplace Seller A may provide Seller B an exemption certificate claiming resale and Seller B may accept that exemption certificate.

Disclosed Practice 8.2.g. - Marketplace Seller Liability and Audits

8.2.g.i A Marketplace Seller is liable for the tax on sales made through a Marketplace Facilitator/Provider if the Marketplace Seller provides incorrect or insufficient information. The State should indicate in the Comment column if there are exceptions to this rule.

8.2.g.ii. The state has a written policy that explains when and how a Marketplace Seller may be audited and held liable for tax on sales made using Marketplace Facilitators/Providers? If yes, the state will provide a reference to the document location in the Comment column.

Disclosed Practice 8.3 – Marketplace Facilitators/Providers

Explanation: Many States have enacted Marketplace Facilitator/Provider laws that require the Marketplace Facilitator/Provider to collect and remit sales and use tax on sales facilitated on behalf of Marketplace Sellers if they exceed certain thresholds. States may define a Marketplace Facilitator/Provider more narrowly or more broadly than the general definition below.

A Marketplace Facilitator/Provider may also be a “Remote Seller” if it makes sales on its own behalf. A Remote Seller is generally a seller that does not have a physical presence in a State but who sells products or services for delivery into that State.

If the Marketplace Facilitator/Provider has a physical presence in a State, it is not a Remote Seller and is generally required to register in that State regardless of the amount or number of sales.

Definition: For purposes of Disclosed Practice 8.3, the following general definition applies:

“Marketplace Facilitator/Provider” is generally a person who owns, operates or otherwise controls a physical or electronic marketplace and facilitates Marketplace Seller’s sales that the Marketplace Facilitator/Provider either directly or indirectly through contracts, agreements, or other arrangements with third parties, collects the payment from the purchaser and transmits all or part of the payment to the Marketplace Seller.

The State should indicate whether the State has adopted and/or follows the NCSL model definition of “Marketplace Facilitator.” [Link to NCSL cite here](#)

Disclosed Practice 8.3.a. – Exceptions to Marketplace Facilitator/Provider Collection Requirements

Explanation: A State’s statutory definition of “Marketplace Facilitator/Provider” may specifically exclude certain business types from Marketplace Facilitator/Provider collection requirements or by the nature of the definition, certain business types may not be included. If by nature of what type of business is considered to be a Marketplace Facilitator/Provider, a business type is excluded, the State should indicate those exclusions below.

8.3.a.i. The State excludes a person as a **Marketplace Facilitator/Provider** if that person’s sole activity with respect to the transaction with the Marketplace Seller is to provide payment processing services between the seller and purchaser.

If a State excludes a payment processor from its definition of **Marketplace Facilitator/Provider** it should answer “Yes” to this statement. If a State does not exclude a payment processor from its definition of Marketplace Facilitator/Provider it should respond “No” and explain in the Comment column. If the State’s law is less restrictive, (i.e., the payment processing activity must only be the principal activity), the State should also indicate this in the Comment column.

8.3.a.ii. The State excludes from **Marketplace Facilitator/Provider** a person who only provides a platform for sellers to list items for sale and provides information that allows the buyer to contact the seller. However, the sales transaction and payment for the transaction occurs off the platform directly between the buyer and the seller.

8.3.a.iii. The State excludes a person from being a **Marketplace Facilitator/Provider** if the person’s participation is limited to listing items for sale and connecting purchasers to Sellers and the **Marketplace Facilitator/Provider** does not directly or indirectly enter into a contract, agreement, or other arrangement with an unaffiliated payment processor that is solely responsible for collecting funds from purchasers and disbursing those funds to Sellers.

If a State excludes from its definition of **Marketplace Facilitator/Provider** a person whose only participation in the transaction is connecting purchasers with sellers and it is the payment processor that is responsible for disbursing funds to the seller, it should answer “Yes” to this statement. If a State does not exclude from its definition of **Marketplace Facilitator/Provider** a person whose only participation in the transaction is connecting purchasers with sellers and it is the payment processor that is responsible for disbursing funds to the seller it should respond “No.”

Example:

A person operates a web platform where sellers can list items for sale and buyers can view the items and make purchases. The platform provides the ability for the seller to connect its own payment processing accounts and the platform does not have the ability to disburse the sale proceeds to the seller. The payment processor may manage payment solutions, disputes, chargebacks, fraud management, merchant management and risk management. The platform has no access to the sale proceeds or the tax proceeds unless the payment processor specifically provides the ability to direct disbursement of the collected sales tax to the platform.

8.3.a.iv. - **Marketplace Facilitator/Provider** excludes a person exclusively providing advertising services.

If a State excludes from its definition of Marketplace Facilitator/Provider a person that only provides advertising services, it should respond “yes”.

8.3.a.v. - **Marketplace Facilitator/Provider** excludes a person that is registered with the Commodity Futures Trading Commission when using its platform services.

