

Marketplace Sales in PA (Act 43-2017)

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Act 43-2017

Marketplace Sales

HB 542 (HB 43-2017) was signed into law on October 30, 2017.

The bill was passed as part of the budget passage.

In part, the bill is intended to raise revenue. The primary source of revenue for the budget year 2017-18 is the issuance of bonds utilizing payments from the Tobacco Master Settlement Agreement.

The marketplace sales language is intended to raise revenue for 2018-19 and after. There were several other tax provisions passed as well in this bill.

Marketplace Facilitator

"Marketplace facilitator." A person that facilitates the sale at retail of tangible personal property. For purposes of this section, a person facilitates a sale at retail if the person or an affiliated person:

- (1) lists or advertises tangible personal property for sale at retail in any forum; and
- (2) either directly or indirectly through agreements or arrangements with third parties, collects the payment from the purchaser and transmits the payment to the person selling the property.

The term includes a person that may also be a vendor.

Responsibilities of a Marketplace Facilitator

Mandatory Election by Marketplace Facilitators that do **NOT Maintain a Place of Business in the Commonwealth of Pennsylvania**

A marketplace facilitator that does not maintain a place of business in Pennsylvania and makes or facilitates taxable sales to Pennsylvania customers totaling \$10,000 or more in the previous calendar year must elect one of two options by March 1, 2018:

Option 1 - Register to collect and remit Pennsylvania sales tax.

Option 2 - Comply with Pennsylvania's notice and reporting requirements.

An election made on or before March 1, 2018 will be in effect through June 30, 2019.

Responsibilities of a Marketplace Facilitator

Sales Tax Collection by Marketplace Facilitators that Maintain a Place of Business in the Commonwealth of Pennsylvania

A marketplace facilitator that maintains a place of business in Pennsylvania is required to:

Collect and remit sales tax on its own taxable sales; and

Collect and remit sales tax on the taxable sales made through its forum by any marketplace seller using the forum.

Marketplace Seller

"Marketplace seller." A person that has an agreement with a marketplace facilitator pursuant to which the marketplace facilitator facilitates sales for the person.

Responsibilities of a Marketplace Seller

Marketplace seller who does **not** maintain a place of business in the Commonwealth of Pennsylvania

When a marketplace seller uses a marketplace facilitator that maintains a place of business in Pennsylvania, the marketplace facilitator must collect sales tax on behalf of the marketplace seller.

A marketplace seller who does not maintain a place of business in the Commonwealth and whose marketplace facilitator also does not maintain a place of business in Pennsylvania, may be subject to the Remote Seller provisions if it makes sales through a marketplace facilitator and makes direct taxable sales to Pennsylvania customers in excess of \$10,000 during the prior 12-month period.

Responsibilities of a Marketplace Seller

Marketplace seller who maintains a place of business in the Commonwealth of Pennsylvania

A marketplace seller who maintains a place of business in the Commonwealth is required to ensure the collection and remittance of sales tax on its taxable sales in Pennsylvania.

That obligation may be met directly by the marketplace seller who maintains a place of business in the Commonwealth, or by its marketplace facilitator.

If the marketplace facilitator maintains a place of business in the Commonwealth, the marketplace facilitator must collect on behalf of the marketplace seller.

Records must be maintained by the marketplace seller that substantiate the tax was properly charged by the marketplace facilitator.

Remote Seller

"Remote seller." A person, other than a marketplace facilitator, a marketplace seller or a referrer, that does not maintain a place of business in this Commonwealth that, through a forum, sells tangible personal property at retail, the sale or use of which is subject to the tax imposed by this article. The term does not include an employee who in the ordinary scope of employment renders services to his employer in exchange for wages and salaries.

Responsibilities of a Remote Seller

Mandatory Election

A remote seller that makes taxable sales totaling \$10,000 or more to Pennsylvania customers in the previous calendar year must elect one of two options by March 1, 2018:

[Option 1](#) - Register to collect and remit Pennsylvania sales tax.

[Option 2](#) - Comply with Pennsylvania's notice and reporting requirements.

An election made on or before March 1, 2018 will be in effect through June 30, 2019.

Act 43-2017 Timeline

October 30, 2017 – Enactment of statute

February 1, 2018 – Guidance published

March 1, 2018 – Election due (failure to elect deemed a notice/reporting election)

April 1, 2018 – Notice/reporting or collection due

January 31, 2019 – Reports due to purchasers and department

Implementation and Administration

After passage of the bill, the Department began to plan the necessary programming and issuance of guidance to the taxpayers.

