Simplifying Sales Tax for E-Commerce: Guidance for Sellers and Marketplaces

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E-Commerce Businesses

- Historically were B2C
- Movement towards B2B and even services
- Expansion of Marketplace Facilitators
- Added complexity with business models adds complexity to sales tax compliance
  - Nexus
  - Taxability
  - Exemption documentation
  - Registration
  - Who is responsible for tax collection and remittance

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Physical, Economic and Marketplace Nexus

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Physical Nexus

- Even though economic nexus has become the new law of the land, physical presence is still relevant post-Wayfair.
- It is still the first question you ask when determining if you have nexus in a state.
- If you have physical presence in a state, you have nexus and the economic nexus thresholds are irrelevant.
- Physical presence nexus starts on the first day of physical activity in the state.

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Physical Nexus

- For e-commerce sellers, physical presence nexus in a state can be created in a number of different ways:
  - Main office
  - Remote employees
  - Seller-owned or 3PL warehouse where seller controls inventor
  - Inventory in a third-party warehouse where seller does not control inventory (FBA)
  - Traveling representatives or salespersons
  - Trade shows and special events

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Physical Nexus

- Exceptions For Physical Nexus:
  - Inventory in a third-party warehouse where seller does not control inventory (FBA)
    - If only physical presence some states won't consider this to be nexus
    - AZ, AR, IL, IA, KS, NE, NV, NY, OK, PA, TX
  - Traveling representatives or salespersons
    - Depends on activity and length of visit
  - Trade shows and special events
    - Depends on activity, whether sales occur and length of event

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Economic Nexus

- Typical Attributes
  - Does not require physical presence
  - Applies only if there is NO physical nexus
  - Correlates with a set level of sales or gross receipts activity

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Economic Nexus - Definitions

- Threshold: The amount of sales and/or number of transactions that determine when you have substantial nexus in the state.
  - The threshold may be dollar only or dollar with transaction count.
  - Increasing trend among states to not include or to remove the transaction count from the threshold

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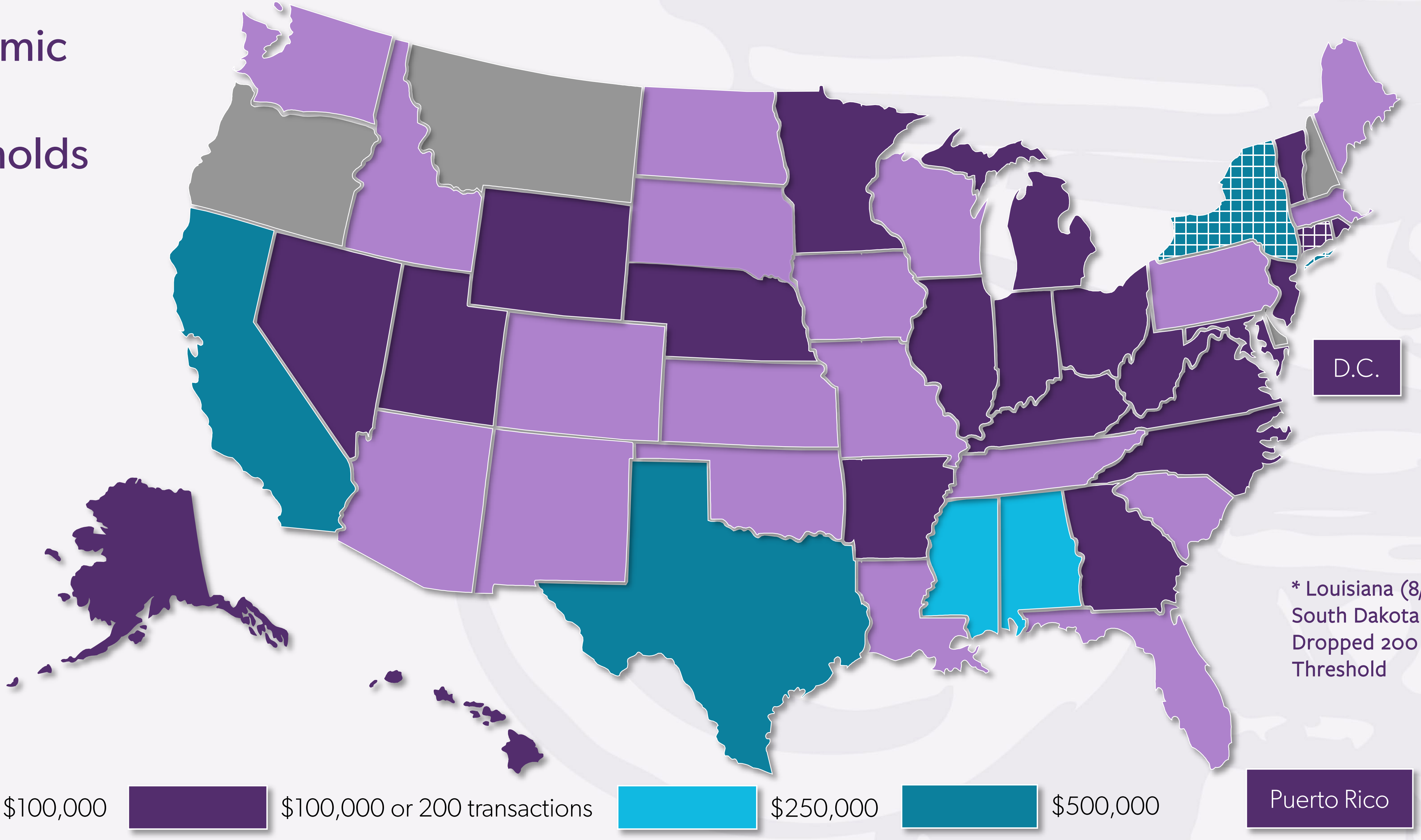
Economic Nexus Thresholds