If a State excludes from its definition of Marketplace Facilitator/Provider a person that is registered with the Commodity Futures Trading Commission, it should respond “yes”.

8.3.a.vi. The State requires a **Marketplace Facilitator/Provider** to collect tax on all types of taxable products (e.g., tangible personal property, digital goods, or services).

If no, please explain in Comment column which types of taxable product the Marketplace Facilitator/Provider is required to collect on.

8.3.a.vii. Are sales by certain types of businesses (e.g., prepared food/grocery delivery services, hotel or travel intermediaries, car rental services, etc.) excluded from **Marketplace Facilitator/Provider** collection requirements?

If “yes,” please indicate the exclusions in the Comment column.

Disclosed Practice 8.3.b. - Marketplace Facilitator/Provider Notification Requirements

8.3.b.i. The State requires a Marketplace Facilitator/Provider to provide notification or certification to its Marketplace Sellers that it is registered to collect and remit the tax? (If yes, describe the method in the Comment column.)

8.3.b.ii. The State requires a Marketplace Facilitator/Provider to provide notification or certification to the state tax agency that it is registered to collect and remit the tax? (If yes, describe the method in the comment column.)

8.3.b.iii. The State requires a Marketplace Facilitator/Provider to provide notification or certification to its Marketplace Sellers that it is no longer registered to collect and remit the tax as provided in 8.3.h. (If yes, describe the method in the Comment column.)

Disclosed Practice 8.3.c. – Does your State’s Marketplace Facilitator/Provider law provide for a waiver of the marketplace facilitator/provider registration, collection, and remittance requirements?

8.3.c.i. The State allows for a waiver of registration, collection and remittance by the Marketplace Facilitator/Provider if substantially all of a Marketplace Facilitator’s/Provider’s sellers are registered with the State to collect and remit the tax.

8.3.c.ii. The State allows a Marketplace Seller to continue to collect and remit the tax if mutually agreed to by the Marketplace Facilitator/Provider and if it is approved by the revenue/tax agency.

8.3.c.iii. The State allows the Marketplace Seller to continue to remit the tax if mutually agreed to by the Marketplace Facilitator/Provider and the revenue/tax agency is notified. Indicate in the Comment column if any threshold requirements must be met before the Marketplace Seller can enter into such agreement .

Indicate in the Comments if a sales threshold must be met before the Marketplace Facilitator/Provider and Marketplace Seller can enter into an agreement for the Marketplace Seller to collect and remit the tax and any other special requirements in the State such as being required to provide the State a copy of the agreement.

Disclosed Practice 8.3.d. – Marketplace Facilitator/Provider Monetary Economic Nexus Threshold

8.3.d.i. The State’s Marketplace Facilitator/Provider monetary economic nexus threshold and calculation is the same as Remote Sellers in Disclosed Practices 8.1.

If different, answer “no” and indicate the monetary economic nexus threshold or calculation differences in the Comment column.

Disclosed Practice 8.3.e. – Marketplace Facilitator/Provider Transactional Economic Nexus Threshold

8.3.e.i. The State’s Marketplace Facilitator/Provider transactional economic nexus threshold and calculation is the same as Remote Sellers in Disclosed Practices 8.1. If different, please answer “no” and indicate the transactional economic nexus threshold in the Comment column.

Disclosed Practice 8.3.f. – Marketplace Facilitator/Provider Economic Nexus Measurement Period

8.3.f.i. The State’s Marketplace Facilitator/Provider Economic Nexus Measurement Period is the same as Remote Sellers in Disclosed Practice 8.1. If different, please answer “no” and indicate the measurement period in the Comment column.

Disclosed Practice 8.3.g. – Exceptions to Physical Presence

8.3.g.i. A Marketplace Facilitator’s/Provider’s physical presence is based solely on its presence and not on the presence of its Marketplace Sellers.

8.3.g.ii. A Marketplace Facilitator/Provider who is below the state’s economic nexus threshold(s) is excluded from collecting and remitting the state’s sales/use tax if the Marketplace Facilitator/Provider only has employees located in the state that are not engaged in making sales (if applicable, please indicate any exceptions).

Disclosed Practice 8.3.h. – When is a Marketplace Facilitator/Provider that falls below a state’s economic nexus threshold allowed to stop collecting and remitting the applicable tax?

8.3.h.i. The State allows a “Marketplace Facilitator/Provider” who falls below the State’s Marketplace Facilitator/Provider economic nexus threshold during the measurement period to cancel its registration or request inactive status in the same manner as a Remote Seller in Disclosed Practice 8.1.. If different, please answer no and indicate differences in the Comment column.

Disclosed Practice 8.3.i. – What Type of Permit Does a Marketplace Facilitator/Provider Apply For?

