

Sales and Use Tax for Remote Sellers: Ohio

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A Q&A guide to remote sellers' exposure to sales and use tax in Ohio after the US Supreme Court's decision in *South Dakota v. Wayfair, Inc.* in 2018. This Q&A addresses issues including nexus for remote sellers, taxability based on economic nexus and software nexus, economic nexus thresholds (including the threshold measurement period), the Streamlined Sales and Use Tax Agreement (SSUTA), penalties for failure to comply with sales tax collection and remittance, and the taxation of marketplace sellers and hosts or facilitators.

SCOPE OF SALES AND USE TAX

1. Does your state require remote sellers to collect sales and use tax on sales of goods or services made into your state?

Specifically, please discuss:

- How your state determines nexus for sales tax purposes for remote sellers (for example, economic nexus, physical presence nexus, click-through-nexus, affiliate nexus, cookie or in-state software nexus, or a notice and reporting system).
- The particular goods or services that are taxable.
- Relevant statutes or legislation.
- Any significant case law.

Ohio requires out-of-state sellers (including remote sellers) that have **substantial nexus** with the state to register and collect Ohio sales or use tax (R.C. 5741.04 and R.C. 5741.17(A)).

"Substantial nexus" means that the seller has sufficient contact with Ohio to allow the state to require the seller to collect and remit

use tax on sales of tangible personal property or services made to consumers in the state (R.C. 5741.01(l)(1)).

Ohio presumes that a seller has substantial nexus with the state if **any** of the following direct physical connections exist:

- The seller uses an office, distribution facility, warehouse, storage facility, or similar place of business in Ohio, unless operated by a common carrier (R.C. 5741.01(l)(2)(a)).
- The seller has employees, agents, representatives, solicitors, installers, repairers, salespersons, or other persons in Ohio to:
 - conduct the seller's business in the state;
 - engage in a business with the same or a similar industry classification as the seller and selling a similar product or line of products as the seller; or
 - use trademarks, service marks, or trade names in Ohio that are the same or similar to the seller's.
- (R.C. 5741.01(l)(2)(b).)
- The seller uses any person in Ohio, other than a common carrier, to:
 - receive or process orders of goods or services;
 - advertise, promote, or facilitate sales by the seller;
 - deliver, install, assemble, or perform maintenance services for the seller's customers; or
 - facilitate delivery by allowing the seller's customers to pick up products sold by the seller at their place of business.
- (R.C. 5741.01(l)(2)(c).)
- The seller delivers goods for sale into Ohio other than by common carrier, for example, by the seller's own trucks (R.C. 5741.01(l)(2)(d)).
- The seller owns tangible personal property that is rented, leased, or offered to consumers in Ohio (R.C. 5741.01(l)(2)(f)).

Substantial nexus is not limited to direct physical presence. Ohio also finds substantial nexus if an out-of-state seller has:

- Economic nexus (effective as of August 1, 2019) (R.C. 5741.01(l)(2)(g), (h); see Economic Nexus).
- Affiliate nexus (R.C. 5741.01(l)(2)(e); see Affiliate Nexus).

- Marketplace nexus (see Marketplace Nexus and Marketplace Sellers and Facilitators).

A seller may rebut a presumption of substantial nexus by demonstrating that its activities in or connections with Ohio are not significantly associated with its ability to establish or maintain the seller's Ohio market (R.C. 5741.01(l)(3)).

Sales subject to Ohio sales and use tax include both:

- Transfers of title or possession of tangible personal property for consideration.
- The provision of a taxable service for consideration.

(R.C. 5739.01(B).)

Before August 1, 2019, Ohio also presumed substantial nexus to exist for out-of-state sellers based upon:

- Click-through nexus (former R.C. 5741.01(l)(2)(g); see Click-Through Nexus).
- Software nexus (former R.C. 5741.01(l)(2)(h); see In-State Software Nexus).
- Network nexus (former R.C. 5741.01(l)(2)(i); see Network Nexus).

As of August 1, 2019, these types of nexus connections have been repealed and have been replaced by an economic nexus standard (see Economic Nexus). These provisions are, however, effective for tax periods ending before August 1, 2019.

For additional information pertaining to Ohio sales and use tax, see State Q&A, Sales and Use Taxes: Ohio ([5-518-7108](#)).

