Disclosed Practice Number 8 – Collection and Remittance Laws related to Remote Sellers, Marketplace Sellers, and Marketplace Facilitators/Providers (Adopted XX)

Note: These tax administration practices address how a member state administers its 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 in determining their registration, collection, and remittance responsibilities in each of the member states.

Disclosed Practice 8.1 – Remote Sellers

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

> **"Remote Seller"** is a seller that does not have any physical presence in a state but who sells products or services for delivery into that state.
>
> A Remote Seller can include 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) – Remote Seller – Inventory in 3rd-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.

> **Example 1**: 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.
>
> **Example 2**. 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.

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.

<u>Disclosed Practice 8.1.a.</u> – 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. 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.

<u>8.1.a.i.</u> 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. If the State's monetary economic nexus threshold includes exactly $100,000 in sales, the State will indicate that in the Comment column.

<u>8.1.a.ii.</u> The State's Remote Seller monetary economic nexus threshold is something other than "$100,000" (i.e., $1, $200,000, $500,000, etc.). The State will indicate the economic nexus monetary threshold in the Comment column.

If there is no threshold, the State will indicate N/A.

<u>Disclosed Practice 8.1.b.</u> – How is the State's Remote Seller *Monetary* Economic Nexus Threshold Calculated?

Explanation: A state may base its monetary economic nexus threshold on gross sales, gross revenues, gross receipts, retail sales or taxable sales. Many states do not distinguish between taxable and non-taxable sales when determining if a threshold is met.

<u>8.1.b.i.</u> The State's Remote Seller monetary economic nexus threshold is based on **GROSS** sales, gross revenue, or gross receipts from ALL sales of products and services.

If the threshold is applied 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.

<u>Example:</u>
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.

<u>8.1.b. ii.</u> The State's Remote Seller monetary economic nexus threshold is based only on **RETAIL** sales of products and services (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.b.iii. The State's Remote Seller monetary economic nexus threshold is based only on **TAXABLE** sales of products and services (all sales and transactions that are or should be taxed).

"**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.b. 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. In addition, if sales of all types of goods and services are not included in the calculation, for example the threshold is only based on sales of TPP, the state should indicate that in the Comment column.

Disclosed Practice 8.1.c. - 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 SST member states have also established transactional thresholds as an alternative small seller exception in their state.

8.1.c.i. The State's Remote Seller transactional economic nexus threshold is "200" (i.e., either "200 or more" or "more than 200") separate transactions. If yes, indicate if a seller that has exactly 200 transactions is considered to have met the State's transactional economic nexus threshold in the Comment column. See Disclosed Practice 8.1.e. to determine what the state considers to be a "transaction."

8.1.c. ii. The State's Remote Seller transactional economic nexus threshold is something other than "200" (i.e., 1, 300, 500, etc.) separate transactions. The State will indicate the economic nexus transaction threshold in the Comment column or if there is no threshold the State will indicate N/A. In addition, if sales of all types of goods and services are not included, for example the threshold is only based on sales of TPP, the state should indicate that in the Comment column.

Disclosed Practice 8.1.d. - Which Sales Are Used to Determine if a Seller Has Met a State's *Transactional* Economic Nexus Threshold?

Explanation: A state may base its transactional economic nexus sales threshold on several factors. This calculation can be on an invoice basis, a per item basis or based on each order placed. As a subset of this calculation, the type of transactions included in the threshold may be the same gross sales, gross revenues, gross receipts, retail sales or taxable sales as used in the monetary economic nexus threshold calculation. See Disclosed Practice 8.1.b. for examples.

8.1.d.i. The State's Remote Seller transactional economic nexus threshold is calculated using the same sales that are used to calculate the State's monetary economic nexus threshold (gross sales, retail sales or taxable sales).

8.1.d.ii. If the State's transactional economic nexus threshold is calculated using different sales than are used in calculating the State's monetary economic nexus threshold, the State should explain specifically which sales are used in calculating the transactional economic nexus threshold.

