

Section 2. Tax Administration Practices					
<p><b>Disclosed Practice 8 – Collection and Remittance Laws related to Remote Sellers, Marketplace Sellers and Marketplace Facilitators From Appendix E of the SSUTA.</b></p> <p>(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 <a href="#">South Dakota v. Wayfair</a> 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.]])</p>		<p><b>Does Your State Follow this Practice?</b></p>		<p><b>If You Answered No, Describe the Difference Between the Practice as Adopted by the Governing Board and Your State's Treatment. Add Additional Comments if Desired.</b></p>	
Reference Number	Disclosed Practice 8.1- Remote sellers	Yes	No	Statute/Rule Cite	Comment
	Economic nexus laws/regulations – Compliance effective date				
A.1 – General Remote seller definition	For purposes of Disclosed Practice 8.1 and subject to A. and B., a <b>“Remote Seller” is 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.</b> (Note: A remote seller can include a “marketplace seller” that does not have a physical presence.)				
A.1.a. - Remote Seller Definition – Inventory in 3 <sup>rd</sup> party warehouse	A. The State treats a seller whose <u>only</u> physical presence in the state is inventory owned by that seller that is located in a third party's warehouse as a remote seller.				
A.1.b. - Remote Seller Definition – Non-retail sales employee in state	B. The State treats a seller whose <u>only</u> physical presence in the state is an employee that is not involved in making retail sales as a remote seller.				

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Reference Number	Disclosed Practice 8.1.a - What is the State's Remote Seller Monetary Economic Nexus Threshold?	Yes	No	Statute/Rule Cite	Comment
A.2.a	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 (Definition of "sale" is addressed in XX) Note: If your state's threshold is exactly \$100,000 in sales, respond yes and indicate that threshold in the comment column.				
A.2.b	If the answer is "No", indicate the State's Remote Seller monetary economic nexus threshold in "Comment" column. If your State does not have a Remote Seller monetary economic nexus threshold, enter N/A in each column.				
Reference Number	Disclosed Practice 8.1.b. - How is a State's Remote Seller Monetary Economic Nexus Threshold Calculated? - Only one answer should be "yes".	Yes	No	Statute/Rule Cite	Comment
A.3.a - GROSS	The State's Remote Seller monetary economic nexus threshold is based on <b>GROSS</b> sales, gross revenue or gross receipts from <b>ALL</b> sales of products and services.				
A.3.b - RETAIL	The State's Remote Seller monetary economic nexus threshold is based only on <b>RETAIL</b> sales of products and services (only excludes sales for resale)				
A.3.c - TAXABLE	The State's Remote Seller monetary economic nexus threshold is based only on <b>TAXABLE</b> sales of products and services (all sales and transactions that are or should be taxed)				
A.3.d - OTHER	If no to A.3.a. through A.3.c., indicate in the comments section what your 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 Comments column.				
Reference Number	Disclosed Practice 8.1.c. - What is the State's Remote Seller Transactional Economic Nexus Threshold?	Yes	No	Statute/Rule Cite	Comment

A.4.a.	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 XX) Note: If yes, indicate if a seller that has <b>exactly</b> 200 transactions is considered to have met the State's transactional economic nexus threshold in the Comment column.				
A.4.b	If the answer is "No", indicate the State's Remote Seller transactional economic nexus threshold in "Comment" column. If your State does not have a Remote Seller transactional economic nexus threshold, enter N/A in each column. 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 Comments column.				
<b>Reference Number</b>	<b><i>Disclosed Practice 8.1.d. - Which sales are used to determine if a seller has met a state's transactional economic nexus threshold?</i></b>	<b>Yes</b>	<b>No</b>	<b>Statute/Rule Cite</b>	<b>Comment</b>
A.5.a	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, retail or taxable).				
A.5.b	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 indicate in the comments the type of sales used.				
<b>Reference Number</b>	<b><i>Disclosed Practice 8.1.e. - For purposes of computing the state's transactional economic nexus threshold, what is considered a "transaction"?</i></b>	<b>Yes</b>	<b>No</b>	<b>Statute/Rule Cite</b>	<b>Comment</b>
A.6.a.	The State's Remote Seller transactional economic nexus threshold is based on an <b>invoice</b> basis.				
A.6.b.	The State's Remote Seller transactional economic nexus threshold is based on an <b>individual item</b> basis (each item on a single invoice is considered a separate transaction)				