NEXUS

Nexus for sales and use tax purposes is the connection that a seller has with a state that requires it to collect and remit tax on sales made to that state. States have adopted various nexus standards relating to the taxation of remote sellers. For a discussion of the various approaches used by states to determine nexus for sales tax purposes, including economic nexus, see Practice Note, Sales and Use Tax for Remote Sellers: Sales Tax Nexus Approaches and Economic Nexus ([W-016-0090](#)).

In Ohio, the nexus connection for sales and use tax purposes must be substantial. Each of the standards adopted by Ohio relating to remote sellers discussed below satisfy the substantial nexus requirement. If a remote seller satisfies the requirements of any one of the nexus standards, they must collect and remit Ohio sales or use tax.

Economic Nexus

Economic nexus requires a remote seller to collect and remit sales or use tax on sales made to a state if its sales or transaction volume (or a combination of the two) to in-state customers exceeds specified thresholds, even if the seller lacks physical or any other type of presence in the state. In *South Dakota v. Wayfair, Inc.*, the US Supreme Court overruled the physical presence test and noted its approval of South Dakota's economic nexus statute (138 S. Ct. 2080 (2018)). For a discussion of the *Wayfair* decision, see Legal Update, States Consider Next Steps on Taxing Remote Sellers After *S. Dakota v. Wayfair* ([W-015-5051](#)).

Ohio adopted an economic nexus threshold similar to the standard at issue in *Wayfair, Inc.*, effective as of August 1, 2019 (138 S. Ct. 2080). As of August 1, 2019, Ohio applies an economic nexus standard in determining whether out-of-state sellers must collect and remit Ohio sales or use tax. If a remote seller makes retail sales delivered into Ohio that meet the economic threshold, the seller is presumed to have substantial nexus and is required to collect and remit Ohio sales or use tax (see Question 2: Economic Threshold).

Prior to adopting a pure economic nexus standard like the one at issue in *South Dakota v. Wayfair, Inc.*, Ohio deemed a physical presence to exist if a vendor met the standard for software nexus or network nexus (see In-State Software Nexus and Network Nexus). These provisions were repealed and replaced with the economic nexus standard. These provisions are, however, applicable to tax periods ending before August 1, 2019.

Affiliate Nexus

An out-of-state seller is presumed to have affiliate nexus with Ohio for sales and use tax purposes if it has an affiliated person with substantial nexus with Ohio (R.C. 5741.01(l)(2)(e)).

An "affiliated person" is any person that either:

- Is part of the same controlled group of corporations under I.R.C. § 1563(a).
- Regardless of form, bears the same ownership relationship to the seller as a member of the same controlled group of corporations.

(R.C. 5741.01(l)(6)(a).)

Ohio's statute is unlike many other states' affiliate nexus provisions, which typically only attribute nexus if the related party:

- Sells the same or a similar line of products.
- Uses the same or a similar business name.
- Has an in-state facility or employees that advertise, promote, or facilitate sales, including delivering products or accepting returns on the seller's behalf.

However, even if there is a connection between the seller and an affiliated person in Ohio, the seller may be able to rebut this presumption. The seller must demonstrate that the affiliated person's presence in Ohio is not significantly associated with the seller's ability to establish or maintain the seller's market in Ohio.

Marketplace Nexus

Ohio also enacted marketplace nexus effective as of August 1, 2019. For more information, see Marketplace Sellers and Facilitators.

Nexus Safe-Harbors

In addition to the economic threshold that must be satisfied before economic nexus is presumed to exist (see Question 2: Economic Threshold), the Ohio Department of Taxation provides several safe-harbor exemptions from the enforcement of the other types of nexus, primarily for administrative convenience reasons. The Department

does not require out-of-state sellers to collect and remit sales or use tax if the seller's only contacts with Ohio consist of:

- Having tangible personal property in the state for no more than seven days and less than \$25,000 of Ohio sales during the year.
- Conducting meetings with in-state suppliers or government representatives.
- Entering the state for purposes of bringing or defending a lawsuit.
- Attending meetings, retreats, seminars, conferences, schools, or other training sponsored by others.
- Holding retreats, seminars, conferences, employee training, or recruitment or hiring events (but not board of directors' meetings).
- Advertising through electronic or print media.
- Renting customer lists to or from Ohio entities.
- Attending trade shows as a consumer.
- Participating in trade shows as an exhibitor if the seller also meets the final exception below.
- Having less than eight instances of nexus creating activities in Ohio and no more than \$25,000 of Ohio sales during the year.