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Economic Nexus - Definitions

- Includable Sales: The specific sales to include when determining if you meet the economic nexus threshold.
  - Gross Sales (most typically used)
  - Retail Sales (excludes sales for resale)
  - Taxable Sales (excludes all exempt sales)
  - Marketplace sales may be included or excluded when calculating the threshold for individual sellers, depending on the state.
  - Do you include freight?
  - Do you deduct selling fees? (e.g. Amazon sellers)

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Economic Nexus - Definitions

- Measurement Date: The time period for determining the amount of sales and/or number of transactions.
  - Typically the current or previous calendar year (most states), however some states have a different measurement date.
  - Previous calendar year (Alabama)
  - Preceding 12-month period (Illinois)
  - The 12-month period ending on the last day of the most recently completed calendar quarter (Minnesota)
  - Immediately preceding four sales tax quarters (New York)

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Economic Nexus - Definitions

- When You Need to Register Once You Exceed the Threshold: How soon you need to register to collect and remit sales tax once the threshold is met.
  - Next transaction
  - Delayed
    - Example: January 1 following the year the threshold is exceeded (Rhode Island)
    - Example: The first day of the month that starts at least 30 days after you meet the threshold (Washington)

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Economic Nexus State Guide

- The Sales Tax Institute's Economic Nexus State Guide contains all of the above plus additional helpful information for each state.
  - https://www.salestaxinstitute.com/resources/economic-nexus-state-guide
- The SST Disclosed Practice #8 also includes a wealth of information for remote sellers, marketplace sellers and marketplace facilitators.
  - New project to add additional questions for states to answer
  - https://sst.streamlinedsalestax.org/TAP

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Nexus Determination Examples

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Nexus Determination – State Example 1

State	Effective Date	Threshold	Measurement Date	Includable Sales (Gross, Retail, or Taxable)	When You Need to Register Once You Exceed the Threshold
Idaho	June 1, 2019	$100,000	Previous or current calendar year	Gross sales Marketplace sales included towards the threshold for individual sellers	Next transaction (state doesn't specify)

- A remote seller with no physical presence in Idaho made gross sales of $196,000 in Idaho in 2022.
- Are they required to collect and remit sales tax in Idaho?
- If yes, when should they register to collect and remit sales tax?
- Yes – required to register on next transaction after reaching $100,000 in sales

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Nexus Determination – State Example 2

State	Effective Date	Threshold	Measurement Date	Includable Sales (Gross, Retail, or Taxable)	When You Need to Register Once You Exceed the Threshold
South Dakota	November 1, 2018	$100,000 or 200 or more separate transactions * South Dakota transaction threshold dropped as of July 1, 2023	Previous or current calendar year	Gross revenue Marketplace sales included towards the threshold for individual sellers	Next transaction

- A seller with its main office in South Dakota made gross sales of $35,000 (in 185 sales transactions) in South Dakota in 2022.
- Are they required to collect and remit sales tax in South Dakota?
- If yes, when should they register to collect and remit sales tax?
- Yes – physical presence so need to be register from date of 1st sale

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Nexus Determination – State Example 3

State	Effective Date	Threshold	Measurement Date	Includable Sales (Gross, Retail, or Taxable)	When You Need to Register Once You Exceed the Threshold
New Mexico	July 1, 2019	$100,000	Previous calendar year	Taxable sales Marketplace sales excluded from the threshold for individual sellers	January 1 following the year the threshold is exceeded

- A remote seller with no physical presence in New Mexico made gross sales of $125,000 in New Mexico in 2022.
  - $20,000 of the gross sales are Marketplace sales. $30,000 of the gross sales are sales for resale
- Are they required to collect and remit sales tax in New Mexico?
- If yes, when should they register to collect and remit sales tax?
- No –below threshold since exclude marketplace and resale sales.

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Marketplaces

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Marketplace Nexus

- Requires online marketplace facilitator to collect and remit tax on behalf of sellers selling through their platform
- Typical requirements include that the marketplace facilitator collects revenue from the customer and manages multiple activities related to the selling process
- Key provisions relate to collection of sales revenue from customer
- Number and type of marketplaces are growing

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Marketplace Nexus

- Exceptions exist for specialty marketplaces such as food delivery, lodging, amusement and others
- Some states allow marketplace facilitator and marketplace seller to agree to have seller collect and remit
- MTC Whitepaper
  - https://www.mtc.gov/wp-content/uploads/2023/02/Wayfair-and-Marketplace-White-Paper-FINAL-7-8-2021.pdf

