

MICHIGAN DEPARTMENT OF TREASURY
REVENUE ADMINISTRATIVE BULLETIN 2021-21

Approved: December 21, 2021

SALES AND USE TAX NEXUS STANDARDS
FOR REMOTE SELLERS

(Replaces Revenue Administrative Bulletins 1999-1, 2015-22, and 2018-16)

Pursuant to MCL 205.6a, a taxpayer may rely on a Revenue Administrative Bulletin issued by the Department of Treasury after September 30, 2006, and shall not be penalized for that reliance until the bulletin is revoked in writing. However, reliance by the taxpayer is limited to issues addressed in the bulletin for tax periods up to the effective date of an amendment to the law upon which the bulletin is based or for tax periods up to the date of a final order of a court of competent jurisdiction for which all rights of appeal have been exhausted or have expired that overrules or modifies the law upon which the bulletin is based.

RAB 2021-21.

The Michigan Revenue Act authorizes the Department of Treasury (“Department”) to periodically issue bulletins that explain the Department’s interpretation of current state tax laws.¹ The purpose of this Revenue Administrative Bulletin (RAB) is to: (i) explain each of the three ways that an out-of-state (also called “remote”) seller² can establish nexus in Michigan for purposes of Michigan’s General Sales Tax Act (GSTA)³ and Use Tax Act (UTA)⁴, namely physical presence nexus, attributional or “click-through” nexus, and economic nexus; (ii) address how tax is reported and remitted as either sales or use tax; and (iii) explain the filing requirements for remote sellers who have nexus with Michigan.

This RAB addresses only the specific nexus-related issues described above. It does not address any other aspect of, or issue arising under, the GSTA and/or the UTA. Except for a limited discussion of the calculation of the economic nexus threshold, this RAB also does not address marketplace facilitators and marketplace sellers under these acts.⁵ This RAB updates and replaces RABs 1999-1, 2015-22, and 2018-16.

ISSUES

- I.** What are the constitutional parameters under which the state may require remote sellers to collect and remit Michigan sales and use taxes on sales sourced to Michigan?
- II.** What are the ways in which a remote seller can establish nexus with Michigan?

¹ See MCL 205.3(f).

² For purposes of this RAB, the phrase “out-of-state seller” or “remote seller” means a seller (including a foreign seller) that sells tangible personal property through the internet, catalogs, mail order, or any other similar method.

³ MCL 205.51 *et seq.*

⁴ MCL 205.91 *et seq.*

⁵ For additional information regarding marketplace facilitators and marketplace sellers, see RAB 2021-22.

- A. What is physical presence nexus and how can it be established? Once established, what is the duration of physical presence nexus?
 - B. What is the presumption of representational, attributional, or “click-through” nexus, and how can the presumption be rebutted? What is the duration of the presumption of nexus once it arises?
 - C. What is economic nexus and how can it be established? What is the duration of economic nexus once it has been established?
- III. How is tax reported and remitted as either sales or use tax?
 - IV. What are the filing requirements for a remote seller who has nexus with Michigan for sales and use tax purposes?

ANALYSIS AND DISCUSSION

I. Constitutional Parameters of the State’s Authority to Impose Tax

The authority of each of the several states to impose sales or use taxes on out-of-state sellers stems from its implied authority under the Commerce Clause of the United States Constitution to regulate, and therefore tax, interstate commerce. Interstate commerce “may be required to pay its fair share of state taxes,” observed the United States Supreme Court in *D.H. Holmes Co. v McNamara*.⁶ The Court has also made clear, however, that state taxes on interstate commerce “must not create any effect forbidden by the Commerce Clause.” *Complete Auto Transit, Inc. v Brady*.⁷ The Court has stated that a state tax on interstate commerce will pass constitutional muster under the Commerce Clause if it: 1) applies to an activity with a “substantial nexus” with the taxing state; 2) is fairly apportioned; 3) does not discriminate against interstate commerce; and 4) is fairly related to the services that the taxing state provides.⁸

