

Tax Alert



Tax Alert Comptroller of Maryland
Revenue Administration Division
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For tax information: www.marylandtaxes.gov.
Questions? Send them to taxhelp@comp.state.md.us.

09-19

Marketplace Facilitators

The General Assembly of Maryland enacted House Bill 1301 during the 2019 legislative session. Under the new law, marketplace facilitators must collect Maryland sales and use tax on a retail sale or sale for use by a marketplace seller to a buyer in Maryland. A marketplace seller is not required to collect sales and use tax if the marketplace facilitator collects the sales and use tax. The law is effective October 1, 2019.

1. What is a marketplace facilitator?

A marketplace facilitator is an entity or individual that facilitates a retail sale by:

1. listing or advertising for sale in a marketplace tangible personal property, and
2. collects payment from a buyer and transmits the payment to a marketplace seller.

Marketplace facilitators, whether in-state or out-of-state, are now considered vendors under Maryland law.

Marketplace facilitators include, but are not limited to online marketplaces, consignment stores, and auction houses.

2. What is not a marketplace facilitator?

A marketplace facilitator does not include an entity, individual, or platform that:

1. exclusively provides internet advertising services, including for sale listings, if it does not engage, either directly or indirectly, in the collection of a payment from a buyer and its transmittal to the vendor; or
2. a payment-processing business appointed by a vendor to handle payment transactions, including credit and debit card payments, whose only activity with respect to marketplace sales is to handle transactions between two parties; or
3. a peer-to-peer car sharing program as defined in section 19-520 of the Insurance Article; or
4. a delivery service company that delivers tangible personal property on behalf of an in-state marketplace seller and which is:
 - a. an out-of-state vendor in the State; or
 - b. a retail vendor in the State; or
 - c. a marketplace facilitator; or
 - d. holds a special license issued pursuant to section 11-707 of the Tax-General Article.

3. What is a marketplace seller?

A marketplace seller is a person that makes retail sales or sales for use through a physical or electronic marketplace operated by a marketplace facilitator. Marketplace sellers, whether in-state or out-of-state, are now considered vendors under Maryland law.

4. What is a marketplace?

A marketplace may be physical or electronic. A marketplace includes, but is not limited to, any space, store, booth, catalog, website, application, or television or radio broadcast.

5. **Do marketplace facilitators need to collect Maryland sales and use tax when they facilitate sales into Maryland?** Yes. Effective October 1, 2019, marketplace facilitators must collect Maryland sales and use tax on each facilitated retail sale or sale for use by a marketplace seller to a buyer in Maryland.
6. **Do marketplace sellers need to collect Maryland sales and use tax on sales made through a marketplace facilitator?** No. If a marketplace facilitator collects the applicable sales and use tax, a marketplace seller is not required to collect sales tax on a facilitated sale. The sales and use tax is due at the time of sale. The buyer is required to pay the sales tax directly to the marketplace facilitator and the marketplace facilitator will remit tax collected directly to the State.
7. **Do I need to register for a Maryland sales and use tax license if I engage in business as a marketplace facilitator?** Yes. If you are engaged in business as a marketplace facilitator, you must register with the Maryland Comptroller's Office. A Maryland Combined Registration Application can be found at https://forms.marylandtaxes.gov/current_forms/CRA.pdf
8. **Do marketplace sellers have to register for a Maryland sales and use tax account and file sales and tax returns when all of their sales are through a marketplace facilitator?** No. You do not have to register if you are a marketplace seller and all your sales are through a marketplace facilitator. However, if you are a marketplace seller that also makes direct sales, then you are required to register as an out-of-state seller.
9. **What are the minimum thresholds to trigger the registration requirement?** Marketplace facilitators and out-of-state vendors who make direct sales are required to register to collect Maryland sales and use tax if they sell tangible personal property or taxable services for delivery in Maryland and satisfy, during the previous calendar year or the current calendar year, either of the following criteria:
- (a) gross revenue from the sale of tangible personal property or taxable services delivered in Maryland exceeds \$100,000; or
 - (b) tangible personal property or taxable services were sold for delivery into Maryland in 200 or more separate transactions.