(Ohio Department of Taxation Information Release ST 2001-01 (updated Oct. 2017) § IV.)

There is also a statutory exception for the ownership of certain property located at a printing facility located in Ohio (R.C. 5741.17(A)(4)). This property includes:

- Final printed products.
- Property that becomes part of the final printed products.
- Copy from which the final printed product is produced.

An example of this exception includes a seller that uses an in-state printer to produce and mail catalogs or other advertising.

Click-Through Nexus

Before August 1, 2019, an out-of-state seller was presumed to have click-through nexus for Ohio sales and use tax collection if both:

- The seller entered into an agreement with one or more Ohio residents under which the residents, for a commission or other consideration, refers potential customers (directly or indirectly) to the seller, whether:
 - by web link;
 - in-person;
 - by telemarketing; or
 - otherwise.
- The seller's cumulative Ohio gross receipts from sales to consumers referred by all those residents exceeded \$10,000 in the preceding twelve months.

(Former R.C. 5741.01(l)(2)(g).)

Click-through nexus is still applicable for tax periods ending before August 1, 2019.

A typical example of remote sellers with click-through nexus include e-commerce retailers that advertise products on websites maintained by other parties and pay a commission when a consumer clicks on the advertisement and makes a purchase.

A seller presumed to have click-through nexus may rebut this presumption. A seller rebuts the presumption by submitting proof that each Ohio resident engaged by the seller to refer potential customers did not engage in any activity in Ohio within the preceding 12 months that was significantly associated with the seller's ability to establish or maintain the seller's Ohio market. This proof may consist of sworn written statements from all such residents that the resident did not solicit sales in Ohio on behalf of the seller. (Former R.C. 5741.01(l)(4); for more information, see Ohio Department of Taxation Information Release ST 2001-01 (updated Oct. 2017) § III.)

For more information on click-through nexus, see Practice Note, Sales and Use Tax for Remote Sellers: Click-Through Nexus ([W-016-0090](#)).

In-State Software Nexus

Before August 1, 2019, an out-of-state seller had in-state software nexus and was required to collect and remit Ohio sales or use tax if it both:

- Used in-state software to sell taxable products or services to Ohio consumers.
- Had more than \$500,000 of Ohio gross receipts in the current or preceding calendar year.

(Former R.C. 5741.01(l)(2)(h).)

In-state software nexus is still applicable for tax periods ending before August 1, 2019.

Ohio's Revised Code states that in-state software nexus is a rebuttable presumption (former R.C. 5741.01(l)(3)). However, in practice it is highly unlikely that a seller would be able to overcome the presumption if the requirements establishing nexus are met.

"In-state software" means computer software that is either:

- Stored on property in Ohio.
- Distributed in Ohio for purpose of facilitating the seller's sale.

(Former R.C. 5741.01(l)(6)(d).)

In-state software does **not** include cookies, which are simply text files that allow a website to recognize returning customers, as opposed to coded instructions that cause a computer to perform a task (R.C. 5739.01(BBB)). Examples of in-state software include catalog applications and html or java script coding used to display the seller's website on customers' computers or cell phones (Ohio Department of Taxation Information Release ST 2017-02 (Oct. 2017) § I).

Network Nexus

Before August 1, 2019, an out-of-state seller had network nexus and was required to collect Ohio sales or use tax if it both:

- Provided or entered into an agreement to use a content distribution network with servers located in Ohio to accelerate or enhance delivery of the seller's website to consumers.
- Had more than \$500,000 of Ohio gross receipts in the current or preceding calendar year.

(Former R.C. 5741.01(l)(2)(i).)

Ohio's Revised Code states that network nexus is a rebuttable presumption (former R.C. 5741.01(l)(3)). However, in practice it is highly unlikely that a seller would be able to overcome the presumption if the requirements establishing nexus are met.

"Content distribution network" means a system of distributed servers that deliver websites or other web content to a user based on:

- The user's geographic location.
- The origin of the website or content.
- A content delivery server.