In *Quill v North Dakota*,⁹ the Court addressed the “substantial nexus” requirement in the context of that state’s use tax, holding under a bright-line standard that, to be subject to state taxation, an out-of-state seller was required to have a “physical presence” in the taxing state. In June 2018, however, *Quill* was overturned by the Court’s decision in *South Dakota v Wayfair*.¹⁰

At issue in *Wayfair* was a South Dakota law that required remote sellers, including those with no physical presence in the state, to remit sales tax on sales sourced to South Dakota if, in the previous calendar year, the seller’s sales in the state exceeded \$100,000 or the seller had at least 200 separate transactions with customers in the state.¹¹ Reexamining *Quill*, the Court found it to be “flawed on its own terms,” concluding that the physical presence rule upheld in that case was both “unsound and incorrect.”¹² The Court observed that *Quill* had effectively come to serve as a “judicially created tax shelter” because businesses could limit their physical presence but, with ongoing

⁶ *D.H. Holmes Co. v McNamara*, 486 US 24, 31 (1988).

⁷ *Complete Auto Transit, Inc. v Brady*, 430 US 274, 285 (1977).

⁸ *Id.*, at 279.

⁹ *Quill v North Dakota*, 504 US 298 (1992).

¹⁰ *South Dakota v Wayfair*, 585 US ___; 138 S Ct 2080 (2018).

¹¹ *Id.*, 138 S Ct at 2089.

¹² *Id.*, 138 S Ct at 2092, 2099.

advancements in technology, continue to sell their goods and services to a state’s consumers.¹³ Consequently, the Court determined that “substantial nexus” under the *Complete Auto* test was established when “the taxpayer ... avails itself of the substantial privilege of carrying on business in that jurisdiction.”¹⁴

The Court thus found that a remote seller’s economic presence in a state could, by itself, be sufficient to create nexus. The Court highlighted three specific characteristics of South Dakota’s law in upholding its constitutionality. First, the law contained a safe harbor for small sellers, because sellers with less than \$100,000 in sales and fewer than 200 separate sales transactions in the state in the previous calendar year were determined not to have nexus for purposes of the tax. Second, the law explicitly applied only on a prospective basis. Finally, the Court favorably noted South Dakota’s membership in the Streamlined Sales and Use Tax Agreement, a system which “standardizes taxes to reduce administrative and compliance costs.”¹⁵

The Department subsequently amended its sales and use tax nexus standards for remote sellers to include economic presence, effective for transactions occurring on or after October 1, 2018, consistent with the Court’s decision in *Wayfair*. The Department’s post-*Wayfair* sales and use tax economic nexus policy was codified into statute by Public Acts 145 and 146 of 2019.¹⁶ The addition of these economic presence nexus standards does not alter the physical presence nexus standards or the nexus presumptions provided for under MCL 205.52b and 205.95a. Guidance regarding the state’s sales and use tax nexus standards has been spread across multiple RABs. This RAB is therefore intended to both update and replace previous RABs issued by the Department addressing sales and use tax nexus for remote sellers, namely, RABs 1999-1, 2015-22, and 2018-16.

II. Nexus with Michigan Can Be Established in Several Ways

A remote seller that has substantial nexus with Michigan must remit sales or use tax, as appropriate, on all sales of tangible personal property sourced to Michigan and file all required returns. Under the constitutional parameters outlined above, and consistent with the GSTA and UTA, a remote seller can establish nexus with Michigan in any one of several different ways.

A. Physical Presence Nexus

Although the Supreme Court’s *Wayfair* decision overturned *Quill*’s physical-presence-only nexus requirement, maintaining a physical presence in the state remains an important way that an out-of-state seller can establish nexus with Michigan for sales and use tax purposes. Such a seller has nexus with Michigan and is required to remit sales and use tax on all taxable sales sourced to Michigan when it engages in any one or more of the following activities:

1. It has one or more employees resident or temporarily present in Michigan engaging in any activity intended to establish or maintain the market for the

¹³ *Id.* 138 S Ct at 2094.

