

SALT INSIGHTS

Jurisdiction: Washington
Tax Type: Sales & Use Tax
Issue: Marketplace Fairness Penalty Reduction Program
Date: May 11, 2018

SYNOPSIS:

Washington has announced a Marketplace Fairness Penalty Reduction Program ("the Program") in an effort to help businesses and remote sellers to comply with the Marketplace Fairness law. Businesses that register with Washington by June 30, 2018 through the Program may receive reduced penalties and other benefits.

Historically, Washington did not require remote sellers and referrers (collectively, "market facilitators") to collect and remit sales or use taxes or notify purchasers that they may owe use tax. However, effective January 1, 2018, Washington began requiring market facilitators with a physical presence in Washington, or \$10,000 or more in retail sales sourced to Washington- including sales made on behalf of marketplace sellers, to either collect and remit sales tax on sales to Washington purchasers, or utilize the states use tax notice and reporting requirement- requiring sellers to issue a conspicuous notice on a marketplace platform, website, catalog, or other medium.

Washington defines a marketplace facilitator as a business that:

1. Facilitates the sale of seller's product through a marketplace for payment;
2. Engages, directly or indirectly to bring buyer and seller together by;
 - a. Transmitting or communicates an offer or acceptance between buyer and seller, or
 - b. Owns or operates physical or technological infrastructure that brings buyers and sellers together, or
 - c. Provides a virtual currency that buyers can use to purchase products from the seller; or
3. Develops software or performs R&D activities related to any activities with respect to the seller's products.

INSIGHT:

The Marketplace Fairness Penalty Reduction Program provides a business with a limited "look-back" period of 4-years (plus the current year) and waiver of up to 39% of potential penalties. In addition, the Program permits a participant to enter the Program even if they have been contacted by the state- normally not permitted under a traditional Voluntary Disclosure Program ("VDA").

Not complying with the new law exposes a business to numerous years of "look-back", annual penalties and compounded interest. Therefore, remote sellers will want to determine whether they should enter the Program rather than risk a large tax exposure. Contact SimekScott to discuss the Program, options and potential risks.

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