The Department also began to receive inquiries from taxpayers that could be affected.

Elections

As of September 2018, 266 companies have filed elections.

127 companies have elected to report. 139 companies have elected to collect.

Notice and Reporting

For marketplace facilitators not maintaining a place of business in PA, marketplace sellers who also make direct sales and are not maintaining a place of business in PA, and remote sellers, there is an election.

In lieu of collection, these taxpayers may file an election to comply with the notice and reporting requirements.

Notice and Reporting

Post a notice on its forum that states:

Pennsylvania sales or use tax may be due in connection with the purchase and delivery of tangible personal property to Pennsylvania individuals and businesses.

The purchaser is required to file a use tax return if tax is due in connection with the purchase and delivery in the Commonwealth.

This notice is required pursuant to the provisions of the Tax Reform Code of 1971. 72 P.S. § 7213.2.

Notice and Reporting

Provide a written notice on all invoices, order forms, sales receipts or similar documents, whether in paper or electronic form, to each purchaser at the time of each sale that states:

Pennsylvania sales tax was not collected on this sale. Therefore, you may be required to remit use tax directly to the Commonwealth on your purchase if the items are subject to Pennsylvania sales tax. Please visit [this link](#) to learn more about your use tax obligations under Pennsylvania law.

Notice and Reporting

Provide an annual report to the purchaser that states:

A marketplace facilitator making an election to comply with the notice and reporting requirements must submit an annual report by January 31 of each year to the purchaser that includes the following.

[Name of marketplace facilitator] did not collect sales tax in connection with your transactions. You may be required to remit use tax to the Pennsylvania Department of Revenue. Following is a list by date, type and purchase price of each product purchased or leased by the purchaser from this marketplace facilitator, and delivered to a location within Pennsylvania.

Notice and Reporting

Provide an annual report to the Pennsylvania Department of Revenue

A marketplace facilitator making an election to comply with the notice and reporting requirements must submit an annual report by January 31 of each year to the Pennsylvania Department of Revenue that includes the following:

The purchaser's name, billing address, delivery address and, if different, the purchaser's last known mailing address.

The total dollar amount of purchases from this marketplace facilitator.

The name and address of the marketplace facilitator that made the sale.

A report required under this section shall be submitted by an officer of the marketplace facilitator and shall include a statement made under penalty of perjury by the officer that the marketplace facilitator made reasonable efforts to comply with the notice and reporting requirements of this part.

Marketplace Sales Outreach

Building upon prior years' remote seller enforcement plus new data sources

- 3,000 January 2018 election alert notices
- 7,000 April – May 2018 voluntary compliance notices

Extensive online guidance

Directed appropriate resources to major facilitators and remote sellers

Purchaser Compliance

Remote seller reports due January 31, 2019

Purchaser compliance notices

Following filing of personal income tax returns due April 15, 2019

June – November 2019

Marketplace Facilitator and Remote Seller Enforcement

“The department shall assess a penalty in the amount of twenty thousand dollars (\$20,000) or twenty per cent of total sales in Pennsylvania ...”

1st Quarter 2019 imposition for 2018

Leverage earlier compliance notices and direct contacts

Revenue Estimate

The revenue estimate for the marketplace bill is a gain of \$8.2M for 2017-18 and \$50.5 million for 2018-19.

The estimate was calculated using figures from the 2015 Online Retailers Guide. The top 200 online sellers were compared to PA tax records and an estimate of new taxpayers was calculated. Using figures from the U.S. Census Bureau, 2014 Annual Retail Trade Survey, E-Stats, the top 200 was extrapolated to the population.

Revenue Collections

It is not possible to directly measure the impact of Act 43-2017, as many of the entities affected were already remitting SUT to Pennsylvania.

To estimate the additional remittances from the law change, a regression was created to estimate what SUT remittances from affected entities would have been without the law change. The difference between this amount and their actual remittances is then the effect of the law.

Wayfair

In June 2018, South Dakota vs Wayfair was decided. The Supreme Court declared “that the physical presence rule of Quill is unsound and incorrect?”

How does this decision affect the marketplace law in Pennsylvania?

Other concerns

The implementation of the marketplace language in Pennsylvania has been a success, enabling a more efficient method of collecting tax that is already due.

One concern at this point is the introduction of federal legislation to limit the ability of states to tax remote sellers.