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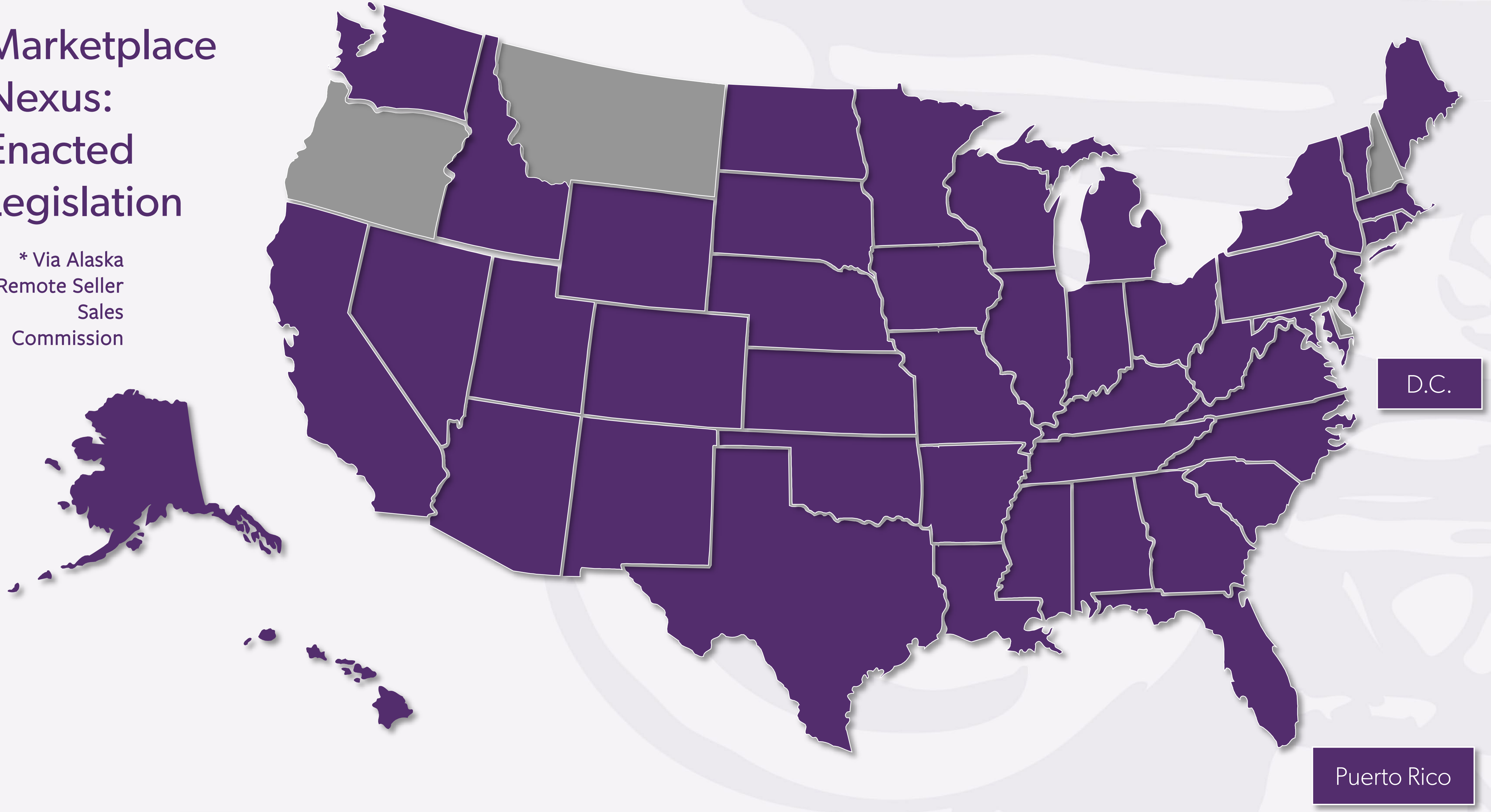
Marketplace Nexus: Enacted Legislation

* Via Alaska Remote Seller Sales Commission



Enacted

No sales tax

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Double Taxation

- For some industries, the implementation of marketplace collection laws has been more challenging.
- These industries often facilitate sales for in-state retail businesses (e.g., hotels, restaurants, grocery stores, big-box retailers).
- Some in-state businesses have struggled to comply with the marketplace facilitator laws since they were already collecting and remitting sales tax.
- Under marketplace facilitator laws the obligation has been shifted to the marketplace facilitator.

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Double Taxation

- This has created implementation challenges:
  - Marketplace sellers refusing to stop collecting and remitting sales tax.
  - Marketplace facilitators getting assessed by states for sales tax that has already been collected and remitted by the marketplace seller.
  - Confusion regarding sourcing
- The risk of double taxation increases as the marketplace facilitator and marketplace seller may both remit tax.
  - E.g. A marketplace facilitator sends a sales report to a marketplace seller who then remits tax on those sales even though the facilitator already remitted tax.
  - In this case, how can the seller prove that the facilitator remitted tax so they can get a refund of tax paid?

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Exemption Certificates

- Since marketplace facilitators are facilitating transactions but not buying and reselling goods or services, exemption certificates have not generally been applicable to marketplace transactions.
- Some marketplace sellers have demanded that marketplace facilitators provide exemption certificates.
  - Sellers are looking for reassurance that they are no longer required to collect and remit sales tax.
  - Marketplace facilitators are reluctant to provide exemption certificates since they are not buying and reselling.

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Exemption Certificates

- Many states have not issued guidance on whether resale exemption certificates can or should be issued by marketplace facilitators to marketplace sellers.
- Some states have marketplace certification forms that are provided to the seller to indicate that the marketplace is collecting and remitting sales tax.
    - IL CRT-63
    - NY ST-150
    - SST Disclosed Practice #8.3.b

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Exemption Certificates

- SST Disclosed Practice 8.2.d
  - Does the State require a Marketplace Seller to maintain exemption documentation only for its direct sales, and not for sales made through a Marketplace Facilitator/Provider?
- SST Disclosed Practice 8.2.f
  - Can a Marketplace Seller that is not registered or not required to be registered in any State issue an exemption certificate to a Seller located in this State claiming sale for resale and can that Seller accept that exemption certificate?

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Practical Issues for Marketplace Sellers

- Potential issues may exist for the marketplace seller regarding whose responsibility it is to collect and remit sales tax.
  - What if the marketplace facilitator doesn't collect tax?
    - SST Disclosed Practice 8.3.m – Shifting Liability to Seller
  - Recordkeeping: Sales made on or off the marketplace are included in total revenue and it is imperative to have adequate records in case of an audit.
  - Some states have laws in place that require marketplace sellers to monitor and report their marketplace sales.
  - Some states require marketplace sellers to report sales across all sales channels, including marketplaces.

