

Sales/Use/Indirect:

Michigan Administrative Guidance Explains Remote Seller and Marketplace Facilitator Economic Nexus

Revenue Administrative Bulletin (RAB) 2021-21 and Revenue Administrative Bulletin 2021-22, Mich. Dept. of Treas. (12/21/21). The Michigan Department of Treasury recently issued guidance reflecting Michigan's codified post-*Wayfair* nexus standards in the form of two separate revenue administrative bulletins. The first one, RAB 2021-21, explain each of the three ways that an out-of-state (*i.e.*, "remote") seller may establish nexus in Michigan for purposes of Michigan's General Sales Tax Act (GSTA) and Use Tax Act (UTA), namely physical presence nexus, attributional or "click-through" nexus, and economic nexus. RAB 2021-21 additionally addresses how tax is reported and remitted as either sales or use tax and explains the filing requirements for remote sellers who have nexus with Michigan. The second one, RAB 2021-22, explains Michigan's adoption of marketplace facilitator legislation that became effective January 1, 2020, requiring entities that operate a sales platform that links third-party sellers to purchasers to collect and remit Michigan tax on sales they facilitate. For purposes of the GSTA and UTA, RAB 2021-22 provides that marketplace facilitators are generally considered the taxpayer for all purposes for both their direct sales and sales they facilitate for third-party marketplace sellers. As such, the marketplace facilitator is responsible for remitting and reporting the tax and for receiving any benefits, such as vendor discounts. Conversely, RAB 2021-22 explains that marketplace sellers are generally *not* liable for sales made through a marketplace facilitator unless the marketplace seller provides incorrect or insufficient information to the marketplace facilitator.

URL: https://www.michigan.gov/taxes/0,4676,7-238-43551_84522-574365--,00.html

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Among other topics, RAB 2021-22 addresses how marketplace facilitators and marketplace sellers calculate their respective economic nexus thresholds for Michigan purposes. Under Michigan law, RAB 2021-22 explains that marketplace facilitators must include all direct and facilitated sales into Michigan to determine if they meet Michigan's economic nexus thresholds. Likewise, even though a marketplace seller should not report or remit tax on facilitated sales, it is required to include both facilitated and direct sales in determining if it meets the economic nexus thresholds. Furthermore, RAB 2021-22 provides that a seller that has physical presence nexus (or nexus based on any activity other than its economic presence in Michigan as described in RAB 2021-21) has nexus with Michigan even if its sales fall under Michigan's economic nexus thresholds. Please contact us with any questions.

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