

Sales/Use:

Florida DOR Issues Implementation Guidance on New Remote Seller and Marketplace Provider Law

Tax Information Publication (TIP) No. 21A01-03, Fla. Dept. of Rev. (5/14/21). The Florida Department of Revenue (Department) summarizes and provides some underlying implementation guidance on recently enacted legislation that, effective July 1, 2021, revises Florida's sales tax nexus standard by requiring some marketplace providers and out-of-state retailers to register for, collect and remit applicable Florida sales taxes, including discretionary sales surtaxes [see previously issued Multistate Tax Alert for more details on this new law]. According to the Department, affected "persons" not located in Florida who make a substantial number of remote sales for delivery in Florida are required to register with the Department and collect and remit tax, where a "substantial number of remote sales" is any number of taxable remote sales in the previous calendar year in which the sum of the total sales exceeds \$100,000. The Department also explains that a "remote sale" is the retail sale of tangible personal property ordered by mail, telephone, the internet, or other communication, from a person who receives the order outside Florida and causes the property to be transported into Florida.

URL: https://floridarevenue.com/taxes/tips/Documents/TIP_21A01-03.pdf

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-multistate-tax-alert-new-florida-requirement-to-collect-and-remit-sales-tax-for-remote-sellers-and-marketplace-providers.pdf>

Moreover, the Department explains that marketplace providers who have a physical presence in Florida, or who make or facilitate a "substantial number of remote sales" through a marketplace, must register with the Department and collect and remit tax. According to the Department, a "marketplace" is any physical place or electronic medium through which tangible personal property is offered for sale; and a "marketplace provider" is a person who facilitates a retail sale by a marketplace seller by listing or advertising for sale by the marketplace seller tangible personal property in a marketplace and who, directly or indirectly, through agreements or arrangements with third parties, collects payment from the customer and transmits all or part of the payment to the marketplace seller – regardless of whether the marketplace provider receives compensation or other consideration in exchange for its services. The Department additionally provides that marketplace providers do *not* include:

- Persons who solely provide travel agency services;
- Persons who are delivery network companies and not registered as dealers under Chapter 212, Florida Statutes; or
- Persons whose sole activity is to process payment transactions between two or more parties.

Regarding discretionary sales surtaxes, the Department explains that in addition to the collection and remittance of Florida state sales tax, marketplace providers and persons making remote sales are required to collect and remit discretionary sales surtax when delivering tangible personal property to counties imposing a surtax; these surtaxes "are levied by individual counties and vary in rate," with some counties imposing none at all.

Furthermore, the Department explains that marketplace providers and persons making remote sales who register by October 1, 2021, “will not be held liable for the remittance of sales tax on untaxed remote sales made prior to July 1, 2021, unless the provider or person was under audit; had been issued a bill, notice, or demand for payment; or was under an administrative or judicial proceeding as of July 1, 2021.” Please contact us with any questions.

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