



STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

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NOTICE REGARDING 2019 PAs 143-146 MARKETPLACE FACILITATORS AND ECONOMIC NEXUS

Issued: December 23, 2019

On December 12, 2019, Public Acts 143 through 146 of 2019 were signed into law. PAs 143 and 144 (Marketplace Acts) are effective January 1, 2020, and require certain marketplace facilitators¹ to pay sales or use tax on their sales or sales they facilitate through their marketplace to Michigan purchasers. PAs 145 and 146 (Nexus Acts) are effective for transactions occurring on or after October 1, 2018, and codify into law the Department's sales and use tax economic nexus policy that was announced in Revenue Administrative Bulletin (RAB) 2018-16. The Nexus Acts also describe how marketplace facilitators and marketplace sellers must calculate their economic nexus thresholds for purposes of the Marketplace Acts beginning on January 1, 2020.

Marketplace Acts. The Marketplace Acts require marketplace facilitators to remit sales or use tax on sales they make or sales they facilitate for third-party marketplace sellers.

Marketplace facilitator defined: For purposes of the Marketplace Acts, a "marketplace facilitator" is a person that facilitates retail sales for third-party marketplace sellers by listing or advertising the seller's product for sale on its marketplace, and either directly or indirectly (through agreements with third parties or the facilitator's affiliates), collects payment from retail purchasers and transmits that payment to marketplace sellers for consideration. Conversely, a person that merely advertises products for sale, but does not collect and transmit payment from the retail purchaser to the seller, is not considered a marketplace facilitator. For example, a newspaper that runs a traditional classified section would not be a marketplace facilitator.

Rights and responsibilities of marketplace facilitators and sellers: The Marketplace Acts mandate that the facilitator is the taxpayer for facilitated sales; therefore, all rights and obligations of persons making retail sales apply to marketplace facilitators that facilitate sales for marketplace sellers. For instance, marketplace facilitators may claim an early payment discount in connection with facilitated sales. Further, marketplace facilitators are required to obtain and maintain exemption certificates for direct sales *and* sales they facilitate. Marketplace sellers must work with facilitators to ensure that facilitators have access to all relevant data needed to properly collect and remit the tax, including access to any exemption certificates that are provided to the marketplace seller.

¹ This Notice uses the terms "marketplace facilitator" and "facilitator" interchangeably.

Liability: The Marketplace Acts provide that only the marketplace facilitator will be held liable for sales it facilitates, unless the facilitator can demonstrate that its failure to collect and remit the appropriate amount of tax was due to incorrect or insufficient information provided by a marketplace seller. If such a failure occurs, the marketplace seller is liable for the tax. A marketplace facilitator is not liable for tax on sales it facilitates to the extent that it can demonstrate to the Department's satisfaction that the marketplace seller already remitted the tax to the Department on the transaction.

Audits: Generally, and regarding facilitated sales, the Department may only audit the facilitator for those facilitated sales. However, if the marketplace seller provides incorrect or insufficient information to the extent that the facilitator is no longer liable for the tax, the Department may audit the marketplace seller.

Returns: Marketplace facilitators must report all direct and facilitated sales combined on one return; no separate reporting is required or permitted at this time. A marketplace seller should not report sales made through a marketplace facilitator on its return. Consequently, a marketplace seller that *only* makes sales through a marketplace facilitator is not required to register for sales or use tax and is not required to file returns.

Sales excluded from the Marketplace Acts: Sales of telecommunications services are not subject to the Marketplace Acts. Sales of rooms or accommodations, if the accommodations provider is registered for sales or use tax, are also not subject to the Marketplace Acts. The seller of these services or accommodations is required to report and remit tax as it had prior to enactment of the Marketplace Acts; marketplace facilitators should not report or remit tax on these sales.

Effective date and penalty waiver: The Marketplace Acts are effective beginning January 1, 2020. However, upon request, the Department will waive failure to file or deficiency penalties for tax due on sales facilitated by a marketplace facilitator for returns due on or before April 20, 2020. Penalties will not be waived for direct sales made by facilitators during this timeframe.

Nexus Acts.

Economic nexus: The Nexus Acts codify the Department's economic nexus policy announced in RAB 2018-16. Specifically, they provide that a seller that has gross receipts exceeding \$100,000 or that has 200 or more separate transactions into Michigan in the previous calendar year has nexus with Michigan. The Nexus Acts also provide that they do not alter physical presence nexus standards or the nexus presumptions provided for under MCL 205.52b or MCL 205.95a. Consistent with RAB 2018-16, these standards codify the effective date of October 1, 2018. More information regarding the Department's economic nexus policy may be found at www.Michigan.gov/remotesellers.

Returns: The Nexus Acts provide that a person that only makes sales for purposes of resale (i.e., no retail sales) is not required to register for sales or use tax or file returns.

Marketplace facilitators/sellers nexus: The Nexus Acts provide that for purposes of calculating economic nexus thresholds, a marketplace facilitator shall include **both** its direct sales and sales it facilitates for marketplace sellers. Likewise, a marketplace seller must include its direct sales and sales it makes on marketplaces in calculating its sales volumes for purposes of economic

nexus. The Nexus Acts do not otherwise alter which party is responsible for reporting and remitting the tax.

To read the new laws in their entirety, please refer to 2019 PAs 143-146 at www.legislature.mi.gov.