¹⁴ *Id.*, 138 S Ct at 2099 (internal quotations omitted).

¹⁵ *Id.*, 138 S Ct at 2092, 2099 – 2100.

¹⁶ See MCL 205.52c and 205.95b.

out-of-state seller in Michigan, other than those activities set forth in subparagraph 7 below. An employee temporarily present in Michigan for two or more days and engaging in such activity for establishing or maintaining a market not included in subparagraph 7 will create nexus.

2. It owns, rents, leases, maintains, or has the right to use and uses real property in Michigan or tangible personal property that is permanently or temporarily physically located in Michigan.

Example A: Company A's only physical presence in Michigan is inventory it owns that is located in a marketplace facilitator's warehouse. Company A does not control the inventory, as it is used by the marketplace facilitator to fulfill facilitated sales of Company A on a marketplace. Company A has nexus with Michigan.

3. Its employees own, rent, lease, use, or otherwise maintain an office or other place of business in Michigan.
4. It has goods delivered to Michigan in vehicles that the out-of-state seller, or an affiliated person,¹⁷ owns, rents, leases, uses, or maintains.

Example B: Company B uses its own trucks to deliver goods to purchasers in Michigan over 2 or more days. Company B has nexus with Michigan.

Example C: Company C, whose wholly owned subsidiary acts as its representative, delivers goods to Company C's purchasers in Michigan over 2 or more days. Company C has nexus with Michigan.

Example D: Company D has all of its goods delivered to purchasers in Michigan by a shipping company that is a wholly owned subsidiary of Company D. Company D has nexus with Michigan.

5. Agents, representatives, independent contractors, brokers, or others acting on behalf of the out-of-state seller own, rent, lease, use, or maintain an office or other place of business in Michigan, and this property is used in the representation of the out-of-state seller in Michigan.
6. Agents, representatives, independent contractors, brokers, or others acting on behalf of the out-of-state seller are present in Michigan on a regular and systematic basis, conducting activities to establish or maintain a market for the out-of-state seller, whether or not such individuals or entities reside in Michigan.
 - a. Activities that establish or maintain a market for the out-of-state seller include, but are not limited to, the following:

¹⁷ For purposes of this RAB, "affiliated person" has the meaning set forth in MCL 205.52b and MCL 205.95a.

- i. Soliciting sales;
 - ii. Making repairs or providing maintenance or service to property sold or to be sold;
 - iii. Collecting current or delinquent accounts, through assignment or otherwise, related to sales of tangible personal property or services;
 - iv. Delivering property sold to customers;
 - v. Installing or supervising installation of goods at or after shipment or delivery;
 - vi. Conducting training for employees, agents, representatives, independent contractors, brokers, or others acting on behalf of the out-of-state seller, or for customers or potential customers;
 - vii. Providing customers with any kind of technical assistance or service including, but not limited to, engineering assistance, design service, quality control, product inspection, or similar services;
 - viii. Investigating, handling, or otherwise assisting in resolving customer complaints;
 - ix. Providing consulting services; or
 - x. Soliciting, negotiating, or entering into franchising, licensing, or similar agreements.
- b. “Regular and systematic” presence means presence in Michigan of at least 2 days on an annual basis. “Annual” means a 12-month period.
 - c. Lawyers, accountants, investment bankers, and similar professionals in Michigan, performing their customary services for an out-of-state seller in their professional capacity, are not considered to be establishing or maintaining a market on behalf of the out-of-state seller.
7. If none of an out-of-state seller’s contacts with or activities in Michigan fall within paragraphs 1 – 6 above, and its contacts with or activities in Michigan are wholly restricted to those listed in a. through h., below, such contacts or activities will be presumed not to create nexus. If an activity is listed in a. through h., below, but that activity also falls within the activities described above in paragraphs 1 – 6, that paragraph controls and the out-of-state seller has nexus.
- a. Meeting with in-state suppliers of goods or services;
 - b. Attending in-state meetings with government representatives in their official capacity;
 - c. Attending occasional in-state meetings (e.g., board meetings, retreats, seminars and conferences sponsored by others, training or schooling sponsored by others, etc.);
 - d. Holding recruiting or hiring events;
 - e. Advertising in the state through various media;
 - f. Renting customer lists to or from an in-state entity;

- g. Attending a trade show at which no orders for goods are taken and no sales are made; or
- h. Participating in a trade show at which no orders for goods are taken and no sales are made, for fewer than ten days cumulatively on an annual basis.