Disclosed Practice 8.1.e. - For Purposes of Computing the State's Transactional Economic Nexus Threshold, What is Considered a "Transaction"?

Explanation: A state may base its transactional economic nexus threshold on several factors. This calculation can be on an invoice basis, on the basis of each order placed or on a quantity of items sold basis . As a subset of this calculation, the type of transactions included in the threshold may be the same gross sales, gross revenues, gross receipts, retail sales or taxable sales as used in the monetary economic nexus threshold calculation. See Disclosed Practice 8.1.b. for examples.

8.1.e.i. The State's Remote Seller transactional economic nexus threshold is based on an **invoice** basis.

8.1.e.ii. The State's Remote Seller transactional economic nexus threshold is based on **each order 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.e. iii. The State's Remote Seller transactional economic nexus threshold is based on a quantity of **items sold** basis (each item on a single invoice is considered a separate transaction).

Example: An invoice may have: 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.

8.1.e.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.f. – Contract That Requires Multiple Payments

A contract that requires multiple 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: Customer signs an annual subscription agreement and is billed monthly. This is considered one transaction and not twelve transactions.

Example: 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.g. – Remote Seller Who Makes Sales Through a Marketplace Facilitator/Provider

8.1.g.i A remote seller shall include sales made through a Marketplace Facilitator/Provider when determining if it meets or exceeds the state's economic nexus threshold.

8.1.g.ii.

Does it make a difference if the marketplace facilitator is or is not registered or required to be registered in the state? If the answer is yes, the State will explain in the Comment column.

Disclosed Practice 8.1.h. - What period of time does a remote seller use to determine if it meets or exceeds a state's economic nexus threshold? – Only one answer should be yes.

Background:

States differ on the measurement period for determining 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.

8.1.h.i. A Remote Seller has economic nexus in the state if it meets or exceeds the state's economic nexus threshold in **either** the previous calendar year or current calendar year.

8.1.h. ii. A Remote Seller has economic nexus in the state only if it meets or exceeds the state's economic nexus threshold in **only the previous** calendar year.

8.1.h. iii. A Remote Seller has economic nexus in the state based on a different period of time. The State will indicate the period of time in the Comment column.

Disclosed Practice 8.1.i. - When is a remote seller required to register and begin collecting the applicable sales or use 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 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 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.i.i. A Remote Seller must register and begin collecting the applicable tax on the **next transaction after meeting or exceeding the threshold.**

8.1.i.ii. Option 1: A Remote Seller must register and begin collecting the applicable tax ~~by~~ no later than the **first day of the month that is at the most 30 days after meeting or exceeding the threshold.**

Example: A seller reaches the threshold on May 28, under this language, the seller is required to register and begin collecting June 1 (3 days later).

Option 2: A Remote Seller must register and begin collecting the applicable tax no later than the first day of the first calendar month that is at least 30 days after meeting or exceeding the threshold.

Example: A seller reaches the threshold on May 28, under this language, the seller is required to register and begin collecting July 1 (33 days later).

8.1.i.iii. Option 1: A Remote Seller must register and begin collecting the applicable tax ~~by~~ no later than the **first day of the month that is at the most 60 days after meeting or exceeding the threshold.**

Example: A seller reaches the threshold on May 28, under this language, the seller is required to register and begin collecting July 1 (33 days later).

Option 2: A Remote Seller must register and begin collecting the applicable tax no later than the first day of the first calendar month that is at least 60 days after meeting or exceeding the threshold.

Example: A seller reaches the threshold on May 28, under this language, the seller is required to register and begin collecting August 1 (63 days later).

8.1.i.iv. If the state requires a remote seller to register and begin collecting at a different point in time, the state should indicate the point in time in the Comment column.

<u>Disclosed Practice 8.1.j.</u> - When is a remote seller who falls below a state's economic nexus threshold allowed to stop collecting and remitting the applicable sales or use tax?

