



This memorandum supersedes TSB-M-19(2)S, issued on May 31, 2019.

## Sales Tax Collection Requirement for Marketplace Providers

The Tax Law has been amended to require marketplace providers to collect sales tax on taxable sales of tangible personal property that they facilitate for marketplace sellers. These amendments apply to sales made on or after June 1, 2019.

**On June 24, 2019, the Tax Law was further amended to change the annual sales threshold dollar amount requiring a marketplace provider with no physical presence in the state to register for sales tax from \$300,000 to \$500,000.** This change is effective retroactive to June 1, 2019.

### Marketplace providers

A *marketplace provider* is a person who, pursuant to an agreement, facilitates sales of tangible personal property by a *marketplace seller* or sellers. A person “facilitates a sale of tangible personal property” when:

- the person provides the forum in which, or by means of which, the sale takes place or the offer of sale is accepted, including an internet web site, catalog, shop, store, booth or similar forum; and
- the person, or an affiliate, collects the receipts paid by a customer to a marketplace seller for a sale of tangible personal property, or contracts with a third party to collect the receipts. Persons are affiliated if one person has an ownership interest of more than five percent, whether direct or indirect, in another, or where an ownership interest of more than five percent, whether direct or indirect, is held in each of such persons by another person or by a group of other persons that are affiliated persons with respect to each other.

To be a marketplace provider, a person must meet both criteria in the above definition. For example, a person that provides a forum for third parties to make sales or the offer of a sale is not a marketplace provider if it (or an affiliate, as defined above) does not collect the payment paid by a customer, or if it has not contracted with a third party to collect the payments.

A marketplace provider must be registered with the Department for sales tax purposes. If not already registered, the marketplace provider must register at least 20 days before beginning business in New York. For registration information, see [Tax Bulletin ST-360](#), *How to Register for New York State Sales Tax*. To apply, use [New York Business Express](#).

A person with no physical presence in New York State who facilitates sales for marketplace sellers as described above is a marketplace provider and is required to register for sales tax purposes and collect and remit sales tax if, in the previous four sales tax quarters:

- the cumulative total of the person’s gross receipts from sales made or facilitated of tangible personal property delivered into the state exceeded \$500,000, and

- such person made or facilitated more than 100 sales of tangible personal property delivered in the state.

### **Marketplace sellers**

A *marketplace seller* is defined as any person who has an agreement with a marketplace provider under which the marketplace provider will facilitate sales of tangible personal property for the marketplace seller.

### **Sales of tangible personal property**

A marketplace provider is required to collect and remit sales tax on all taxable sales of tangible personal property (including sales of prewritten computer software that is downloaded or remotely accessed by the customer) that it facilitates for marketplace sellers, regardless of whether the marketplace seller is required to register for sales tax purposes. A *sale* is any transaction where there is a transfer of title or possession, or both, of tangible personal property for a consideration. For a definition and examples of tangible personal property, see Tax Bulletin [Quick Reference Guide for Taxable and Exempt Property and Services \(TB-ST-740\)](#). However, a marketplace provider is not required to collect sales tax on the rental of a passenger car as defined in Tax Law § 1160.<sup>1</sup>

A marketplace provider is not required to collect sales tax on transactions that are not considered the sale of tangible personal property, such as sales of:

- services (for example, transportation services or electric service)
- restaurant food
- hotel occupancy, or
- admissions to a place of amusement.

A marketplace seller who is registered to collect New York State sales tax and makes sales of tangible personal property in New York State by means other than through a marketplace provider remains responsible for collecting and remitting any tax due on those sales. Such a marketplace seller also remains responsible for collecting sales tax on taxable transactions facilitated by a marketplace provider that do not involve the sale of tangible personal property.

### **Requirements for marketplace providers**

A marketplace provider has all the obligations and rights of a vendor, including, but not limited to:

- obtaining a *Certificate of Authority*;
- collecting tax, filing returns, and remitting the tax due;
- the right to accept a certificate or other documentation substantiating an exemption or exclusion from tax; and
- the right to receive a refund authorized by Tax Law § 1132(e).

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<sup>1</sup> A motor vehicle having a gross vehicle weight of 9,000 pounds or less, with a seating capacity of nine persons or less, designed for passenger transportation.

A marketplace provider cannot refuse to collect tax on a marketplace seller's sales, even if the seller is registered for sales tax purposes. Marketplace providers must keep records and cooperate with the Tax Department to ensure the proper collection and remittance of tax imposed, collected or required to be collected.

Except as provided below, a marketplace provider must issue Form ST-150, *Marketplace Provider Certificate of Collection*, to its marketplace sellers for sales of tangible personal property that it facilitates for such sellers.

A marketplace provider that has been collecting sales tax on sales it facilitates for marketplace sellers before this law took effect should continue to do so. However, it should ensure that it follows the requirements of the new law, including issuance of a Form ST-150, *Marketplace Provider Certificate of Collection*.

### **Liability relief for marketplace providers**

A marketplace provider is relieved of liability for failure to collect the correct amount of tax to the extent that the marketplace provider can show that the error was due to incorrect or insufficient information given to the marketplace provider by the marketplace seller. This liability relief does not apply if the marketplace seller and marketplace provider are affiliated (see definition above).

### **Liability relief for marketplace sellers**

A marketplace seller who is registered to collect New York State sales tax is relieved from the duty to collect tax on a sale of tangible personal property and should not include the receipts from the sale in its taxable receipts if:

- the marketplace seller can show that the sale was facilitated by a marketplace provider from whom the marketplace seller has received, in good faith, a properly completed Form ST-150, *Marketplace Provider Certificate of Collection*, certifying that the marketplace provider is registered to collect sales tax and will collect sales tax on all taxable sales of tangible personal property by the marketplace seller facilitated by the marketplace provider; and
- any failure of the marketplace provider to collect the proper amount of tax on a sale was not the result of the marketplace seller providing the marketplace provider with incorrect or insufficient information. (This relief of liability does not apply if the marketplace seller and marketplace provider are affiliated, as defined above.)

Form ST-150, *Marketplace Provider Certificate of Collection*, is one of the records that must be retained by a marketplace seller. See [Tax Bulletin ST-770](#), *Recordkeeping Requirements for Sales Tax Vendors*.

If, prior to this new law, a marketplace provider had already been collecting sales tax on sales that it facilitates by marketplace sellers, a marketplace seller should ensure that it timely receives Form ST-150, *Marketplace Provider Certificate of Collection*.

### **Alternative to Form ST-150**

A marketplace provider who has a publicly-available agreement with its marketplace sellers that includes the following statement, or one that is substantially similar, does not need to issue Form ST-150 to such sellers:

*[Marketplace provider name] is registered to collect New York State sales tax and will collect sales tax on all taxable sales of tangible personal property that it facilitates for marketplace sellers for delivery to a New York State address.*

This provision will have the same effect as if the marketplace provider had issued Form ST-150 to its marketplace sellers.

If a marketplace seller has a publicly-available agreement with a marketplace provider that includes the statement provided above, or other language pre-approved by the Tax Department, it does not need to obtain Form ST-150 from such provider.

[Tax Law §§ 1101(e), 1131(1), 1132(l)(1), 1133(f), 1136(a)(4), 1142(15)]

**Note:** A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.