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Practical Issues for Marketplace Sellers

- Potential issues may exist for the marketplace seller regarding whose responsibility it is to collect and remit sales tax.
  - Some states require marketplace sellers to register and file, even if 100% of their sales occur on a marketplace platform.
    - SST Disclosed Practice 8.2.a
  - How do marketplace sellers manage challenges when they cannot control the taxability of the products, especially if they can be jointly liable for tax remittance?
  - What if the marketplace seller was collecting prior to the marketplace facilitator relationship and does not want to shift the tax collection/remittance to the marketplace facilitator?
    - SST Disclosed Practice 8.3.c (Waiver of Facilitator)

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State-Specific Guidance for Sellers and Marketplace Facilitators

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Louisiana Clarifies Treatment of Marketplace Sales for In-State Businesses

- The Louisiana Sales and Use Tax Commission for Remote Sellers has provided guidance to marketplace facilitators and sellers about each's responsibility for sales tax, specifically focusing on businesses with a presence in the state.
- Louisiana merchants may rely on marketplace facilitators to collect and remit sales taxes on their behalf for sales made through marketplaces.
- Though marketplace sales are always considered remote sales, selling on a marketplace does not make the rest of a business' sales classified as remote sales reportable to the Commission for Remote Sellers.

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Louisiana Clarifies Treatment of Marketplace Sales for In-State Businesses (cont.)

- If a Louisiana seller makes their own sales into Louisiana directly to customers, they are responsible for registering and remitting any tax due on their sales to the DOR and any required home rule authorities unless qualify as a remote seller and can then report through the Commission for Remote Sellers.
- Marketplace facilitators must report sales to the Commission for Remote Sellers, regardless of whether they have a physical presence in Louisiana.
- Marketplace facilitators must keep documentation of seller information and exemption certificates to support the taxability of their sales.
- (Louisiana Sales and Use Tax Commission for Remote Sellers, Remote Sellers Information Bulletin No. 23-001, September 8, 2023)

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California Adopts New Regulations to Clarify Marketplace Facilitator Responsibilities

- Effective August 28, 2023, California has added additional language to its Code of Regulations to clarify which businesses have responsibilities under their marketplace facilitator laws.
- The new rules include a detailed definition of a Marketplace Facilitator as any business that handles payment, fulfillment, or storage of products for sale, lists products and sets prices, takes orders, or provides customer service on behalf of a marketplace seller.
- Marketplace Facilitators also include businesses that transmit offers and acceptance of orders between buyers and sellers, operate the infrastructure of a marketplace website, or provide virtual currency to buyers to make payment to sellers.

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California Adopts New Regulations to Clarify Marketplace Facilitator Responsibilities (cont.)

- Marketplace Facilitators are not considered the sellers or facilitators of sales where their only involvement in the transaction is a link, advertisement, or direct referral of the seller to the purchaser.
- Delivery network companies that provide websites or applications that facilitate local deliveries and otherwise meet the definition of a marketplace facilitator can elect to be treated as a marketplace facilitator for sales and use tax purposes.
- (Cal. Code of Regs., Title 18, section 1684.5, Marketplace Sales, Cal. Dept. of Tax & Fee Admin, August 28, 2023)

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Texas Comptroller Explains Remote Seller, Marketplace Tax Policies

- The Texas Comptroller of Public Accounts has offered new guidance and answers to FAQs for remote and marketplace sellers and marketplace providers.
- If a remote seller is below the state's $500,000 economic nexus threshold, tangible personal property stored in a marketplace provider's Texas warehouse does not require the remote seller to get a permit if the marketplace has certified it will act as the seller for tax collection.
- Remote sellers selling through marketplace providers should collect sales and use tax until certification is received from the marketplace provider that it will collect the tax. This certification is required by Texas. Sellers must maintain it for tax and audit records.

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Texas Comptroller Explains Remote Seller, Marketplace Tax Policies (cont.)

- Remote sellers who only sell through a marketplace provider do not need to register for a tax permit as long as they have received and accepted a certification from the marketplace provider that it will collect tax. However, sales records for all marketplace sales must be kept and maintained for four years.
- Marketplace providers are required to provide sellers with certification they are collecting and remitting tax. There is no specific form, and it can be part of the terms and use or any other agreement between sellers and the marketplace provider. The marketplace seller must keep the record of certification of tax collection and payment provided by the marketplace provider.
- Both marketplace sellers and marketplace providers are subject to audit.
- (Remote Sellers and Marketplace Frequently Asked Questions, Texas Comptroller website, updated January 2023)

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Kansas Guidance for Marketplace Facilitators

- Kansas authorizes the DOR to waive the obligation of a marketplace facilitator to collect and remit taxes if the marketplace facilitator shows that substantially all of its marketplace sellers are already collecting and remitting all applicable taxes.
  - For purposes of obtaining a waiver from the DOR, the phrase "substantially all" means 95% or more.
- Kansas also allows marketplace facilitators to contract with marketplace sellers that have at least $1 billion of annual gross sales in the United States to require the marketplace seller to collect and remit all applicable taxes and fees.
- (Notice 21-14, Marketplace Facilitators – Products, Kansas Department of Revenue, November 1, 2021)

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Illinois Releases Answers to 2022 Sales and Use Tax Issues Survey