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

Example 1: State A has a measurement period of current or prior calendar year. Seller exceeded the economic threshold in 2019 but did not in 2020. The seller will be eligible to withdraw from collecting tax 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.i.

Example 2: State A has a measurement period of current or prior calendar year. Seller exceeded the economic 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 threshold in 2019 but did not in 2020. The seller will be eligible to withdraw from collecting tax 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.

<u>8.1.j.ii.</u> If the state does not allow a Seller to cancel its registration or to request inactive status at a time after the measurement period ends, the state should indicate when a seller may cancel its registration or request inactive status (e.g. the state has trailing nexus) in the Comment column.

<u>Disclosed Practice 8.1.k.</u> – What type of permit does a remote seller apply for? – (Only one answer should be "yes")

<u>8.1.k.i.</u> Remote Sellers register for a sales tax permit.

<u>8.1.k. ii.</u> Remote Sellers register for a (seller's) use tax permit.

<u>8.1.k.iii.</u> Remote Sellers may be required to register for either a sales tax or use tax permit or both depending upon either transfer of ownership or location of inventory.

Example 1: ABC, a remote seller sells tangible personal property to customers in State A. ABC's inventory is located in a warehouse in State B. ABC will direct the purchased property to be delivered to the purchaser in State A. Ownership transfers to purchaser in <u>State A</u>. If ABC meets the State A economic nexus threshold, ABC is required to obtain a sales tax permit in State A.

Example 2: ABC, a remote seller sells tangible personal property to customers in State A. ABC's inventory is located in a warehouse in State B. ABC will direct the purchased property to be delivered to the purchaser in State A. Ownership transfers to purchaser in <u>State B</u>. If ABC meets the State A economic nexus threshold, ABC is required to obtain a seller's use tax permit in State A.

<u>Disclosed Practice 8.2 – Marketplace Sellers</u>

<u>Explanation:</u>

Many states have enacted Marketplace Facilitator/Provider laws that require the Marketplace Facilitator/Provider to 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 that 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 amount 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.

<u>Disclosed Practice 8.2.a.</u> - Is a Marketplace Seller Required to Register in the State When All Sales Are Made Through Marketplace Facilitators/Providers

<u>8.2.a.i.</u> Subject to the responses in 8.1, a Marketplace Seller that does <u>not</u> have a physical presence in the State and sells exclusively through Marketplace Facilitators/Providers that are required to collect and remit sales/use tax on behalf of the Marketplace Seller, is still required to register with the State.

<u>8.2.a.ii.</u> A Marketplace Seller <u>with</u> a physical presence in the State that sells exclusively through Marketplace Facilitators/Providers that are required to collect and remit sales/use tax on behalf of the Marketplace Seller is still ~~not~~ required to register with the State.

<u>Disclosed Practice 8.2.b.</u> The Marketplace Seller shall include sales (dollars and transactions) made through a Marketplace Facilitator/Provider in determining it's economic nexus threshold.

<u>Disclosed Practice 8.2.c.</u> A Marketplace Seller registered and filing in a State shall include its marketplace sales in the total sales reported on its sales tax return and take a deduction as if the sales are exempt. If the State responds yes to this question, it will provide an explanation in the Comment column as to which deduction line to use.

<u>Disclosed Practice 8.2.d.</u> A Marketplace Seller is required to maintain exemption documentation only for its direct sales, and not for sales made through a Marketplace Facilitator/Provider.

<u>Disclosed Practice 8.2.e.</u> A Marketplace Seller may rely upon a customer's exemption documentation for its direct sales, even where that exemption certificate is maintained by a Marketplace Facilitator/Provider.

> **Example:** Marketplace Seller has access to the Marketplace Facilitator's/Provider's exemption documentation.

<u>Disclosed Practice 8.2.f</u>. Marketplace Seller Liability and Audits

8.2.f.i A Marketplace Seller is liable for the tax on sales through a Marketplace Facilitator/Provider if the Marketplace Seller provides incorrect or insufficient information.