Example E: Company A, an out-of-state manufacturer and seller of towels and linens, meets with a textile manufacturer in Michigan merely to inspect fabrics and patterns it may use in its line of products. Company A does not have nexus with Michigan because its only activity in Michigan is meeting with an in-state supplier.

Example F: Company B, an out-of-state manufacturer and seller of towels and linens, meets with a textile manufacturer in Michigan to inspect fabrics and patterns it may use in its line of products. The meeting includes a tour of the textile manufacturer's facilities. Several of Company B's sales directors are included in the meeting as a training exercise, so that they can learn first-hand about the materials and processes used by the company's suppliers. Company B has nexus with Michigan because in addition to meeting with an in-state supplier, it is conducting training for some of its employees. If Company B instead sent the employees to a training seminar sponsored by and held at Michigan State University, the training activity would not create nexus, pursuant to paragraph 7.c., above.

Once an out-of-state seller has established physical presence nexus with Michigan, nexus will continue to exist for that seller from the date of contact forward for the remainder of that month and for the following 11 months. The seller may submit proof to the Department that a shorter period of time more reasonably reflects the sales that were caused by the seller's in-state contacts under the particular facts and circumstances. Likewise, the Department may determine that a longer period of time better reflects the sales that were caused by the seller's in-state contacts under the particular facts and circumstances.

Example G: The representative of an out-of-state seller enters Michigan on January 17 and again on February 15 in order to conduct activities intended to maintain the market for the out-of-state seller. The out-of-state seller has nexus with Michigan beginning on February 15 – the second day of contact – forward. The seller must file appropriate sales and use tax returns for the remainder of the month of February and for the next 11 months.

B. Representational, Attributional, or “Click-Through” Nexus

Section 2b of the GSTA¹⁸ and Section 5a¹⁹ of the UTA, effective October 1, 2015, address the circumstances under which an out-of-state seller is presumed to have nexus with Michigan for purposes of those statutes based upon the seller's relationships with other entities doing business in Michigan or its agreements with residents of Michigan.

1. Pursuant to these statutory sections, an out-of-state seller is presumed to be engaged in the business of making sales at retail in Michigan and is subject to the GSTA and/or the UTA when the seller or another person engages in or performs any of the following activities in this state:
 - a. Sells a similar line of products as the seller and does so under the same or a similar business name as the seller.
 - b. Uses its employees, agents, representatives, or independent contractors in Michigan to promote or facilitate sales by the seller to purchasers in Michigan.
 - c. Maintains, occupies, or uses an office, distribution facility, warehouse, storage place, or similar place of business in Michigan to facilitate the delivery or sale of tangible personal property sold by the seller to the seller's purchasers in Michigan.
 - d. Uses, with the seller's consent or knowledge, trademarks, service marks, or trade names in Michigan that are the same or substantially similar to those used by the seller.

Example H: Company A, a Michigan company that sells environmentally friendly lawn care products, enters into a license agreement with So Green, a company in Ohio that sells similar products. The agreement permits Company A, for appropriate consideration, to use the name "So Green" and that company's registered trademark, a stylized tree and house, in its advertising and business operations. So Green is presumed to have nexus with Michigan because its licensee is using its intellectual property in Michigan.

- e. Delivers, installs, assembles, or performs maintenance or repair services for the seller's purchasers in Michigan.

Example I: Company A is an out-of-state seller of mobile telephones. Although customers can send a device directly to Company A for repair, for convenience, Company A has also arranged for Cell Phone Repair, a Michigan company, to perform "authorized" in-person repairs on Company A's products. Company A is presumed to have nexus with Michigan because a Michigan

¹⁸ MCL 205.52b, added by 2014 PA 553.