- Illinois has published guidance that clarifies the state's treatment of marketplace sellers.
- Marketplace Sellers who only make sales on a marketplace may still have a filing obligation for tax types other than Retailer's Occupation Tax (ROT) if they meet the economic nexus threshold.
- A Marketplace Facilitator that does not have physical or economic nexus does not qualify as a marketplace facilitator in Illinois if they register voluntarily, and marketplace sellers may still have a requirement to collect and remit tax for sales on such marketplaces.
- Marketplace facilitators should make arrangements to remit taxes other than ROT to marketplace sellers if they are collected on orders, so marketplace sellers may remit the tax.
- (Illinois Department of Revenue, General Information Letter ST 22-0020-GIL)

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Taxpayer Doesn’t Meet Definition of Marketplace Facilitator in North Carolina

- A North Carolina taxpayer who is an affiliate of original equipment manufacturers (OEMs) does not meet the definition of a “marketplace facilitator” per a private letter ruling from the NC DOR.
- The taxpayer owns and administers the electronic infrastructure of a platform on which marketplace sellers make sales.
- North Carolina defines “marketplace facilitator” as a person that, directly or indirectly and whether through one or more affiliates, does both of the following:
  - Lists or otherwise makes available for sale a marketplace seller’s items through a marketplace owned or operated by the marketplace facilitator; and
  - Collects the sales price or purchase price of a marketplace seller’s items or otherwise processes payment, or makes payment processing services available to purchasers for the sale of a marketplace seller’s items

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Taxpayer Doesn’t Meet Definition of Marketplace Facilitator in North Carolina (cont.)

- The taxpayer is not a marketplace facilitator since it does not meet both parts of the state’s definition.
- While the taxpayer does own and administer a marketplace in North Carolina that lists marketplace sellers’ items for sale, the taxpayer does not directly or indirectly collect the sales price or purchase price of the marketplace sellers’ items, process payment, or make payment processing services available.
- Third-party providers who are not affiliates of the taxpayer process payment and make payment processing services available. As such, the taxpayer does not meet the state’s definition of a marketplace facilitator.
- (SUPLR 2022-0008, North Carolina Department of Revenue, December 9, 2022)

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Fulfillment Models

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Fulfillment Models

- The fulfillment model that an e-commerce seller uses can have a significant impact on nexus and sales tax requirements.
- An important consideration in determining physical presence nexus can be if the seller controls the movement of the inventory.

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Fulfillment Models

- There are four main fulfillment models:
  - FBA – Fulfillment by Amazon
  - 3PL (Third-Party Logistics)
  - Self-fulfilled
  - Consigned inventory

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Fulfillment Models

- Amazon warehouse
  - For FBA (Fulfillment by Amazon) sellers, the seller doesn’t control the inventory stored in the Amazon warehouse.
  - A seller’s inventory may get commingled with another seller’s inventory.
  - Some people have made the argument that Amazon essentially owns the inventory because they decide what to do with it.

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Fulfillment Models

- Amazon warehouse (cont.)
  - Inventory in an Amazon warehouse may or may not be considered physical presence in a state.
    - Arizona and New York specify that 3rd party inventory does not create physical nexus.
    - SST Disclosed Practice 8.1.a
  - This inventory could create income tax nexus in addition to sales tax nexus and even if the state says it doesn't create sales tax physical nexus.

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Fulfillment Models

- 3PL (Third-Party Logistics)
  - The seller engages with a 3rd party contractor to manage its inventory at the 3PL warehouse location
  - The seller retains clear ownership of the inventory and controls the movement
  - This creates physical nexus.
- Self-fulfilled
  - The seller fulfills orders from its own location itself.
  - The seller clearly owns and controls the inventory, so this creates physical nexus wherever they maintain their own warehouses.

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Fulfillment Models

- Consigned inventory
  - The seller purchases the inventory from the supplier and has legal title to the inventory at the time of purchase .
  - The supplier retains the inventory and acts as the fulfillment center on behalf of the seller.
  - The seller clearly owns the inventory, so this creates physical nexus.

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Drop Shipments

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Drop Shipments

- Drop shipments commonly happen in the fulfillment of sales made by e-commerce sellers.
- As contrasted with consigned inventory, in a drop shipment model, the supplier sells the inventory to the seller at the same time the seller makes the sale to their customer in a “flash” title transfer situation.
- The seller doesn’t have ownership of the inventory prior to the point of shipment.
- As such, it’s important to understand how they work, the sales tax implications, and what sellers need to do to stay compliant.

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Drop Shipments Definition

- Seller/distributor accepts order from customer/end user
- Seller/distributor places order with shipper/wholesaler
- Seller/distributor directs shipper/wholesaler to ship goods direct to customer/end user
- Shipper/wholesaler bills the Seller/distributor at wholesale price
- Seller/distributor bills customer at retail price