8.2.f.ii. A Marketplace Seller may not be audited for Marketplace Facilitator/Provider sales unless the Marketplace Facilitator/Provider demonstrates that the Marketplace Seller did not provide correct and sufficient information.

8.2.f.iii. Does your state have a written policy or law on when and how a Marketplace Seller is liable for tax on sales made using Marketplace Facilitators/Providers? If yes, the state will provide a reference to the document location.

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 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.

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 of sales

Definition:

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

> **"Marketplace Facilitator/Provider"** generally is a person who owns, operates or otherwise controls a physical or electronic marketplace and facilitates the sale of a Marketplace Seller's products or services that directly or indirectly collects payment from the purchaser and transmits all or part of the payment to the Marketplace Seller.

Disclosed Practice 8.3. a. – Marketplace Facilitator/Provider

> "Marketplace Facilitator" is limited to i) a person that contracts with a seller to facilitate for consideration (regardless of whether fees are deducted from the transaction) the sale of products or services through a physical or electronic marketplace owned by the person and ii) that person directly or indirectly through an agreement with a seller collects and transmits all or part of a purchaser's payment to a seller.

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

8.3.b.i "**Marketplace Facilitator/Provider**" excludes a person whose principal activity with respect to marketplace sales is to provide payment processing services between two parties.

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." If the State's law is more restrictive, i.e., the payment processing activity must be the only activity, the State should indicate this in the Comment column.

Example: Purchaser makes a purchase on ABC Marketplace. During the check-out process, the purchaser chooses to pay for the purchase using Paypal. In a state that does not include payment processors as a marketplace, Paypal is not a marketplace facilitator/provider. ABC marketplace is a Marketplace Facilitator/Provider that may be required to register, collect and remit sales tax on the transaction.

<u>8.3.b.ii.</u> "**Marketplace Facilitator/Provider**" excludes a person whose only participation is connecting purchasers to Sellers and the payment processor is responsible for disbursing funds to a Seller.

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 platform can define a fee that the payment processor will distribute to them for use of the platform but otherwise does not have the ability to direct or disburse funds. The platform has no access to the sale proceeds or the tax proceeds.

<u>8.3.b.iii.</u> **"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".

<u>8.3.b.iv.</u> "**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 registered with the Commodity Futures Trading Commission, it should respond "yes".

<u>8.3.b.v.</u> Marketplace Facilitators/Providers are only required to collect tax on the sales of tangible personal property. Services and digital goods are excluded.

<u>8.3.b.vi.</u> Are certain transactions excluded from Martketplace Facilitator/Provider collection (*e.g.,* prepared food/grocery delivery services, hotel or travel intermidiaries, car rental services, *etc*.)? If "yes," please indicate exclusions in the Comment column.

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

<u>8.3.c.i.</u> The State does not provide for a waiver **of the Marketplace Facilitator/Provider registration, collection, and remittance requirement. (If the answer is yes, the State is not required to respond to c.ii.- c.iv.)**

8.3.c.ii. The State will provide 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 sales/use tax.

8.3.c.iii. The State allows a waiver if mutally agreed to by the Marketplace Facilitator/Provider and the Marketplace Seller and it is approved by the tax agency.

8.3.c.iv. If a Marketplace Facilitator/Provider and Marketplace Seller agree, and the threshold is met, a registered Marketplace Seller must notify the tax agency that it will be collecting the tax. If yes, please provide threshold amount in the Comment column.

Disclosed Practice 8.3.d. - Is the State's Marketplace Facilitator/Provider monetary economic nexus threshold and calculation the same as Remote and Marketplace Sellers in Disclosed Practices 8.1 and 8.2? If different, answer "no" and note threshold in the Comment column.