(Former R.C. 5741.01(l)(6)(e).)

These networks are commonly used by online retailers to accelerate the delivery of their website to consumers throughout the country (Ohio Department of Taxation Information Release ST 2017-02 (Oct. 2017) § I).

TAXABILITY OF GOODS AND SERVICES

Retail sales of the following by out-of-state sellers with substantial nexus to Ohio are subject to Ohio sales and use tax:

- Tangible personal property (as defined by R.C. 5739.01(Y)).
- Installation of and repairs to tangible personal property, the purchase of which would be taxable.
- Various types of services as provided in R.C. 5739.01(B)(3), including:
 - automatic data processing;
 - electronic information services (excluding digital advertising services);
 - electronic publishing;
 - computer services; and
 - employment services.

(R.C. 5739.01(B) (providing a complete list of transactions that qualify as retail sales subject to Ohio sales and use tax).)

For additional guidance on the taxability of specific products and services in Ohio, see State Q&A, Sales and Use Taxes: Ohio: Question 3 ([5-518-7108](#)).

STATUTES AND LEGISLATION

Relevant authority related to this subject can be found in Ohio Revised Code Chapters:

- 5739 for Sales Tax (R.C. 5739.01 to R.C. 5739.99).
- 5741 for Use Tax (R.C. 5741.01 to R.C. 5741.99).

SIGNIFICANT CASE LAW

Because the legislation adopting economic, marketplace, and affiliate nexus is recent, there are no significant Ohio cases involving remote sellers. The following US Supreme Court cases, however, are relevant:

- *South Dakota v. Wayfair, Inc.* (138 S. Ct. 2080 (2018)).
- *Quill Corp. v. North Dakota* (504 U.S. 298 (1992)).

TAXABILITY BASED ON ECONOMIC NEXUS

2. If your state currently does or intends to require remote sellers to collect sales tax for sales of goods or services into your state based on economic nexus, please:

- Provide the date this requirement either went into or is intended to go into effect.
- Discuss whether the requirement is retroactive.
- Discuss whether there is an economic threshold that remote sellers must meet before they are subject to the collection and remittance requirements.
- Discuss any amnesty opportunities.

EFFECTIVE DATE

Ohio's economic nexus provision, which requires out-of-state sellers to collect and remit Ohio sales or use tax if they meet the economic threshold, went into effect on August 1, 2019 (see Economic Threshold).

Affiliate nexus, which may also require out-of-state sellers to collect and remit Ohio sales or use tax, went into effect July 1, 2015 (see Affiliate Nexus).

Effective Periods for Pre-Economic Nexus Standards

Before the effective date of Ohio's economic nexus standard, Ohio imposed several other nexus standards which a remote seller may have been subject to (see Question 1: Click-Through Nexus, In-State Software Nexus, and Network Nexus). These nexus provisions have been repealed effective August 1, 2019. The effective periods for each of these nexus standards are:

- **Click-through nexus**, effective from July 1, 2015 through July 31, 2019.
- **In-state software nexus**, effective from January 1, 2018 through July 31, 2019.
- **Network nexus**, effective from January 1, 2018 through July 31, 2019.

RETROACTIVE COLLECTION

The obligation of remote sellers to collect Ohio sales tax based on economic nexus is not retroactive. It applies only to sales made starting August 1, 2019 (see Effective Date).

ECONOMIC THRESHOLD

Ohio has adopted the same economic threshold for out-of-state sellers as set forth in *South Dakota v. Wayfair*, effective as of August 1, 2019. Specifically, out-of-state sellers must collect and remit Ohio sales or use tax if they meet either or both of the following thresholds in the current or previous calendar year:

- The out-of-state seller has **more than \$100,000** in gross receipts from sales of either:
 - tangible personal property for storage, use, or consumption in Ohio; or
 - services, where the benefit is received in Ohio.
- (R.C. 5741.01(l)(2)(g).)

- The out-of-state-seller engages in **at least 200 separate transactions** selling either:
 - tangible personal property for storage, use, or consumption in Ohio; or
 - services, where the benefit is received in Ohio.
- (R.C. 5741.01(l)(2)(h).)