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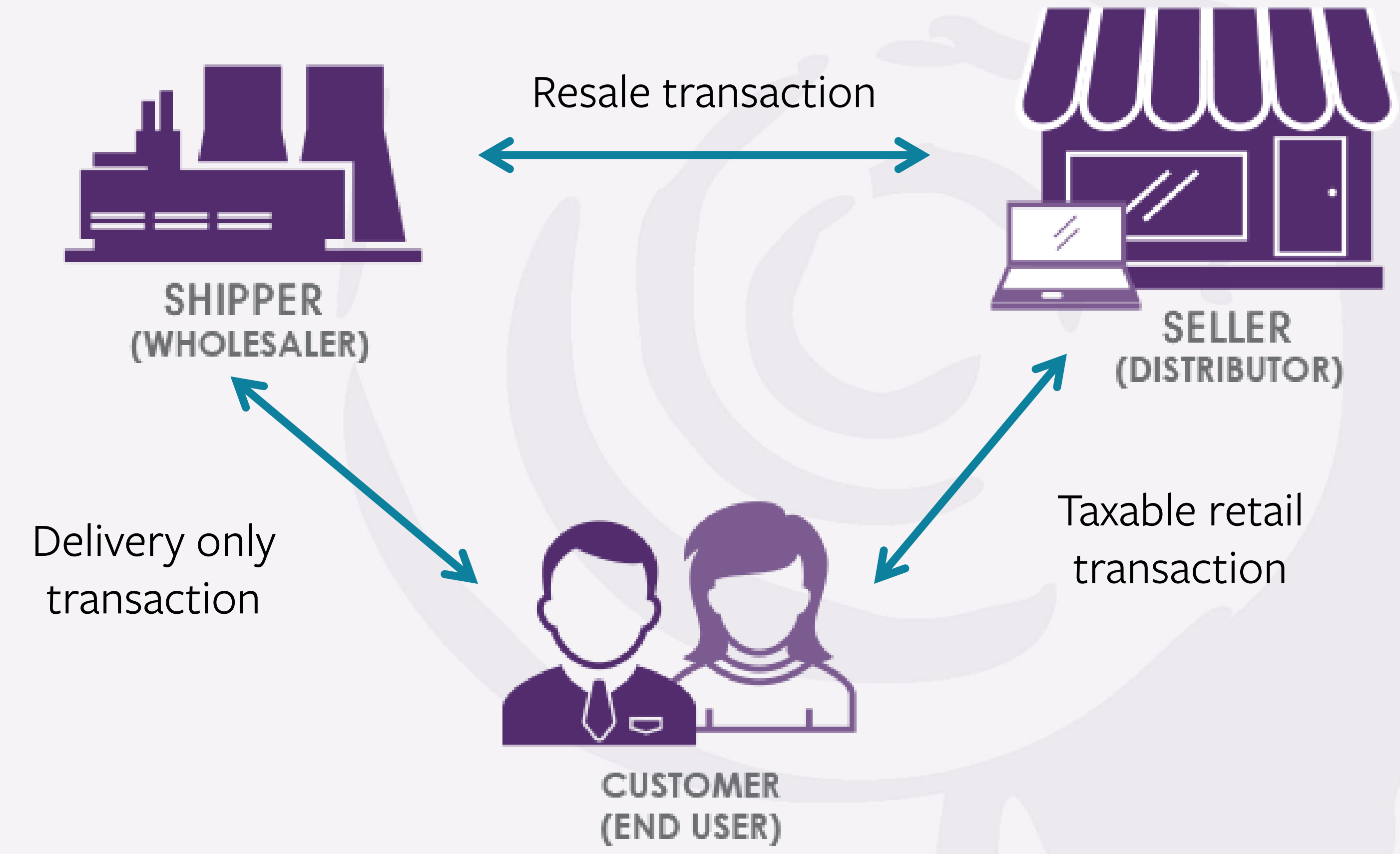
Drop Shipment Models – Traditional



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The Drop Shipment Model – 4 party

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Implications of Drop Shipments

- A state cannot <u>require</u> out-of-state businesses to register to collect its tax unless nexus is established…BUT
  - If the shipper/wholesaler requires appropriate exemption documentation, the retailer may be forced to register.
  - Otherwise, the shipper/wholesaler will be required to charge tax on the invoice to the retailer.
  - Economic nexus could resolve many of these issues and the retailer may now be required to be registered.

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Sales and Use Tax Issues with Drop Shipments

- If the seller/distributor is not registered to collect sales tax and has no nexus with the state where the goods are shipped to the customer, will the state recognize the sale from the shipper/wholesaler to the retailer as a sale for resale?
  - The sale is a sale for resale, but the issue is how can it be documented?

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Implications of Drop Shipments

- What is the appropriate documentation to support the exempt transaction?
  - Some jurisdictions allow alternate documentation
  - Some states require their own registration number
  - Some states accept a pass-through exemption

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California Drop Shipment Rules

- Marketplace Seller Requirements
  - If you are a marketplace seller, beginning October 1, 2019, you are no longer considered the retailer of your sales of tangible merchandise facilitated through a marketplace, as defined by statute, provided the marketplace facilitator is registered or required to be registered for a seller's permit or Certificate of Registration – Use Tax.
- Purchases for Resale by Marketplace Sellers (and Drop Shipments)
  - If you are a marketplace seller that is not required to be registered with CDTFA as a seller or retailer because all your sales of merchandise are facilitated by a marketplace facilitator that is registered as a retailer with CDTFA, or you are a marketplace seller that does not have sufficient physical presence in California or economic nexus with California and your sales for delivery in California are facilitated by a registered marketplace facilitator, you may still purchase items for resale from your supplier.
  - Unregistered marketplace sellers should explain that a permit is not required because all their sales are facilitated by a registered marketplace facilitator, or because they are an out-of-state seller that does not have a sufficient physical presence in California or economic nexus with California and their sales for delivery in California are facilitated by a registered marketplace facilitator.
  - https://www.cdtfa.ca.gov/industry/MPFAct.htm

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Exemption Certificate Best Practices

- Collection of Certificates
  - Make the request part of the new customer set up
  - Match the customer "sold to" name to name on certificate
  - Develop a document retention plan and process
  - Understand drop ship rules and don't be overly restrictive
  - If drop shipping, set up all possible exempt states at creation
  - Track certificates that expire and request updated certificate timely
  - Update non-expiring certificates every 3-5 years

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Exemption Certificate Best Practices

- Issuing Certificates
  - Timely provide certificates to new vendors
  - Complete appropriate reason and what certificate applies to on certificate
  - Claim all applicable states if purchasing for drop shipments
  - Maintain records of who certificates have been issued to
  - Update certificates timely for ones that expire

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Exemption Certificates

- MTC Multi-jurisdiction Certificate
  - https://www.mtc.gov/Resources/Uniform-Sales-Use-Tax-Exemption-Certificate
- SST Exemption Certificate
  - https://www.streamlinedsalestax.org/Shared-Pages/exemptions
- SST Disclosed Practice 9
- Sales Tax Institute State by State Exemption Certificate Guide
  - https://www.salestaxinstitute.com/resources/state-by-state-exemption-certificate-guide

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Implications for Income Tax and Business Licenses

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Implications for Income Tax

- If the seller has physical presence in a state, be aware that they may also need to register for income tax.
- If the seller has economic nexus in a state and no physical presence, they likely will not need to register for income tax.
  - However, states are trending towards economic nexus concepts which could require filing.