¹⁹ MCL 205.95a, added by 2014 PA 554.

company performs repair services for Company A's customers in Michigan.

- f. Facilitates the sale of tangible personal property to purchasers in Michigan by allowing the seller's purchasers in Michigan to pick up or return tangible personal property sold by the seller at an office, distribution facility, warehouse, storage place, or similar place of business maintained by that person in Michigan.

Example J: Big Box Store allows purchasers of Company A to return items that were purchased online to its brick-and-mortar locations in Michigan. Company A is presumed to have nexus with Michigan.

- g. Shares management, business systems, business practices, or employees with the seller, or in the case of an affiliated person, engages in intercompany transactions related to the activities occurring with the seller to establish or maintain the seller's market in Michigan.
 - h. Conducts any other activities in Michigan that are significantly associated with the seller's ability to establish and maintain a market in Michigan for the seller's sales of tangible personal property to purchasers in Michigan.
2. The presumption stated in 1., above, may be rebutted by demonstrating that a person's activities in Michigan are not significantly associated with the out-of-state seller's ability to establish or maintain a market in Michigan for sales of tangible personal property to purchasers in Michigan.
 3. Additionally, an out-of-state seller is presumed to be engaged in the business of making sales at retail in Michigan if the seller has entered into an agreement with one or more Michigan residents under which the resident refers potential purchasers (e.g., by a link on an internet website or by an in-person oral presentation) to the seller for a commission or other consideration based on completed sales.²⁰ The presumption arises only if both of the following apply:
 - a. Gross receipts from all referred sales to purchasers in Michigan are greater than \$10,000 during the immediately preceding 12 calendar months; and
 - b. Gross receipts from all sales to purchasers in Michigan exceed \$50,000 during the immediately preceding 12 calendar months.
 4. The out-of-state seller may rebut the presumption in 3., above, by demonstrating that the residents of Michigan with whom the seller has agreements did not engage in any solicitation or other activity that is significantly associated with the seller's ability to establish or maintain a market

²⁰ When the referral originates from a website, this is generally referred to as "click-through" nexus. However, this also applies to referral agreements in print or any other form of media.

in Michigan. The presumption shall be considered rebutted if evidence of all of the following is provided:

- a. Contract condition. The agreement or contract between the seller and the resident provides that the resident is prohibited from engaging in any solicitation activities in Michigan on behalf of the seller. Solicitation activities include, but are not limited to, the following: the referral of potential customers to the seller by means of distributing flyers, coupons, newsletters, and other printed promotional materials, or electronic equivalents; oral solicitation (e.g., in-person referrals); and the initiation of telephone calls or e-mails. In addition, if the resident is an organization such as a club or non-profit group, the contract or agreement must provide that the organization will maintain on its website information alerting its members to the prohibition against each of the solicitation activities described above; and
 - b. Proof of compliance condition. Each resident representative provides to the seller a signed statement stating that the resident representative has not engaged in any prohibited solicitation or other activities in Michigan on behalf of the seller at any time during the immediately preceding 12 calendar months. In addition, if the resident representative is an organization, the statement must also include a certification that the resident organization's website includes information directed at its members alerting them to the prohibition against the solicitation and other activities described in this RAB. The statements must be provided and obtained in good faith.
5. Mere advertising will not give rise to a presumption of nexus. This exception does not apply when advertising is paid for by commissions or other consideration based on completed sales.
 6. An out-of-state seller may use the *Annual Certification of No Solicitation* and the *Statement from Organization*, if applicable, to satisfy MCL 205.52b(4) and MCL 205.95a(4).²¹
 7. For purposes of MCL 205.52b and MCL 205.95a, "resident" includes, but is not limited to: an individual domiciled in Michigan; an entity organized or incorporated under the laws of Michigan; or any entity with a place of business, or otherwise engaged in business, in Michigan.