Disclosed Practice 8.3.e. – Is the State's Marketplace Facilitator/Provider transactional economic nexus threshold and calculation the same as Remote and Marketplace Sellers in Disclosed Practices 8.1 and 8.2? If different, please answer "no" and note threshold in the Comment column.

Disclosed Practice 8.3.f. – Is the State's Marketplace Facilitator/Provider Economic Nexus Measurement Period the same as Remote and Marketplace Sellers in Disclosed Practice 8.1 and 8.2? If different, please answer "no" and note threshold 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 remiting the state's sales/use tax if the Marketplace Facilitator/Provider only has employees located in the state that are not engaged in making retail sales (if applicable, please note any thresholds).

Disclosed Practice 8.3.h. – May a "Marketplace Facilitator/Provider" who falls below the State's Marketplace Facilitator/Provider economic nexus threshold during the measurement period cancel its registration in the same manner as a Remote and Marketplace Seller in Disclosed Practice 8.1.and 8.2? If different, please answer no and note differences in the Comment column.

Disclosed Practice 8.3.i. - The State's type of registration for Marketplace Facilitators/Providers is the same as Remote and Marketplace Sellers in Disclosed Practice 8.1 and 8.2? If different, please answer "no" and note type of registration in the Comment column.

Disclosed Practice 8.3.j. – Registration and Reporting requirements for the Marketplace Facilitator/Provider and its Marketplace Seller Sales

8.3.j.i. A Marketplace Facilitator/Provider is only required 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 must register and file separate returns for its own sales and those made on behalf of Marketplace Sellers.

Disclosed Practice 8.3.k. - May a person that does not meet the State's definition of "Marketplace Facilitator/Provider" voluntarily register, collect and remit the tax on behalf of its marketplace sellers?

8.3.k.i. If 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"?

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

8.3.l.i. Is a "Marketplace Facilitator/Provider" required to provide notification or certification to its marketplace sellers that it is registered, collecting and remitting the tax? (If yes, describe the method.)

8.3.l.ii. Is a "Marketplace Facilitator/Provider" required to provide notification or certification to the state tax agency that it is registered, collecting and remitting the tax? (If yes, describe the method.)

8.3.l.iii. Is a "Marketplace Facilitator/Provider" required to provide notification or certification to its marketplace sellers that it is no longer registered, collecting and remitting the tax as provided in 8.3.h.? (If yes, describe the method.)

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

8.3.m.i. Refunds – Marketplace Facilitator/Provider may request a refund from the state in the same manner as a seller/retailer.

8.3.m.ii. Timely filing/payment discounts/vendor allowances apply to Marketplace Facilitators/Providers in same manner as a seller/retailer.

8.3.m.iii. Exemption Documentation – sales made by Marketplace Facilitator/Provider are exempt based on the Marketplace Facilitator/Provider having access to exemption documentation maintained by either the Marketplace Facilitator/Provider or Marketplace Seller.

8.3.m.iv. Coupons, whether issued by a Marketplace Facilitator/Provider or a marketplace seller will be deemed to be a retailer's coupon/discount.

8.3.m.v. Bad Debts – Sales Tax bad debt deduction is based on the party that is able to claim the federal tax deduction under IRC 166, regardless of which party remitted the sales tax.

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

8.3.n.i. A Marketplace Facilitator/Provider is required to collect sales tax and liability only shifts to a Marketpalce Seller if such Seller provided incorrect or insufficient information.

8.3.n.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.o. - A Marketplace Facilitator/Provider is absolved of tax, interest, and penalty if it can show that a Marketplace Seller or the purchaser has already paid tax on the transaction.

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

<u>8.3.p.i.</u> A Marketplace Faciliator/Provider is required 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.

<u>8.3.p.ii.</u> A Marketplace Faciliator/Provider is required 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 provide fees and taxes in the Comment column along with legal authority.

<u>Disclosed Practice 8.3.q.</u> – The State's Marketplace Facilitator/Provider statute prohibits class action law suits (and, if applicable, false claims act suits) against Marketplace Facilitators/Providers.