

Substantial Nexus and Marketplace Facilitator Changes

The Ohio General Assembly recently passed Am. Sub. H.B. 166, the biennial budget bill, which contains new substantial nexus provisions as well as “marketplace facilitator” statutes. Those statutory changes take effect August 1, 2019. This alert is to advise taxpayers of the sales and use tax substantial nexus changes made in that legislation. The Ohio Department of Taxation will be updating prior information releases, as necessary.

To get email updates on the latest information from the Department of Taxation on this issue, sign up under the “Sales and Use Taxes – Nexus – Out of State Sellers” Tax Alerts [here](#).

Substantial Nexus Changes

Economic Presence Standard

On June 21, 2018, the United States Supreme Court issued a decision in *S. Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080, 2104, 201 L. Ed. 2d 403 (2018) that held the physical presence requirement recognized in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992) no longer impedes a state from requiring an out-of-state seller to collect and remit sales/use tax for purchases made by its residents.

Similar to the standard the Court opined on in *Wayfair, Inc.*, Ohio has adopted a standard that looks at the gross receipts or transaction thresholds of a seller in the current calendar year (i.e., 2019) and/or the previous calendar year (i.e., 2018). If the seller’s gross receipts are greater than \$100,000 or the seller has at least 200 transactions in either year, the seller has substantial nexus and is required to collect from consumers, file returns, and remit the appropriate tax.

Collection, Filing, and Remitting Requirements

The duty to obtain a seller’s use tax license, collect tax on taxable sales made to consumers in this state, and file returns and remit the appropriate tax begins with the month that the seller establishes a substantial nexus and applies prospectively from that date.

An out-of-state seller that falls within this state’s taxing jurisdiction and makes taxable sales will be required to obtain a seller’s use tax license, collect tax on taxable sales made to consumers in this state, and file returns and remit the appropriate tax. Information

about registration and licenses can be obtained by calling 1-800-304-3211 or by visiting the Department's website at tax.ohio.gov.

Previous Standards

Many of the other substantial nexus provisions remain unchanged by the Bill. However, Am. Sub. H.B. 166 repealed the provisions relating to [software nexus and network nexus](#). The bill also repealed a provision that created a presumption of nexus when a person provided a commission to individuals located in Ohio for referring potential customers to the seller if the cumulative gross receipts from sales (and not the commissions) are greater than \$10,000.

Marketplace Facilitators

Am. Sub. H.B. 166 also requires certain marketplace facilitators to collect from consumers, to file returns with the Department, and to remit the appropriate tax on all taxable retail sales made into Ohio that are facilitated by the marketplace facilitator. See R.C. 5741.01(T). A marketplace facilitator that has substantial nexus is liable for all sales made by the marketplace facilitator on behalf of one or more marketplace sellers.

Pursuant to R.C. 5741.01(I)(4), the marketplace facilitator will look to whether the marketplace facilitator, on its own behalf, and/or sales facilitated by the marketplace facilitator on behalf of one or more marketplace seller(s) yield either:

1. an aggregate amount of gross receipts in the previous or current calendar year from sales of tangible personal property or services the benefit of which is realized in this state is greater than \$100,000; or
2. at least 200 transactions sourced to Ohio.

Collection, Filing, and Remission Requirements

In general, effective August 1, 2019, marketplace facilitators must collect and remit sales tax on behalf of Ohio customers. If a marketplace facilitator has already reached one or more of the thresholds in the prior calendar year (i.e., 2018), the first day the marketplace facilitator must begin collecting and remitting sales tax from Ohio consumers is September 1, 2019, filing the September return and remitting payment on or before October 23, 2019.

If a marketplace facilitator begins facilitating sales into Ohio after the effective date of Am. Sub. H.B. 166, that seller must begin collecting and remitting sales tax on behalf of Ohio consumers on the first day of the first month that begins at least thirty (30) days

after meeting the thresholds set out by the statute. For example, a facilitator that makes its 200th transaction in Ohio on December 15, 2019 must begin collecting and remitting on behalf of Ohio customers February 1, 2020.

Destination Sourcing

Ohio retains origin sourcing for most sales of tangible personal property made by Ohio vendors to Ohio consumers. See ST 2009-03 - Sales and Use Tax: Sourcing – Issued December 2009 for additional information. However, R.C. 5741.05 requires marketplace facilitators to source sales they facilitate (other than sales of titled motor vehicles, titled watercraft, or titled outboard motor) to the location where the consumer receives the property or service that is sold.

Marketplace Seller Waiver

Pursuant to R.C. 5741.071, a marketplace seller may request and shall obtain a waiver from the tax commissioner for a marketplace facilitator not to be treated as a seller with respect to that marketplace seller if the following conditions are met:

1. The marketplace seller certifies it has annual gross receipts within the United States, including the gross receipts of any affiliate, of at least one billion dollars;
2. The marketplace seller or its affiliate is publicly traded on at least one major stock exchange;
3. The marketplace seller is current on all taxes, fees, and charges administered by the department of taxation that are not subject to a bona fide dispute;
4. The marketplace seller has not, within the past twelve months, requested that a waiver related to the marketplace facilitator at issue be canceled nor has the waiver been revoked by the commissioner; and
5. The marketplace seller has not violated R.C. 5739.30(B).

If a waiver is granted, the marketplace seller will be responsible for ensuring collection from consumers, filing returns, and remitting the appropriate tax on all taxable retail sales made into Ohio, including those made by the marketplace facilitator.

Please contact the Department at 1-800-304-3211 to request a waiver form.

Frequently Asked Questions

Will there be an amnesty period for taxpayers to become compliant?

Only the General Assembly may authorize an amnesty program. However, the Department offers a voluntary disclosure program under which sellers with prior filing responsibilities may enter into an agreement. Please visit the Department's [website](#) to read more about this program or call the Department at 1-800-304-3211.

I am located out-of-state and sell through a marketplace facilitator, my own website, and through a catalog. What are my Ohio sales and use tax responsibilities?

If all sales into Ohio combined – including sales made through any marketplace facilitator – exceed \$100,000 or 200 transactions, you must register for a seller's use tax account and collect sales tax from the consumer to remit to Ohio. Please note that you are only required to collect and remit tax on taxable sales through your website and catalog that are not marketplace facilitators.

Which of my sales are taxable in Ohio?

Ohio taxes most sales of tangible personal property (goods) and some services. For a listing of common taxable items and services, please download [Ohio's taxability matrix](#).

For more information on specific topics, please review Ohio's [sales and use tax FAQs](#).

I am an Ohio business and I make sales through my website to other states. Do I need to register for a permit in other states?

Each state's laws are different. To determine which laws apply to your business, please visit the [Streamlined Sales Tax - State Website and Contact Information](#) page for collection requirements in all 24 Streamlined Sales Tax states.

If the state is not a member of Streamlined Sales Tax, please contact that state.