Example K: XYZ Company (XYZ) is an internet-based retailer of sporting goods, specializing in hockey equipment. XYZ is located in Massachusetts. XYZ sells its merchandise nationwide, including in Michigan. The merchandise sold by XYZ is delivered by the U.S. Postal Service or by common carrier. As part of its marketing plan, XYZ enters into agreements with several hockey clubs located in Michigan whereby the hockey clubs will maintain links to XYZ's retail website on the clubs' own websites.

²¹ The certification form can be found as an attachment to this RAB.

XYZ will pay a commission and/or other consideration to the hockey clubs based on completed sales that XYZ makes that originate from these links. From October 1, 2019, to September 30, 2020 (i.e., the immediately preceding 12 calendar months), XYZ has gross receipts from sales of its merchandise based on these agreements with the Michigan hockey clubs totaling \$80,000. Other than its customers and the agreements described above, XYZ has no other connection with Michigan. XYZ is presumed to be making taxable sales in Michigan and is required to register as a seller, remit Michigan sales and use taxes, and file returns.

Example L: ABC Inc. (ABC) is an internet-based retailer of home tools and supplies. ABC's home office is in North Carolina. ABC sells its products nationwide, including in Michigan, and its products are delivered to its customers by common carrier. ABC had 60 separate sales transactions to Michigan customers in the last calendar year, with those sales totaling \$25,000. Other than having customers in Michigan and the agreements described below, ABC has no other connection with Michigan. As part of its business plan to market its products in Michigan, ABC enters into agreements with several local organizations to place online advertisements on their websites, which, when clicked, lead the website user to ABC's retail website. In exchange for placing ABC's advertisements on their websites, ABC agrees to pay the organizations a set fee based solely on the number of clicks on the link to ABC's website, whether or not the clicks result in completed sales. ABC's agreement with the organizations is merely to place advertising on the organizations' websites. Therefore, ABC is not presumed to be a seller making taxable sales in Michigan by soliciting business in Michigan. Consequently, ABC is not required to register as a seller, remit Michigan sales and use taxes, or file returns based on those activities.

An out-of-state seller will be presumed to be engaged in the business of making sales at retail in Michigan for purposes of MCL 205.52b and MCL 205.95a as follows:

1. Once nexus has been established under MCL 205.52b(1) or MCL 205.95a(1), an out-of-state seller is presumed to be engaged in the business of making sales at retail in Michigan commencing with the day nexus is established and continuing for the following 11 calendar months.²²

Example M: An out-of-state seller's representative enters Michigan on January 17 and 18 for purposes of making sales of tangible personal property in Michigan. The out-of-state seller has nexus with Michigan beginning on the second day of contact – January 18 – forward. The seller must remit sales and

²² The presumed nexus period is a rolling period. If an action establishing nexus is taken by the seller during the trailing 11 months, a new 11-month period commences.

use taxes and file tax returns for the remainder of the month of January and for the succeeding 11 calendar months.

2. Once nexus has been established under MCL 205.52b(3) or MCL 205.95a(3), an out-of-state seller is presumed to be engaged in the business of making sales at retail in Michigan commencing with the first day of the calendar month and for the following 11 calendar months.²³

Example N: Under the facts presented in Example K, above, XYZ has nexus with Michigan beginning on October 1, 2020. The seller must remit sales and use taxes and file tax returns for the entire month of October and for the succeeding 11 calendar months.

C. Economic Nexus

As noted, the Department's post-*Wayfair* sales and use tax economic nexus policy was codified into statute, effective for transactions occurring on or after October 1, 2018.²⁴