A.6.c.	The State's Remote Seller transactional economic nexus threshold is based on <b>each order placed</b> (i.e., if a single order is placed but it is delivered in three (3) separate shipments, it is considered one (1) transaction)				
A.6.d.	An invoice that includes items to be delivered into multiple states is considered a transaction in each of the states where the product is delivered.				
A.7.	<i>Disclosed Practice 8.1.f - A lease or annual 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)</i>				
<b>Reference Number</b>	<b>Disclosed Practice 8.1.g. - Remote seller who makes sales through a marketplace facilitator</b>	<b>Yes</b>	<b>No</b>	<b>Statute/Rule Cite</b>	<b>Comment</b>
A.8.a.	A remote seller must include sales made as a marketplace seller through a <b>registered</b> Marketplace Facilitator when determining if it meets or exceeds the state's economic nexus threshold.				
A.8.b.	Does it make a difference if the marketplace facilitator is or is not registered or required to be registered in the state?				
<b>Reference Number</b>	<b>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</b>	<b>Yes</b>	<b>No</b>	<b>Statute/Rule Cite</b>	<b>Comment</b>
A.9.a. - EITHER CURRENT or PREVIOUS YEAR	A Remote Seller has economic nexus in the state if it meets or exceeds the state's economic nexus threshold in <b>either</b> the previous calendar year or current calendar year.				
A.9.b. - ONLY PREVIOUS YEAR	A Remote Seller has economic nexus in the state only if it meets or exceeds the economic nexus threshold in <b>only the previous</b> calendar year.				
A.9.c. - OTHER	A Remote Seller has economic nexus in the state based on a different period of time. (Provide the basis in the comment column)				

Reference Number	<b><i>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</i></b>	Yes	No	Statute/Rule Cite	Comment
A.10.a	A Remote Seller must register and begin collecting the applicable tax on the <b>next transaction after meeting or exceeding the threshold</b>				
A.10.b.	A Remote Seller must register and begin collecting the applicable tax no later than the <b>first day of the month that is at the most 30 days after meeting or exceeding the threshold</b>				
A.10.c.	A Remote Seller must register and begin collecting the applicable tax no later than the <b>first day of the month that is at the most 60 days after meeting or exceeding the threshold</b>				
A.10.d.	If the answer to A.7.a to A.7.c. is “no” note in the Comment column when a Remote Seller must register and begin collecting the applicable tax				
Reference Number	<b><i>Disclosed Practice 8.1.j. - 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?</i></b>	Yes	No	Statute/Rule Cite	Comment
A.11.a.	A Remote Seller <del>whose sales/revenue and/or number of transactions</del> that falls below the State’s Remote Seller economic nexus threshold(s) during the measurement period may cancel its registration or request inactive status any time after the measurement period ends. If yes, identify if cancellation or inactive status.				
A.11.b.	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)				
Reference Number	<b><i>Disclosed Practice 8.1.i. - Remote seller who makes sales through a marketplace facilitator</i></b>	Yes	No	Statute/Rule Cite	Comment

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Reference Number	Disclosed Practice 8.1.k - What Type of Permit Does a Remote Seller Apply For? - (Only one answer should be "yes")	Yes	No	Statute/Rule Cite	Comment
A.12.a.	Remote Sellers register for a sales tax permit				
A.12.b.	Remotes Sellers register for a (seller's) use tax permit				
A.12.c.	Remotes Sellers may register for either a sales or use tax permit				
<b>Marketplace Seller Specific Questions</b>	<b>Disclosed Practice 8.2- Marketplace Sellers</b>				
	Marketplace Facilitator/Provider laws/regulations - Compliance effective date				
<b>General definition</b>	<b>For purposes of Disclosed Practice 8.2, "Marketplace Seller" means a seller who sells products or services through a physical or electronic marketplace operated by a Marketplace Facilitator/Provider</b>				
B.1	<b>Disclosed Practice 8.2.a -Is a Marketplace Seller Required to Register When All Sales Are Made Through Marketplace Facilitators</b>				
B.1.a	Subject to response in 8.1, a Marketplace Seller that does <u>not</u> have a physical presence in the State and sells <b>exclusively</b> through Marketplace Facilitators that are required to collect and remit sales/use tax on behalf of the Marketplace Seller is not required to register with the State.				