VOLUNTARY DISCLOSURE AMNESTY OPPORTUNITIES

The Ohio Department of Taxation offers a Voluntary Disclosure (VDA) Program for Ohio sales and use tax as well as other taxes. This program allows taxpayers to come forward anonymously by submitting a Request for Sales and Use Tax Voluntary Disclosure (Form ST VDA) by mail, fax, or email. Taxpayers who have not been contacted by the Ohio Department of Taxation are eligible for the VDA Program.

In exchange for a company voluntarily disclosing its unpaid sales and use tax liabilities, the Ohio Department of Taxation will agree to:

- Waive civil and criminal penalties (except for a 10% penalty imposed on tax collected but not remitted).
- Limit the lookback period of 36 months (except for tax collected but not remitted, which has an unlimited lookback period).
- Not disclose the company's identity to other parties.

ECONOMIC THRESHOLD

3. If your state has an economic threshold, what is the threshold measurement period?

Ohio law provides that the threshold measurement period is the current or previous calendar year (R.C. 5741.01(l)(2)(g) and 5741.01(l)(2)(h)). If an out-of-state seller meets the economic threshold in either (or both) the current or the previous calendar year, Ohio presumes that the seller has substantial nexus and is the seller is required to:

- Obtain a seller's use tax license (or vendor's license).
- Collect and remit Ohio tax on taxable sales.
- File applicable sales and use tax returns.

These requirements start the month when substantial nexus is established and apply prospectively (see Ohio Department of Taxation Tax Alert, Substantial Nexus and Marketplace Facilitator Changes (7/23/19)).

Unlike many other states, Ohio does not provide out-of-state sellers with a grace period to begin collecting tax after meeting the economic nexus thresholds.

4. If a remote seller meets the economic threshold during the current year, does your state specify when and for how long the tax obligation applies (either by statute, regulation, or guidance)?

Once an out-of-state seller meets the economic nexus threshold, the seller's Ohio sales and use tax obligations continue for both:

- The remainder of the current calendar year.
- The next calendar year.

(R.C. 5741.01(l)(2)(g), (h).)

However, if Ohio sales and use tax nexus is created only through a remote seller's direct physical presence, Ohio does not apply trailing nexus if the seller's activities creating nexus cease and do not recur. The remote seller may cancel its registration and stop collecting tax as soon as it no longer has nexus creating contacts. However, if the seller engages in any activities creating nexus within 12 months of cancelling its registration:

- The seller is considered to have a regular presence in the state.
- The seller's substantial nexus with Ohio is presumed to have been continuous during the interim period.
- The seller is required to reinstate its registration and pay tax on all its sales during the interim period.
- The seller is required to continue to collect tax on a prospective basis.

(Ohio Department of Taxation Information Release ST 2001-01 (updated Oct. 2017) § VIII.)

5. If a remote seller does not meet the economic threshold in your state requiring the collection and remittance of sales tax, is it subject to notice and reporting requirements? If yes, please describe the requirements.

Ohio does not require out-of-state sellers to report sales to Ohio customers or to notify customers of Ohio filing and payment obligations. If an out-of-state seller does not collect sales tax on a taxable sale delivered to Ohio, the purchaser must report and remit use tax.

STREAMLINED SALES AND USE TAX AGREEMENT (SSUTA)

6. Is your state a member of the Streamlined Sales and Use Tax Agreement (SSUTA)?

Ohio became a full member of the SSUTA in 2014. Ohio had been an associate member since 2005. Because Ohio is a member of SSUTA, remote sellers may submit their Ohio sales tax registration (as well as registration for all other member states) using the Streamlined Sales Tax Registration System (SSTRS).

For additional information about SSUTA, see Practice Note, Sales and Use Tax for Remote Sellers: Streamlined Sales and Use Tax Agreement ([W-016-0090](#)).

7. If your state is not a member of the Streamlined Sales and Use Tax Agreement (SSUTA), how does your state collect sales and use tax, both at the state and local level? Specifically, please discuss whether your state:

- Adheres to common tax base definitions provided in SSUTA.
- Provides base/rate lookup software for sellers.
- Offers immunity from reliance on software.
- Has uniformity between the state and local tax bases.
- Provides centralized administration by the state or otherwise for sales tax registration, filings, and tax remittance.