Example 1: M is an online marketplace facilitator. M facilitated 5,000 separate sales with a gross revenue of \$50,000 to Maryland buyers. M must register for a Maryland sales and use tax account, collect sales and use tax, file sales and tax returns and remit the applicable sales and use tax collected from buyers on behalf of marketplace sellers because M made more than 200 sales transactions into Maryland.

Example 2: M is an online marketplace facilitator. M facilitated 100 separate sales with a gross revenue of \$500,000 to Maryland buyers. M must register for a Maryland sales and use tax account, collect sales and use tax, file sales and tax returns and remit the applicable sales and use tax collected from buyers on behalf of marketplace sellers because M's gross sales exceeded the \$100,000 threshold.

Example 3. M is an online marketplace facilitator. M facilitated 100 separate sales with a gross revenue of \$50,000 to Maryland buyers. M is not required to register for a Maryland sales and use tax account, collect sales and use tax, or file sales and tax returns, until they meet one of the two thresholds.

For more information on out-of-state vendors, please see here https://taxes.marylandtaxes.gov/Resource_Library/Tax_Publications/Tax_Alerts/Maryland-Wayfair-Tax%20Alert-Final-Version%209-14-2018.pdf

10. **For purposes of determining whether the threshold has been met, must out-of-state vendors aggregate sales made through the marketplace and sales made directly?**

Yes. All sales, direct and facilitated, are counted for purposes of determining whether the threshold has been met.

Example 4: M operates a website that allows buyers to purchase goods directly from M or from other sellers through a marketplace on M's website. M's gross revenue for direct sales to Maryland buyers was \$75,000. The gross revenue it received from facilitated sales was \$26,000. Since M's combined sales of \$101,000 exceeds the \$100,000 gross revenue threshold, M must register with the Maryland Comptroller's office and collect sales and use tax.

Example 5: V is an out-of-state vendor. V sells widgets to Maryland customers on its website. V also sells widgets on a marketplace facilitator's website. V sold \$25,000 of widgets to Maryland buyers on its website, and \$76,000 to Maryland buyers on the marketplace facilitator's website. V's total activity exceeds the \$100,000 threshold, thus V must register with Maryland Comptroller's office and collect sales and use tax on V's direct sales.

11. For purposes of determining whether the threshold of 200 transactions or \$100,000 of gross revenue has been met, do I include non-taxable sales and transactions?

Yes. For purposes of determining whether the threshold has been met, the calculation must include all Maryland sales including tax-exempt transactions and Maryland tax-exempt revenue, e.g. sales for resale, sales to tax exempt entities, and sales of exempt items.

Example 6: V is an out-of-state vendor. V sells a combination of tax-exempt and taxable goods. V sold to Maryland customers \$12,000 of taxable goods and \$90,000 of tax-exempt goods. V's gross revenue for purposes of determining whether the threshold has been met is \$102,000.

Additional information on calculating the threshold for out-of-state vendors is available here https://taxes.marylandtaxes.gov/Resource_Library/Tax_Publications/Tax_Alerts/Maryland-Wayfair-Tax%20Alert-Final-Version%209-14-2018.pdf

12. How should sales and use tax collected be reported?

Use the table below to determine which form(s) to use to report sales and any sales and use tax collected.

Licensee:	Type of sales:	Where to report:
In-state vendor	Direct sales	Form 202
Out-of-state vendor, with over \$100,000 in gross revenue or 200 or more sales transactions into Maryland in the prior year	Direct sales	Form 202
Marketplace facilitator, with over \$100,000 in gross revenue or 200 or more sales transactions into Maryland in the prior year*	Direct sales	Form 202
Marketplace facilitator, with over \$100,000 in gross revenue or 200 or more sales transactions into Maryland in the prior year*	Facilitated sales	Form 202F
Marketplace seller (in-state or out-of-state)	Facilitated sales	No reporting requirement for the marketplace seller. These sales and the tax collected are reported by the marketplace facilitator.