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B.1.b	A Marketplace Seller <u>with</u> a physical presence in the State that sells <b>exclusively</b> through Marketplace Facilitators that are required to collect and remit sales/use tax on behalf of the Marketplace Seller is not required to register with the State.				
B.2.	<b><i>Disclosed Practice 8.2.b - The Marketplace Seller should exclude sales made through a Marketplace Facilitator in determining its economic nexus threshold.</i></b>				
B.3	<b><i>Disclosed Practice 8.2.c - A Marketplace Seller should exclude sales made through the Marketplace Facilitator from its direct sales on its sales tax return.</i></b>				
B.3.a	If a marketplace seller is otherwise required to register for sales tax due to physical nexus or meeting the remote seller threshold, the seller should report marketplace sales as if they are exempt sales on the sales tax return.				
B.3.b.	When reporting sales tax on the sales tax return, the marketplace seller must include all sales made or facilitated by the business or by a Marketplace Facilitator in their total sales. Marketplace sellers may include in the deduction section sales made through a Marketplace Facilitator that is collecting and remitting sales tax on the remote sellers' behalf to arrive at net taxable sales. Also, the marketplace seller must report the total dollar amount of their sales made through a Marketplace Facilitator in a separate section of the return.				
B.4	<b><i>Disclosed Practice 8.2.d - A Marketplace Seller is required to maintain exemption documentation only for its direct sales, and not for sales made through a Marketplace Facilitator.</i></b>				
B.5	<b><i>Disclosed Practice 8.2.e - 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 (e.g., , Marketplace Seller has access to the Marketplace Facilitator's exemption documentation).</i></b>				
B.6	<b><i>Disclosed Practice 8.2.f - Marketplace Seller Liability</i></b>				

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B.6.a	A Marketplace Seller is only liable for the tax on sales through a Marketplace Facilitator when the Marketplace Seller fails to provide correct and sufficient information.				
B.6.b	A Marketplace Seller may not be audited for Marketplace Facilitator sales unless the Marketplace Facilitator demonstrates that the Marketplace Seller did not provide correct and sufficient information.				
B.6.c	The state has a written policy on when and how a Marketplace Seller is liable for tax on sales made using Marketplace Facilitators (if yes, please reference location of the document).				
B.7	<i>Disclosed Practice 8.2.g - Class action law suits are prohibited (and, if applicable, false claims act suits) against Marketplace Sellers</i>				
<b>Marketplace Facilitator Specific Questions</b>	<b>Disclosed Practice 8.3- Marketplace Facilitators</b>				
	<b>Marketplace Facilitator laws/regulations, including compliance effective dates</b>				
<b>Marketplace Facilitator Definition***</b>	<b>For purposes of Disclosed Practice 8.3, a</b> 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.				
	"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.				
C.3	<i>Disclosed Practice 8.3.a - Exceptions to Marketplace Facilitator Collection</i>				

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C.3.a	“Marketplace Facilitator” excludes a person whose principal activity with respect to marketplace sales is to provide payment processing services between two parties.				
C.3.b	“Marketplace Facilitator” excludes a person whose only participation is connecting purchasers to Marketplace Sellers and the payment processor is responsible for disbursing funds to a Marketplace Seller.				
C.3.c	“Marketplace Facilitator” excludes a person providing a service that merely connects buyers and sellers and does not participate in the payment process.				
C.3.d	“Marketplace Facilitator” excludes a person exclusively providing advertising services.				
C.3.e	“Marketplace Facilitator” excludes a person that is registered with the Commodity Futures Trading Commission when using its platform services.				
C.3.f	The State will provide a waiver if substantially all of a marketplace facilitator’s sellers are registered with the State to collect and remit sales/use tax.				
C.3.g	The State allows a waiver if mutually agreed to by the Marketplace Facilitator and the marketplace seller and it is approved by the tax agency.				
C.3.h	If an Marketplace Facilitator 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 comments.				
C.3.i	Marketplace Facilitators are only required to collect on the sales of tangible personal property, services are excluded.				
C.3.j	Are certain transactions excluded from Marketplace Facilitator collection (e.g., prepared food/grocery delivery services, hotel or travel intermediaries, car rental services, etc.)? If “yes,” please indicate exclusions in comments.				