Ohio is a member of the SSUTA (see Question 6).

PENALTIES

8. What are the penalties imposed on remote sellers by your state for failing to comply with sales and use tax collection, filing, and notice and reporting requirements?

Ohio imposes penalties for violations of sales and use tax filing and collection requirements, including for:

- **Failure to file a return or pay full amount of tax due.** In addition to the penalties and interest listed below, the failure to file a return or pay the full amount of the tax due may result in penalties of \$50 or 10% of the unpaid tax, whichever is greater, for each return (R.C. 5739.12).
- **Failure to file.** The penalty for failing to file a return ranges from \$100 to \$1,000 per return (R.C. 5739.99(B)).
- **Filing an incomplete, false, or fraudulent sales and use tax return.** The penalty for filing an incomplete, false, or fraudulent sales and use tax return ranges from \$100 to \$1,000 (maximum of \$500 for use tax) per return (R.C. 5739.99(B) and R.C. 5741.99).
- **Failure to pay or collect tax.** The penalty for failing to pay or collect tax is:
 - between \$100 and \$500 per return for corporations; and
 - between \$25 and \$100 per return for individuals.
- **Failure to remit collected tax.** The penalty for failing to remit tax that has been collected is up to 50% of the unremitted tax (R.C. 5739.133). A vendor that collects but fails to remit tax may also be guilty of a fourth-degree felony and have its vendor's license revoked (R.C. 5739.99(E)).
- **Interest.** Interest is calculated at the annual rate of 5% with a monthly accrual rate of .42% (see Ohio Department of Taxation - Annual Certified Interest Rates).

Ohio imposes additional penalties and, in certain instances, criminal charges for fraud or serial offenses.

MARKETPLACE SELLERS AND FACILITATORS

9. How does your state handle the collection of sales and use tax for marketplace sellers and marketplace facilitators or hosts (such as Amazon, that sell directly, but also host other sellers on its website)? Is the treatment different between marketplace facilitators or hosts versus hosted (third-party) sellers?

MARKETPLACE FACILITATORS

Effective August 1, 2019, marketplace facilitators (sometimes referred to as marketplace hosts) that have substantial nexus with Ohio are:

- Treated as the seller of the sales made into Ohio that they facilitate.
- Responsible for collecting and remitting Ohio sales and use tax on the taxable retail sales made into Ohio that they facilitate, unless the marketplace seller obtains a waiver from the marketplace seller (see Waiver).

(R.C. 5741.01(E); for more information on marketplace sellers, see Marketplace Sellers.)

The nexus thresholds for marketplace facilitators are the same as those for other out-of-state sellers (see Question 2: Economic Threshold). A marketplace facilitator is presumed to have substantial nexus for Ohio sales and use tax purposes if it meets either (or both) of the following thresholds in the current or previous calendar year:

- The marketplace facilitator has **more than \$100,000** in gross receipts from sales made on its own behalf, or facilitated on behalf of marketplace sellers, of either:
 - tangible personal property for storage, use, or consumption in Ohio; or
 - services, where the benefit is received in Ohio.
- The marketplace facilitator engages in **at least 200 separate transactions** on its own behalf, or facilitated on behalf of marketplace sellers, selling either:
 - tangible personal property for storage, use, or consumption in Ohio; or
 - services, where the benefit is received in Ohio.
 (R.C. 5741.01(I)(4).)

Since the marketplace facilitator collects the applicable Ohio sales or use tax, marketplace sellers are not required to collect and remit tax when sold through such a marketplace facilitator (for more information, see Marketplace Sellers).

Ohio law prohibits class action lawsuits in Ohio courts against marketplace facilitators based upon the overpayment of Ohio tax (R.C. 5741.11(D)).

For additional information on Ohio sales and use tax nexus for marketplace facilitators, including filing and payment dates, see Ohio Department of Taxation Tax Alert, Substantial Nexus and Marketplace Facilitator Changes (7/23/19).

What Is a Marketplace Facilitator

A **marketplace facilitator** is a party that “owns, operates, or controls a physical or **electronic marketplace** through which retail sales are **facilitated**” for marketplace sellers or an affiliate of such party (R.C. 5741.01(T)).