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Implications for Business Licenses

- If the seller has physical presence in a state, be aware that they may also need to obtain local business licenses.
- Business licenses could be flat rate, business type specific, or based on gross receipts, number of employees, square footage or number of vehicles.
- Failure to obtain and maintain a business license could result in actions up to and including padlocking your place of business.
- Colorado locals currently have significant business license requirements but these are not required for remote sellers.

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Global Ramifications

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Global Ramifications

- Just as the U.S. has economic nexus, many other countries have remote or distance sale requirement for the collection of VAT and GST for foreign companies, even with no people or physical presence in a country.
- Some countries have thresholds while others have no threshold but could have different rules based on the price of the item sold.
- Rules could differ for sales of tangible goods and digital goods as well as whether the customer is a registered business.

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Global Ramifications

- Be aware of where you are making sales globally and what your footprint is.
  - If needed, develop partnerships with VAT experts to help understand the tax implications of sales into other countries.
- Using tax automation tools for global tax may be a consideration.

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E-Commerce Sales of Tangible Personal Property Into Canada - Collection of GST/HST

Seller	Sold through	Goods Located	Collection of GST/HST
Non-Résident not Registered	Non-Resident Website	Canada	The Non-Resident supplier needs to register and collect the GST/HST if the small supplier threshold is exceeded.
	Distribution Platform	Canada	DPO needs to register and collect the GST/HST if the small supplier threshold is exceeded.
Non-Resident GST/HST registrant	Non-Resident Website	Anywhere	The Non-Resident supplier needs to collect the GST/HST.
	Distribution Platform	Anywhere	The Non-Resident supplier needs to collect the GST/HST.

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E-Commerce Sales of Digital Goods/Services Into Canada - Collection of GST/HST

Seller	Sold through	Collection of GST/HST	Recipient
Non-Resident not registered (GST/HST)	Non-Resident Website	Non-Resident supplier does not need to collect the GST/HST if the small supplier threshold is not exceeded	N/A
	Distribution Platform	Registered (Specified/General) DPO has to collect the GST/HST	Canadian nonregistered person
Non-Resident registered for the **Simplified** GST/HST	Non-Resident Website	Non-Resident supplier needs to collect the GST/HST	Canadian nonregistered person
	Distribution Platform	Registered (Specified/General) DPO has to collect the GST/HST	Canadian nonregistered person
Non-Resident registered for the **General** GST/HST	Non-Resident Website	Non-Resident supplier needs to collect the GST/HST	All recipients
	Distribution Platform	Non-Resident supplier needs to collect the GST/HST	All recipients

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B2C – Cross border OSS – European Union

WHAT

OSS – Report all B2C distance sales on one OSS resident country return
The Union scheme for intra-EU supplies of TBE services will be extended to all types of B2C services as well as to intra-EU distance sales of goods and certain domestic supplies facilitated by electronic interfaces. Application of Destination Principle of VAT and abolition of the current distance sales thresholds

WHEN

OSS regime live 1st July 2021
Registrations from 1st April 2021

HOW

Registration of OSS is separate
Quarterly filings

WHY

OSS – Simplify registration and reporting obligations for B2C distance sales across the EU

WHERE

Union OSS (for EU-based) – Report where business is resident.

https://ec.europa.eu/taxation_customs/business/vat/oss_en

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B2C – Import scheme IOSS – European Union

WHAT

IOSS – Consignments below €150 can clear customs quickly through "Green Channel"
Seller to charge and collect the VAT at the point of sale to EU customers and declare and pay that VAT globally to the Member State of identification in the IOSS.

WHEN

IOSS regimes live 1st July 2021
Registrations from 1st April 2021

HOW

Registration for iOSS is separate
Monthly filings
Can be used by both EU and non-EU businesses

WHY

iOSS – Simplify customs clearance across the EU for consignments below €150
Consignments above €150 will follow current procedure

WHERE

Non-EU businesses can use IOSS portal of any EU Member State. Will normally need to appoint an EU-established intermediary to fulfil their VAT obligations under IOSS.
Possibly register for IOSS in country where intermediary is established.

https://ec.europa.eu/taxation_customs/business/vat/ioss_en

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Global Ramifications

- Be aware of customs and duties.
  - If you make online sales and sell an expensive item over the threshold, the customer is required to pay the customs and duties.
  - If the customer didn't realize that, they may abandon the order.
- A number of countries have specific invoice requirements related to language and currency
- E-Invoicing requirements which can include clearance of invoices with the government are expanding across the globe

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Sales Tax System Options

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Reasons for Automated Tools

- Quantity of jurisdictions
  - Between 7,500 and 14,000 different authorities impose their own taxes in the U.S.
- Complexity of tax rules
  - Critical for businesses that operate in many jurisdictions, selling items that can have different taxability
- Users' qualifications
  - Given the quantity and variety of users involved in making sales and use tax decisions within a company, automation is critical.
- System Functionality
  - E-Commerce doesn't facilitate manual tax determination on invoices

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Types of Systems

- Host systems
  - Most sales order/billing systems include some level of sales tax processing capability in their system.
  - Determining whether to rely on the standard functionality entails an evaluation of the users' proficiency in making tax determinations, the effort required to maintain the tax rules, and the flexibility in the system.
  - Product taxability indicators are usually limited to a single indicator. For products that have different taxability by jurisdiction, this functionality will be insufficient to meet tax calculation requirements.