1. After September 30, 2018, a remote seller that had sales into this state (both taxable and non-taxable)²⁵ exceeding \$100,000, or a seller that completed 200 or more separate sales transactions into this state (both taxable and non-taxable), in the previous calendar year has nexus with Michigan. A single sales transaction consists of a single order, even if multiple items are ordered at the same time and appear on a single invoice, multiple payments are made for a single purchase, or a single order is delivered in several separate shipments. An invoice that includes items to be delivered into multiple states is considered a transaction in Michigan if any of the items are delivered into Michigan. Sellers meeting the economic nexus threshold are required to remit sales or use tax on all taxable sales into Michigan and file all required returns.²⁶
2. Remote sellers were required to review their 2017 calendar year sales (i.e., January 1, 2017, through December 31, 2017) in order to determine whether they exceeded either of the economic nexus thresholds, and therefore had nexus with Michigan after September 30, 2018. Each subsequent calendar year's sales must continue to be reviewed in the same manner. Remote sellers that have nexus only due to exceeding either of these economic thresholds are not liable for any tax, penalty, or interest for any transactions occurring on or before September 30, 2018.

²³ See footnote 22.

²⁴ The economic nexus standards described below are not applicable to out-of-state sellers that have nexus with Michigan due to their physical, representational, attributional, or click-through presence in Michigan; those sellers must continue to report and remit tax as described previously in this RAB.

²⁵ For purposes of calculating the economic nexus threshold, sales of all types of products are included, such as sales of tangible personal property, sales of digital goods, and sales of services. Gross sales are used in the calculation.

²⁶ As explained below, the economic nexus standard is expressly made applicable to marketplace facilitators and marketplace sellers. For more information on marketplace facilitators and marketplace sellers, see RAB 2021-22 Sales and Use Tax – Marketplace Facilitators.

Example O: Seller has no physical presence, representational, attributional, or click-through nexus with Michigan. Seller had \$100,001 of sales into Michigan in calendar year 2017. Seller had nexus with Michigan effective after September 30, 2018, and was required to begin reporting and remitting sales or use tax on all taxable sales from October 1, 2018, through December 31, 2018. Nexus for 2019 was determined by 2018 sales.

3. Once an out-of-state seller has established nexus due to its economic presence in Michigan, it must continue to remit tax until an entire calendar year passes in which it does not meet either of the economic thresholds set forth above.

Example P: Assume the same facts as Example O except that the seller had only \$10,000 of sales and fewer than 200 sales transactions into Michigan for calendar year 2018 (January 1, 2018, through December 31, 2018). Seller was required to report and remit tax for all taxable sales made after September 30, 2018, through December 31, 2018. Due to its 2018 Michigan sales, Seller no longer had economic nexus beginning on January 1, 2019, and Seller may therefore unregister, and cease remitting and reporting tax after that date.

4. The economic nexus standard described above and codified in MCL 205.52c and 205.95b is also made expressly applicable to marketplace facilitators and marketplace sellers. That is, marketplace facilitators and marketplace sellers will have economic presence in Michigan and be required to report and remit sales and use tax if, in the previous calendar year, the seller had more than \$100,000 in sales to, or 200 or more separate sales transactions with, Michigan customers. In general, a “marketplace facilitator” is a person that facilitates a retail sale by a marketplace seller by listing or advertising for sale tangible personal property or taxable services in a marketplace.²⁷ To be a marketplace facilitator, the facilitator must, either directly or indirectly, collect payment from the customer and transmit that payment to the marketplace seller.²⁸ A “marketplace seller” is a person that makes retail sales through a physical or electronic marketplace operated by a marketplace facilitator.²⁹

For purposes of calculating whether it meets the economic nexus threshold, a marketplace facilitator must include both its own direct sales and sales that it facilitates for marketplace sellers. Similarly, a marketplace seller must include its own direct sales and sales (both taxable and non-taxable) it makes on marketplaces when calculating its sales volumes for purposes of determining whether it has

²⁷ See MCL 205.52d(11)(b) and MCL 205.95c(11)(b). Certain persons are excluded from the statutory definition of “marketplace facilitator.”

²⁸ *Id.*

²⁹ See MCL 205.52d(11)(c) and MCL 205.95c(11)(c).

economic nexus with Michigan. MCL 205.52c and 205.95b do not otherwise alter which party is responsible for reporting and remitting the tax.