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C.4	<i>Disclosed Practice 8.3.b - Is the State's Marketplace Facilitator 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 comments.</i>				
C.6	<i>Disclosed Practice 8.3.c - Is the State's Marketplace Facilitator 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 comments.</i>				
C.7	<i>Disclosed Practice 8.3.d - Is the State's Economic Nexus Measurement Period the same as Remote and Marketplace Sellers in Disclosed Practice 8.1? If different, please answer "no" and note threshold in comments.</i>				
C.8	<i>Disclosed Practice 8.3.e - Exceptions to Physical Presence</i>				
C.8.a	A Marketplace Facilitator's physical presence is based solely on its presence and not on the presence of a Marketplace Seller.				
C.8.b	A Marketplace Facilitator's who is below the state's economic nexus threshold(s) is excluded from collecting and remitting the state's sales/use tax if the seller only has employees located in the state that are not engaged in making retail sales (if applicable, please note any thresholds).				
C.9	<i>Disclosed Practice 8.3.f - May a "Marketplace Facilitator" who falls below the State's Marketplace Facilitator 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 comments.</i>				
C.10	<i>Disclosed Practice 8.3.g - The State's type of registration for Marketplace Facilitators is the same as Remote and Marketplace Sellers in Disclosed Practice 8.1? If different, please answer "no" and note type of registration in comments.</i>				

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C.11	<b><i>Disclosed Practice 8.3.h. – What are the Registration and Reporting requirements for the Marketplace Facilitator and its Marketplace Seller Sales?</i></b>				
C.11.a	A Marketplace Facilitator 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				
C.11.b	A Marketplace Facilitator may register and file separate returns for its own sales and those made on behalf of Marketplace Sellers				
C.11 c	A Marketplace Facilitator must register and file separate returns for its own sales and those made on behalf of Marketplace Sellers				
C.12	<b><i>Disclosed Practice 8.3.i. - <del>May a person that does not meet the State's definition of "Marketplace Facilitator" still voluntarily register and collect the tax as such for its marketplace seller sales.</del></i></b>				
C.13	<b><i>Disclosed Practice 8.3.j. - Marketplace Facilitator Notification Requirements</i></b>				
C.13.a	Is a "Marketplace Facilitator" required to provide notification or certification to its marketplace sellers? (if yes, describe the method)				
C.13.b	Is a "Marketplace Facilitator" required to provide notification or certification to the state tax agency? (if yes, describe the methods)				
C.14	<b><i>Disclosed Practice 8.3.k. - Marketplace Facilitator Treatment as a Seller – A Marketplace Facilitator is treated as the seller for the following:</i></b>				
C.14.a	Refunds – Marketplace Facilitator may request a refund from the state				
C.14.b	Timely filing/payment discounts/vendor allowances – applies to Marketplace Facilitators in same manner as a seller/retailer				

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C.14.c	Exemption Documentation - sales made by Marketplace Facilitator are exempt based on Facilitator having access to exemption documentation maintained by either the Marketplace Facilitator or Marketplace Seller.				
C.14.d	Coupons, whether issued by a Marketplace Facilitator or a marketplace seller will be deemed to be a retailer's coupon/discount				
C.14.e	Bad Debts - 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				
C.15	<b><i>Disclosed Practice 8.3.l. - Shifting of Liability to Marketplace Seller</i></b>				
C.15.a	A Marketplace Facilitator is required to collect sales tax and liability only shifts to a Marketplace Seller if such Seller provided incorrect or insufficient information				
C.15.b	The state has a written policy on what reasonable steps a Marketplace Facilitator must take to obtain correct and sufficient information from a Marketplace Seller to shift the liability of the tax to the Marketplace Seller if the information is subsequently found to be incorrect or insufficient (if "yes," please reference location of the document).				
C.16	<b><i>Disclosed Practice 8.3.m. - A Marketplace Facilitator is absolved of tax, interest, and penalty if it can show that a Marketplace Seller or the purchaser already paid tax on the transaction</i></b>				
C.17	<b><i>Disclosed Practice 8.3.n. - Is the Marketplace Facilitator Required to Collect Non-Sales/Use Taxes and Fees?</i></b>				
C.17.a	A Marketplace Facilitator 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 comments along with legal authority.				

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C.17.b	A Marketplace Faciliator 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 comments along with legal authority.				
C.18	<b><i><u>Disclosed Practice 8.3.0</u> - Class action law suits are prohibited (and, if applicable, false claims act suits) against Marketplace Facilitators</i></b>				

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