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Types of Systems (cont.)

- Host systems (cont.)
  - Customer taxability indicators are often tied to an address.
    - As long as unique address records are created for each delivery address and all items sold to the given customer qualify for an exemption these indicators may be sufficient.
  - Procurement systems, including purchasing and accounts payable functions also may include some level of tax processing.
    - This is generally limited, and in some cases, only a taxable or exempt indicator is permitted.
  - Most e-commerce platforms have an internal sales tax calculation function.

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Types of Systems (cont.)

- Bolt-on products
  - For more sophisticated tax processing, there are third party “bolt-on” products that interface with host systems.
  - An interface is required to communicate between the host system and bolt-on package.
  - Full functionality for tax management may require customization of the host system or interface.
  - User training may impact effectiveness
  - Some e-commerce solutions may not provide bolt on functionality

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Types of Systems (cont.)

- Cloud/ASP Hosted Systems
  - Alternative to on-premise solutions for tax determination
  - Can be cost efficient as the provider will manage all updates and provide the infrastructure.
  - Arrangements for access to the tax data should be included in the hosting agreement
  - Not all businesses will be able to use due to either confidentiality/firewall issues or processing speed and volume of transactions.
  - May not be as customizable as full software implementation but allow for easy scalability

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Types of Systems (cont.)

- Custom designed systems
  - Often incorporated into custom billing systems
  - This often exists for companies in industries with unusual tax requirements or non-standard sales tax rates such as food, medicine, telecommunications and utilities.
  - More difficult to maintain but can be very sophisticated and accurate.
  - In some instances, a third-party rate package is incorporated into the custom calculation in lieu of manual rate updating.
  - As custom systems are converted to standard billing systems, the custom tax functionality must be replaced with canned programs.

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Types of Systems (con't)

- E-Commerce and Marketplace Tax Calculation
  - Most e-commerce platforms include built in tax functionality that usually must be used for tax calculation as integration to a tax bolt on isn't supported
  - Varied level of tax rate and rule functionality exists in the different platforms
  - Tax compliance solutions may have extractors from e-commerce and marketplace applications to transfer data for return preparation

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Types of Systems (con't)

- Shopify
  - Shopify Basic and Advanced have tax functionality built in and don't generally support bolt ons
  - Recent enhancements have added advanced rate functionality as well as product taxability
  - All tax calculation occurs within Shopify
  - Extractors to compliance solutions
  - Shopify Plus supports full integration to Avalara and Vertex for real time tax calculation

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Types of Systems (con't)

- Marketplaces provide all tax functionality and compliance
- Sellers required to map products to Marketplace product categories
- Extractors facilitator data population in returns solutions

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E-Commerce Platforms Tax Functionality

- Adobe Commerce/Magento:
  - https://experienceleague.adobe.com/docs/commerce-admin/stores-sales/site-store/taxes/taxes.html?lang=en
- BigCommerce: https://support.bigcommerce.com/s/article/Tax-Overview?language=en_US
- Shopify:
  - https://help.shopify.com/en/manual/taxes
- Square:
  - https://squareup.com/help/us/en/article/5061-create-and-manage-your-tax-settings
- Squarespace:
  - https://support.squarespace.com/hc/en-us/articles/360053592211
- Weebly:
  - https://www.weebly.com/app/help/us/en/topics/all-about-taxes
- Wix:
  - https://support.wix.com/en/article/wix-stores-about-tax-collection
- WooCommerce:
  - https://woocommerce.com/products/tax/

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Marketplace Platforms Tax Functionality

- Amazon: https://www.amazon.com/gp/help/customer/display.html?nodeId=202211260
- Amazon Canada: https://www.amazon.ca/gp/help/customer/display.html?nodeId=G202029080
- Amazon Mexico: https://sellercentral.amazon.com/help/hub/reference/external/201812940
- Ebay: https://www.ebay.com/help/selling/fees-credits-invoices/taxes-import-charges
- Etsy: https://www.etsy.com/seller-handbook/article/marketplace-sales-tax-where-etsy/321914904041
- Google: https://support.google.com/merchants/search?q=sales+tax&from_promoted_search=true&sjid=4959062915130934682-NA
- Google Ads: https://support.google.com/merchants/answer/7052112?visit_id=637787498489036633-3538217980&rd=1
- Sears: https://marketplace.sears.com/seller-support/sales-and-use-tax-policy/

- Walmart: https://sellerhelp.walmart.com/seller/s/guide?language=en_US&article=000006444

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Types of Systems (cont.)

- Non-Interactive Solutions
  - Simplistic and require manual updating
  - Excel and Access can be used to build templates
  - Manual maintenance of rules and rates is required to comply with tax changes as they occur.
  - May be best suited for companies that have limited billing systems that cannot interface with a standard third-party tax package
  - In some situations, a combination of a non-interactive solution with an interactive solution may be necessary.

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Vendors Evaluation

- The most important initial step is to fully understand your business needs and select the correct classification of solution.
- Evaluate interaction and ease of integration between solutions.
- There are a number of vendors that provide tools which have differing levels of capabilities.
- Comprehensive evaluation should include vendor demonstrations using representative data of your business.

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Questions & Comments

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