III. Sales or Use Tax

If an out-of-state seller has nexus with Michigan (under any of the sales and use tax nexus standards described in this RAB) and makes a taxable retail sale to a Michigan purchaser, the tax must be remitted and reported as sales tax. If an out-of-state seller has nexus with Michigan (under any of the nexus standards described in this RAB) and makes a taxable retail sale to a Michigan purchaser but transfer of ownership of the property occurs outside of Michigan, then the tax must be remitted and reported as use tax. It is important to note that, in most cases, ownership will transfer in Michigan, and it is sales tax that will be remitted and reported.

If a seller does not have nexus with Michigan, but nevertheless voluntarily collects and remits Michigan tax on retail sales, the tax must be remitted and reported as use tax.

IV. Filing Requirements

Out-of-state sellers that have nexus with Michigan for sales or use tax purposes (under any of the nexus standards described in this RAB) are required to register with the Department and file all applicable sales and use tax returns. However, a remote seller that meets the economic nexus standards but makes no sales at retail (for example, a pure wholesaler) is not required to register or file returns.³⁰ For complete information regarding sellers' registration and return filing obligations, as well as links to other helpful resources, please visit <https://www.michigan.gov/taxes/>. From there, click on "Business Taxes" and then on "Sales and Use Tax."

³⁰ See MCL 205.52c(6).

Annual Certification of No Solicitation and Statement from Organization

Instructions. A person may complete the certification form below, or any document that satisfies statutory requirements, to annually certify under penalty of perjury that the person has not engaged in any solicitation activities in Michigan at any time during the previous 12-month period.

An organization should also complete the *Statement from Organization*, or any document that satisfies the statutory requirements, to annually certify under penalty of perjury that its website includes information directed at its members alerting them to the prohibition against the solicitation activities described above.

These forms or any other document that satisfies the annual certification requirements of the statute should be kept for a minimum of 7 years.

ANNUAL CERTIFICATION OF NO SOLICITATION

(to be completed by persons operating in Michigan)

I HEREBY CERTIFY, UNDER PENALTY OF PERJURY:

That the person named below is operating under an agreement with _____ and the
OUT-OF-STATE SELLER'S NAME
 person named below has not engaged in "solicitation activities" in Michigan that would refer potential customers to
 _____ at any time during the previous 12 calendar months (_____
(OUT-OF-STATE SELLER'S NAME) PERIOD).

"Solicitation activities" include, but are not limited to, distributing flyers, coupons, newsletters, and other printed promotional materials or electronic equivalents, verbal soliciting (for example, in-person referrals), initiating telephone calls, and sending emails.

PERSON'S NAME		
SIGNATURE OF PERSON OR PERSON'S AUTHORIZED REPRESENTATIVE		DATE
PRINTED NAME OF PERSON SIGNING	TITLE	TELEPHONE NUMBER ()
ADDRESS OF PERSON SIGNING (Street, City, State, Zip Code)		
ADDRESS OF PERSON'S AUTHORIZED REPRESENTATIVE WHEN APPLICABLE (Street, City, State, Zip Code)		

**STATEMENT FROM
ORGANIZATION**
(to be completed by organizations)

I HEREBY CERTIFY, UNDER PENALTY OF PERJURY:

That the website of the organization named below includes information that alerts its members that they are prohibited from engaging in any solicitation activities in Michigan that refers potential customers to

_____, including, but not limited to, distributing flyers, coupons, newsletters,
(OUT-OF-STATE SELLER'S NAME)

and other printed promotional materials or electronic equivalents, verbal soliciting (for example, in-person referrals), initiating telephone calls, and sending emails.

PERSON'S NAME		
SIGNATURE OF PERSON OR PERSON'S AUTHORIZED REPRESENTATIVE		DATE
PRINTED NAME OF PERSON SIGNING	TITLE	TELEPHONE NUMBER ()
ADDRESS OF PERSON SIGNING (Street, City, State, Zip Code)		
ADDRESS OF PERSON'S AUTHORIZED REPRESENTATIVE WHEN APPLICABLE (Street, City, State, Zip Code)		