

OFFICE OF LEGISLATIVE RESEARCH
PUBLIC ACT SUMMARY



PA 18-152—SB 417

Finance, Revenue and Bonding Committee

AN ACT CONCERNING THE DEPARTMENT OF REVENUE SERVICES' RECOMMENDATIONS REGARDING STATE TAXATION AND COLLECTION

SUMMARY: This act expands the conditions under which certain out-of-state retailers must collect and remit Connecticut sales tax. Among other things, it modifies the sales threshold above which out-of-state retailers soliciting sales in Connecticut must collect and remit sales tax on their sales in the state.

It makes “marketplace facilitators” retailers for the sales they facilitate for sellers on their forum and requires them to collect and remit sales tax on those sales. Marketplace facilitators are generally businesses that (1) facilitate retail sales for sellers by providing a forum that lists or advertises the sellers’ goods and services and (2) collect receipts from customers and remit payments to sellers. The act also establishes notice and reporting requirements for “referrers” (i.e., people and businesses who connect sellers and consumers for a commission or fee).

Lastly, the act decreases, from \$5,000 to \$2,000, the value of lottery prize claims above which the Connecticut Lottery Corporation (CLC) must deduct and withhold delinquent taxes. The decrease applies to claims redeemed at the central CLC office beginning July 1, 2018. By law, the offset is for state taxes, including penalties and interest, more than 30 days overdue that are not the subject of a timely filed (1) administrative appeal to the commissioner or (2) appeal pending before a court.

EFFECTIVE DATE: December 1, 2018, except the lottery provision is effective July 1, 2018.

§§ 2 & 3 — SALES TAX NEXUS

State law requires “retailers” to collect Connecticut sales tax if they are engaged in the business of making retail sales in the state. If a retailer is engaged in business in Connecticut, it is said to have a significant presence (i.e., nexus) here. The act modifies the circumstances under which out-of-state retailers are required to collect and remit sales tax in Connecticut, as described below. It also provides that the definition of “engaged in business in the state” applies to the extent that it is not prohibited by the U.S. Constitution.

Out-of-State Retailers Soliciting Sales in Connecticut

Under prior law, out-of-state retailers that regularly or systematically solicited sales of tangible personal property in Connecticut by various means had to collect

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and remit sales tax if their Connecticut sales exceeded a threshold of 100 retail sales during the preceding 12-month period (ending September 30). The act replaces the 100 sales threshold with a threshold of at least (1) 200 retail sales and (2) \$250,000 in gross receipts during the 12-month period.

Previously, the requirement to collect and remit sales tax applied to out-of-state retailers with no place of business in Connecticut. The act eliminates this condition, thus applying the requirement to all out-of-state retailers soliciting sales in Connecticut that exceed the threshold described above.

The act also specifies that the Internet is one of the means by which such retailers are considered to be soliciting sales in Connecticut. By law, out-of-state retailers are also considered to be soliciting sales in Connecticut if they regularly and systematically solicit sales by:

1. displaying billboards or other outdoor advertisements;
2. distributing catalogs, periodicals, advertising flyers, or other print, radio, or television media; or
3. mail, telegraphy, telephone, computer database, cable, optic, microwave, or other communication.

Out-of-State Retailers Repairing or Servicing Goods under Warranty in Connecticut

Under prior law, out-of-state retailers with no place of business in Connecticut had to collect and remit state sales tax if they repair or service tangible personal property under warranty in Connecticut, either directly or through an agent, independent contractor, or subsidiary. The act requires such retailers to collect and remit sales tax under these conditions regardless of whether they have a place of business in Connecticut.

Remote Sellers with “Click-Through” Nexus

By law, retailers selling tangible personal property or services through certain agreements with people located in Connecticut must collect and remit sales tax on their taxable sales in the state. The agreements must provide that in return for the person in Connecticut referring potential customers to the retailer (directly or indirectly by any means, including a website link), the person will receive a commission or other compensation from that retailer.

Under prior law, this requirement applied to any retailer that annually earned more than \$2,000 in gross receipts from sales in the state under such referral agreements in the preceding four quarters. The act increases this sales threshold from \$2,000 to \$250,000.

Fulfillment House Exclusion

The act limits the out-of-state retailers that are exempt from collecting and remitting state sales tax under the existing “fulfillment house exclusion.”

Under prior law, an out-of-state retailer not otherwise engaged in business in Connecticut was not required to collect and remit Connecticut sales tax solely because it purchased fulfillment services from an unaffiliated in-state company or

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owned property stored on that company's premises. The act excludes retailers who own property stored on a marketplace facilitators' premises from the fulfillment house exclusion (see below).

Under prior law, a company provided "fulfillment services" when it received orders from a retailer or its agent, filled them from the retailer's inventory stored on its premises, and shipped them to the retailer's customers. The act limits the fulfillment services that qualify for this exclusion to those shipping orders outside of Connecticut.

§§ 2 & 4-5 — MARKETPLACE FACILITATORS

Sales Tax Collection and Remittance Requirement

The act requires marketplace facilitators to be considered retailers for the sales they facilitate for sellers on their forum. A marketplace facilitator must:

1. collect and remit sales tax on each such sale;
2. be responsible for all of the obligations state sales and use tax law imposes on retailers as if it were the retailer of the sale; and
3. keep the records and information the Department of Revenue Services (DRS) commissioner requires to ensure proper sales tax collection and remittance, in accordance with the existing sales tax record-keeping requirements.

Definitions

Under the act, a "marketplace facilitator" is any person who:

1. during the prior 12-month period, facilitates retail sales of at least \$250,000 by marketplace sellers by providing a "forum" that lists or advertises taxable tangible personal property or taxable services, including digital goods, for sale by such sellers;
2. collects receipts from customers and remits payments to marketplace sellers, directly or indirectly, through agreements or arrangements with third parties; and
3. receives compensation or other consideration for such services.