8.3.i.i. The State’s registration requirement for a Marketplace Facilitator/Provider is the same as Remote Sellers in Disclosed Practice 8.1. If different, please answer “no” and indicate type of registration in the Comment column.

Disclosed Practice 8.3.j. – What are the Registration and Reporting requirements for a Marketplace Facilitator/Provider?

Explanation: Some states require that a Marketplace Facilitator may only obtain a single registration and file a single return upon which the Marketplace Facilitator/Provider reports both its own sales and the sales it facilitated. Other states allow the Marketplace Facilitator/Provider the option of obtaining separate registrations and file two returns – one to report its own sales and another to report the sales it facilitates.

8.3.j.i. A Marketplace Facilitator/Provider is only permitted to obtain a single registration and file a single return covering its own sales and those made on behalf of Marketplace Sellers.

8.3.j.ii. A Marketplace Facilitator/Provider is permitted to register and file separate returns for its own sales and those made on behalf of Marketplace Sellers.

8.3.j.iii. Were the answers to 8.3.j.i and 8.3.j.ii both “no”? If so, explain in the Comment column the registration and filing requirements for a Marketplace Facilitator/Provider.

Disclosed Practice 8.3.k. – Voluntary Registration as a Marketplace Facilitator/Provider

8.3.k.i. The State allows a person who does not meet the State’s definition of Marketplace Facilitator/Provider to voluntarily register to collect and remit the tax on behalf of its marketplace sellers.

8.3.k.ii. If the answer to 8.3.k.i is yes, will the State enter into an agreement that provides authority for the person to collect the tax as if they met the definition of Marketplace Facilitator/Provider? Note: If a written agreement is required, the State should provide requirements in the Comment column.

Disclosed Practice 8.3.l. - Marketplace Facilitator/Provider Treatment as a Seller – A Marketplace Facilitator/Provider is treated as the seller for the following:

8.3.l.i. Refunds – The State allows the Marketplace Facilitator/Provider to request a refund from the state in the same manner as a seller/retailer.

8.3.l.ii. Vendor discounts – The State applies timely filing/payment discounts/vendor allowances to Marketplace Facilitators/Providers in same manner as a seller/retailer.

8.3.l.iii. Exemption Documentation – The State allows sales made by Marketplace Facilitator/Provider to be exempt based on the Marketplace Facilitator/Provider having access to exemption documentation maintained by either the Marketplace Facilitator/Provider or Marketplace Seller.

8.3.l.iv. Coupons - The State allows coupons, whether issued by a Marketplace Facilitator/Provider or a marketplace seller to be deemed to be a retailer’s coupon/discount. (If “no,” the state should indicate in the Comment column how such coupons are treated)

8.3.l.v. Bad Debts – The State allows a sales/use tax bad debt deduction based on the party that is able to claim the federal tax deduction under IRC 166, regardless of which party remitted the sales tax. (If “no,” the state should indicate in the Comment column such restrictions)

Disclosed Practice 8.3.m. - Shifting of Liability to Marketplace Seller

8.3.m.i. A Marketplace Facilitator/Provider is liable for the tax unless a Marketplace Seller provided incorrect or insufficient information.

8.3.m.ii. The state has a written policy on what reasonable steps a Marketplace Facilitator/Provider must take to obtain correct and sufficient information from a Marketplace Seller to shift the liability of the tax to the Marketplace Seller (if “yes,” please reference location of the document).

Disclosed Practice 8.3.n. – Marketplace Facilitator/Provider absolved of tax, penalty and interest.

8.3.n.i. The State absolves a Marketplace Facilitator/Provider of tax, interest, and penalty if it can show that a Marketplace Seller or the purchaser has already paid tax on the transaction.

Disclosed Practice 8.3.o. – Is the Marketplace Facilitator/Provider Required to Collect Non-Sales/Use Taxes and Fees?

8.3.o.i. The State requires a Marketplace Faciliator/Provider to collect and remit other taxes and fees that are also directly imposed on the consumer at the time of the sale. If yes, please provide fees and taxes in the Comment column along with legal authority.

8.3.o.ii. The State requires a Marketplace Faciliator/Provider to collect and remit other taxes and fees that are not directly imposed on the consumer at the time of the sale. If yes, please identify the other fees and taxes in the Comment column along with legal authority.

Disclosed Practice 8.3.p. – Class Action and/or False Claim Law Suits

8.3.p.i. Did the State enact class action protections for Marketplace Facilitators/Providers separate from what the State is required to provide for all sellers based on Section 325 of the SSUTA/Agreement?

If yes, provide the statutory reference in the Comment column.

(Note: Indicate in the Comment column if this also applies to Marketplace Sellers.)

8.3.p.ii. Did the State enact false claims act suit protections for Marketplace Facilitators/Providers ?

If yes, provide the statutory reference in the Comment column.

(Note: Indicate in the Comment column if this also applies to Marketplace Sellers.)

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