



## Collection of Sales, Use or Similar Taxes by Marketplace Facilitators

### Policy Position

**Position:** *A sales, use or similar transaction tax should be easily administered and understood. Some state laws which require marketplace facilitators to collect and remit state (and applicable local) taxes are not uniform, have overly broad definitions of a marketplace facilitator, and have other deficiencies. In January 2020, the National Conference of State Legislatures (NCSL) Executive Committee approved model legislation developed by the NCSL's Task Force on State and Local Taxation. If a state reviews its marketplace facilitator law and determines that changes are necessary, the state should consider legislative action to conform with the NCSL's model legislation.<sup>1</sup>*

**Explanation:** Marketplace facilitator laws are designed to place the collection responsibility for sales and use taxes<sup>2</sup> on the party providing a platform (the marketplace facilitator) for third-party sellers seeking to sell goods and services primarily over the internet.

COST has long supported uniformity in state tax laws to ease compliance burdens on taxpayers. The swift adoption by states of marketplace facilitator laws in 2018 and 2019 resulted in laws that are not uniform, are inconsistent in scope, and in some cases, unclear. To the extent that a state's marketplace facilitator law is administratively burdensome, states should consider adopting the relevant language from the National Conference of State Legislatures' (NCSL) model marketplace facilitator legislation. Conforming to the NCSL's model will benefit marketplace facilitators, payment processors, and sellers using one or more marketplace facilitators, and will also improve efficiencies in the administration of the tax.

The NCSL model legislation clarifies the definition of marketplace facilitator, and equally important, specifies types of businesses (*e.g.*, mere advertisers, payment processors, etc.) which are not covered by the definition. The model also allows the State to grant a waiver to a marketplace facilitator if the marketplace facilitator demonstrates that substantially all of its marketplace sellers already are registered to collect tax. Additionally, the model allows the marketplace facilitator and the seller to mutually agree to have the marketplace seller collect and remit all applicable taxes and fees where the seller's sales exceed a certain threshold, the seller is registered to collect sales tax, and the parties notify the state. Such waivers could be appropriate for sellers who have developed and maintain sophisticated complex sales/use tax compliance

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<sup>1</sup> The NCSL Marketplace Facilitator Sales Tax Collection Model Legislation is available at: [https://www.ncsl.org/Portals/1/Documents/Taskforces/SALT\\_Model\\_Marketplace\\_Facilitator\\_Legislation.pdf?ver=2020-01-30-122035-320&timestamp=1580412048938](https://www.ncsl.org/Portals/1/Documents/Taskforces/SALT_Model_Marketplace_Facilitator_Legislation.pdf?ver=2020-01-30-122035-320&timestamp=1580412048938).

<sup>2</sup> To the extent a state imposes other taxes and fees on the consumer that are administered with the state sales tax on sales of products and services that are sold on a marketplace, the state needs to address whether, to what extent, and how such other taxes and fees should be incorporated into marketplace collection requirements. If such taxes and fees are incorporated, due to complexity of implementation the state should provide sufficient time (preferably two years) for marketplace facilitators and sellers to make any necessary system changes.

systems designed to collect the states' sales/use taxes *and* other transactional taxes or fees imposed on a purchaser at the time of a sale.

Other important aspects of the NCSL model include:

- Provides a threshold when sellers and marketplace facilitators are required to collect and remit tax;
- Clarification that a marketplace facilitator stands in the same shoes as a seller and is entitled to all the benefits and has the same responsibilities imposed on other sellers in the state;
- Marketplace facilitators have the option to report all sales (by the marketplace facilitator and its marketplace sellers) on one return or to file two separate returns (one for the marketplace facilitator's sales and another for its marketplace sellers' sales);
- Clear provisions to address errors in sales tax collection made by incorrect or incomplete information on the nature of the product or service given to the marketplace facilitator by the marketplace seller, provided that the marketplace facilitator can demonstrate it made a reasonable effort to obtain correct and sufficient information from the marketplace seller;
- Prohibition of class action suits against a facilitator or seller (and, if applicable, false claims act suits); and
- Clear assignment of audit responsibilities (generally on the marketplace facilitator), penalty relief for reasonable cause, and a provision that absolves a marketplace facilitator of collection liability if it can show to the tax agency that a seller or purchaser had previously paid the tax on a transaction.