Electronic marketplaces include:

- Digital distribution services and platforms.
- Online portals.
- Computer software applications.
- In-app purchase mechanisms
- Other digital products.

(R.C. 5741.01(V).)

In Ohio, a sale is **facilitated** by a marketplace facilitator if each of the following three requirements are met:

- The marketplace facilitator, directly or indirectly, does at least one of the following:
 - provides the marketplace where the sale is made;
 - lists, makes available, or advertises sales by sellers;
 - transmits or communicates offers and acceptance between sellers and purchasers;

- owns, rents, licenses, makes available, or operates the infrastructure, or any property, process, method, copyright, trademark, or patent, that connects sellers to purchasers;
 - provides fulfillment or storage services for marketplace sellers;
 - determines the price of sales by marketplace sellers;
 - provides or offers customers service, or accepts or assists with taking orders, returns, or exchanges for or on behalf of marketplace sellers; or
 - brands or identifies the sale as being made through a marketplace facilitator.
- The marketplace facilitator, directly or indirectly, does any of the following:
 - collects or transmits payment (including through a third-party);
 - provides payment processing services; or
 - provides virtual currency that consumers can use for the sale.
 - The sale is not for lodging at a hotel.
(R.C. 5741.01(W).)

Practically, the second requirement regarding payment and processing is likely to be the most critical. The range of activities listed in the first requirement is so broad that it is not much of a limitation. It encompasses some platforms or situations that may not traditionally be thought of as e-commerce marketplaces.

Marketplace facilitators do **not** include parties that provide advertising platforms that do not do at least one of the following:

- Collect or transmit payments.
- Provide payment processing services.
- Provide virtual currency that consumers can use to make purchases.
(R.C. 5741.01(T).)

MARKETPLACE SELLERS

A marketplace seller is a party, on behalf of which, a marketplace facilitator facilitates the sale of either:

- Tangible personal property for storage, use, or consumption in Ohio.
- Services, the benefit of which are realized in Ohio.
(R.C. 5741.01(U).)

A marketplace seller does not need to have substantial nexus with Ohio.

Since marketplace facilitators are generally required to collect and remit the applicable Ohio sales and use tax on sales facilitated on behalf of marketplace sellers, marketplace sellers are not required to collect and remit Ohio sales and use tax on these sales unless a waiver is obtained (see Waiver).

However, marketplace sellers that make taxable retail sales into Ohio through marketplace facilitators and other sources (such as through the seller's own website) may be required to collect and remit tax on taxable sales made through those other sources. If a marketplace seller's combined sales into Ohio (including sales made by marketplace facilitators) exceed \$100,000 or 200 transactions, the seller must collect and remit tax for those sales made into

Ohio (other than those made through any marketplace facilitator). For more information, see Ohio Department of Taxation Tax Alert, Substantial Nexus and Marketplace Facilitator Changes (7/23/19).

WAIVER

Ohio law does provide a mechanism to shift the tax collection responsibility from the marketplace facilitator to the marketplace seller (R.C. 5741.071). The marketplace seller must obtain a waiver from the Ohio Tax Commissioner that the marketplace facilitator is not to be treated as the seller.

To obtain this waiver, sellers must meet all of the following requirements:

- The seller and its affiliates must have at least \$1 billion of US sales.
- The seller or its affiliate must be publicly traded on a major stock market.
- The seller must be current on all Ohio taxes (except those which are subject to a bona fide dispute or appeal).
- The seller must not have requested that a waiver related to the marketplace facilitator be canceled or revoked in the last 12 months.
- The seller must not have failed to file Ohio sales tax returns on two consecutive months, or three or more months within the last 12 months.

(R.C. 5741.071(A).)

If the Tax Commissioner issues the waiver, the marketplace seller must provide it to the marketplace facilitator, which is then absolved of the obligation to collect tax (R.C. 5741.071(C)).

For general information on marketplace sales tax, see Practice Note, Sales and Use Tax for Remote Sellers: Box: Marketplace Sales Tax ([W-016-0090](#)).

OTHER CONSIDERATIONS

10. Does your state offer a FAQ page relating to remote sellers' exposure to sales tax? If so, please provide the website link.

The Ohio Department of Taxation offers a FAQ page providing general information for sales and use tax. Several of the questions relate to remote sellers' exposure to sales and use tax.

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