

Sales/Use:

Utah Administrative Guidance Addresses Implementation of Marketplace Facilitator Provisions

Publication No. 71, Utah State Tax Comm. (9/21). The Utah State Tax Commission has updated sales and use tax administrative guidance encompassing legislation enacted in 2019 [see S.B. 168 (2019) for details on these law changes] that subjects certain defined “marketplace facilitators” and “marketplace sellers” to Utah sales and use tax collection and remittance responsibilities if, in either the previous or current calendar year, they sell or facilitate the sale of products (*i.e.*, tangible personal property, products transferred electronically, or services) that result in either i) gross revenues of more than \$100,000, or ii) 200 or more separate transactions. The guidance explains that a marketplace facilitator is a marketplace owner, operator or controller who both facilitates sales and collects payments through the marketplace, where “facilitating sales” includes:

URL: <https://tax.utah.gov/forms/pubs/pub-71.pdf>

URL: <https://le.utah.gov/~2019/bills/static/SB0168.html>

- Making products available for sale on the marketplace, regardless of ownership or control of the products;
- Communicating offers or acceptances of sale between a seller and a buyer;
- Providing resources that connect sellers and buyers;
- Providing software or research and development directly related to a marketplace;
- Offering sellers fulfillment or storage services;
- Setting prices for a seller’s products;
- Offering customer service to sellers or buyers, such as help with orders, returns or product exchanges; and
- Identifying sales as those of the marketplace.

“Collecting payments” for such purposes includes:

- Using a third party to collect payments and transmitting them to a marketplace seller;
- Providing payment-processing services;
- Charging a fee for product sales on the marketplace; and
- Providing a virtual currency option for purchases.

However, the guidance clarifies that a marketplace facilitator does not include a person who only provides payment-processing services or facilitates restaurants’ sales as of July 1, 2020. Under the guidance, a facilitator must collect sales tax for products delivered to Utah locations at the tax rate of the buyer’s location. Furthermore, the guidance explains that a marketplace facilitator may not be liable for failing to collect taxes if they can show that:

- They made or facilitated the sales through their marketplace,
- They and the seller are not affiliates, and

- The failure to collect tax was due to a good-faith error other than a sourcing mistake.

To not be held liable for such failure to collect tax, a facilitator must also have an error rate (where the error rate is calculated as a percentage of total sales and use tax due on facilitated sales sourced in Utah) of less than or equal to:

- 7% for calendar years 2019 and 2020;
- 5% for calendar year 2021; and
- 3% for calendar year 2022.

Please contact us with any questions.

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