* The listed thresholds apply to marketplace facilitators located outside of the State.

13. Do marketplace facilitators need to separately report sales tax collected from direct sales and facilitated sales?

Under Maryland law, marketplace facilitators must report sales and use tax collected from direct sales separately from tax it collects when acting as a marketplace facilitator. Facilitated sales and the associated tax collected must be reported on Maryland Form 202F. Direct sales made by the marketplace facilitator must be reported on Maryland Form 202. Both forms contain instructions for properly reporting sales and sales and use tax collected.

14. How should purchases for use in Maryland be reported?

All licensees making purchases for use in Maryland should report those purchases and the use tax due on Form 202 (lines 12a, 12, 13a, and 13b).

15. How can I file a Maryland sales and use tax return?

Licensees may file sales and use tax returns online using the Comptroller's bFile application at www.marylandtaxes.gov. You may also contact the Taxpayer Services Division at 410-260-7980 to request Forms 202 and 202F.

16. May a marketplace facilitator request a waiver of its requirement to collect sales and use tax on facilitated sales?

A marketplace facilitator may apply to the Comptroller for a waiver of the collection requirement if:

- (1) the marketplace seller is a communications company that is publicly traded or is controlled, directly or indirectly, by a company that is publicly traded;
- (2) the marketplace facilitator and marketplace seller enter into an agreement that the marketplace seller will collect and remit all applicable sales and use taxes imposed; and
- (3) the marketplace seller provides evidence to the marketplace facilitator that the marketplace seller is licensed to engage in the business of an out-of-state vendor in the State or a retail vendor in the State.

To apply for a waiver, a marketplace facilitator must submit an email to marketplace@comp.state.md.us. The subject line of the email should read "Waiver Request" and include as an attachment containing the following: (1) documentation that the marketplace seller is a communications company that is publicly traded or is controlled, directly or indirectly, by a company that is publicly traded; (2) the written agreement between the marketplace facilitator and seller or other documentation verifying the marketplace seller's responsibility to collect and remit sales and use tax; and (3) the identity of the marketplace seller licensed in Maryland to engage as either an out-of-state vendor or retail vendor. The waiver request must include the marketplace facilitator's name, FEIN, CR number, the name of a contact person and their phone number, and the marketplace seller's name, FEIN, and the contact information for the representative that signed the agreement.

The Comptroller will make a determination of whether to approve or deny the request for a waiver. The marketplace facilitator must collect the applicable sales and use tax until it receives notification from the Comptroller that its request for a waiver has been approved.

17. Who is responsible for refunding sales tax collected from buyers who return or cancel their order after payment on facilitated sales?

The marketplace facilitator is required to refund the sales and use tax paid to it by a buyer. The sale must be canceled, or the property sold must be returned to the marketplace facilitator or marketplace seller. The purchase price must either be wholly or partially repaid or credited to the buyer.

Report the actual amount of sales and use tax you collected or should have collected on facilitated sales, less any tax which you properly refunded to customers for cancelled facilitated sales, on Form 202F on the following lines:

Line 2 for facilitated sales subject to the 6% rate;

Line 3 for facilitated car and motorcycle rentals subject to the 11.5% rate;

Line 4 for facilitated truck rentals subject to the 8% rate; and

Line 6 for facilitated sales of alcoholic beverages subject to the 9% rate.

18. I sell my product directly and on a marketplace facilitator's platform. Do I have to keep records of all sales?

Yes. Marketplace sellers and marketplace facilitators are required to keep and provide records of all sales. Remote sellers, whether they sell directly, only sell through marketplace facilitators, or a combination of both, are required to maintain records of all sales. Marketplace facilitators are also required to keep and provide records of their direct sales and sales made by remote sellers through their marketplace.

19. How frequently must a marketplace facilitator file a sales and use tax return?

Marketplace facilitators are required by law to file sales and use tax returns on a monthly basis.

20. Whom do I contact if I have additional questions on marketplace facilitators or marketplace sellers?

You can contact the Maryland Comptroller's office directly at the following e-mail address marketplace@comp.state.md.us