A "marketplace seller" is any person who has an agreement with a marketplace facilitator regarding his or her retail sales, whether or not the person is required to obtain a sales tax permit. A "forum" is a physical or electronic place where tangible personal property or taxable services are offered for sale, including a store, booth, website, catalog, or dedicated sales software application.

Marketplace Sellers with Sales Tax Permits

The act establishes conditions under which marketplace sellers with valid sales tax permits are not required to collect and remit sales tax on their taxable sales.

Under the act, any marketplace seller with a valid sales tax permit is not required to collect sales tax for a particular sale and include the receipts from the sale in its taxable receipts for purposes of its sales tax return if:

1. the seller can show that the sale was facilitated by a marketplace facilitator

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(a) with whom the seller has a contract that explicitly provides that the facilitator will collect and remit on all taxable sales that it facilitates for the seller or (b) from whom the seller requested and received in good faith a properly completed certificate of collection certifying that the facilitator is registered to collect sales tax and will do so on all of the seller's taxable sales it facilitates, and

2. the facilitator's failure to collect the proper amount of tax for the sale was not due to the seller providing the facilitator with incorrect information.

The act requires the DRS commissioner to administer these provisions (1) in a manner consistent with the existing state sales tax law on the presumption of taxability and (2) as if the law's language expressly referred to a certificate of collection under these provisions.

Refunds

The act allows purchasers who overpaid sales or use tax to a marketplace facilitator to submit a refund claim with the DRS commissioner, in accordance with existing law, in the form and manner he prescribes. The act provides that such purchasers do not have a cause of action against a marketplace facilitator to recover the overpayment.

Limit on Liability for Sales Occurring Between December 1, 2018, and January 1, 2020

The act limits a marketplace facilitator's liability for failing to collect sales tax on a taxable sale during the first 13 months after the requirement takes effect. It authorizes the DRS commissioner to prescribe the form and manner in which marketplace facilitators may request this relief.

Under the act, for taxable sales occurring on or after December 1, 2018, and before January 1, 2020, the commissioner must limit a marketplace facilitator's sales and use tax liability if the facilitator can show, to the commissioner's satisfaction, that the:

1. facilitator and marketplace seller are not affiliated persons (i.e., one does not directly or indirectly own more than 5% of the other, and a third entity or a group of affiliated entities does not directly or indirectly own more than 5% of both),
2. failure to collect sales tax was not due to an error in sourcing the sale, and
3. sale occurred before January 1, 2020.

If the commissioner deems that the marketplace facilitator satisfies these conditions, he must reduce by 5% the total amount of tax it owes on taxable sales it facilitated that are sourced to Connecticut. He must also reduce the interest due by a corresponding amount and waive any associated penalties.

The act also authorizes the commissioner to limit a marketplace seller's sales and use tax liability for taxable sales made through a marketplace facilitator. He may do so to the same extent described above, as long as he deems that the seller has satisfied the three conditions described above.

§ 8 — REFERRER NOTICE REQUIREMENT

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Referrers

The act requires referrers to notify sellers and consumers that sales or use tax is due on certain purchases. It defines a “referrer” as anyone who:

1. contracts or otherwise agrees with a seller to list or advertise one or more items of tangible personal property for sale by any means, including a website or catalog, as long as the listing or advertisement includes the seller’s “shipping terms” or a statement of whether the seller collects sales tax;
2. offers a comparison of similar products offered by multiple sellers;
3. received commissions, fees, or other consideration of more than \$125,000 from a seller or sellers for such listings or advertisements during the preceding 12-month period;
4. refers, by telephone, web link, or other means, a potential customer to a seller or the seller’s affiliated person (described above); and
5. does not collect payments from the customer for the seller.

The act specifies that “shipping terms” does not mean a seller’s mere mention of general shipping costs in the seller’s own listing or advertisement.

Under the act, “referral” or “refer” is the transfer by a referrer of a potential purchaser to a seller who advertises or lists tangible personal property for sale on or in the referrer’s medium.

Notice to Consumers

The act requires referrers, to the extent not prohibited by the U.S. Constitution, to post a conspicuous notice on or in the referrer’s medium (e.g., website) informing consumers of the following:

1. sales or use tax is due from Connecticut purchasers on certain purchases,
2. the seller might not collect and remit sales tax on a purchase,
3. Connecticut requires Connecticut purchasers to file a use tax return if the seller does not impose sales tax at the time of the sale,
4. the instructions for obtaining additional information from DRS regarding the remittance of sales and use taxes on purchases made by Connecticut purchasers, and
5. the notice is being provided pursuant to the requirements established under the act.

Quarterly Notice to Sellers

Beginning by July 1, 2019, the act requires referrers to provide a quarterly notice to each seller to whom they transferred a potential Connecticut purchaser during the previous calendar year. The notice must contain:

1. a statement that Connecticut imposes a sales or use tax on sales made to Connecticut purchasers,
2. a statement that a seller making sales to Connecticut purchasers must collect and remit sales and use taxes to DRS, and
3. instructions for obtaining from DRS additional information regarding Connecticut sales and use taxes.

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Report to DRS

Beginning by January 31, 2020, each referrer must submit an annual report to DRS that contains the following information:

1. the name and address of each seller who received a notice from the referrer, as described above; and
2. the name and address of each seller which the referrer knows that the seller (a) listed or advertised its tangible personal property on or in the referrer's medium and (b) collected and remitted Connecticut sales and use taxes.

They must submit the report electronically and in the form and manner the commissioner prescribes.