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STATE TAX DEPARTMENT

ADMINISTRATIVE NOTICE 2019-21

Consumers Sales and Service Tax – Marketplace Facilitators Having Economic Nexus With West Virginia Required to Collect West Virginia Sales and Use Taxes on Sales Made on and After July 1, 2019.

During the recently completed Regular Session of the West Virginia Legislature Committee Substitute for H. B. 2813 was enacted. This bill requires marketplace facilitators having economic nexus with West Virginia to begin collecting and remitting West Virginia sales and use taxes on sales of goods and service they facilitate on and after July 1, 2019.

“Marketplace facilitator” is defined in W. Va. Code § 11-15A-1(b)(8) and means “a person that contracts with one or more sellers to facilitate for consideration, regardless of whether deducted as fees from the transaction, the sale of the seller’s products through a physical or electronic marketplace operated by the person, and engages:

(A) Directly, or indirectly, through one or more affiliated persons, in any of the following:

(i) Transmitting or otherwise communicating the offer or acceptance between the buyer and seller;

(ii) Owning or operating the infrastructure, electronic or physical, or technology that brings buyers and sellers together;

(iii) Providing a virtual currency that buyers are allowed or required to use to purchase products from the seller; or

(iv) Software development or research and development activities related to any of the activities described in §11-15A-1(b)(7)(B) of this code, if such activities are directly related to a physical or electronic marketplace operated by the person or an affiliated person; and

(B) In any of the following activities with respect to the seller’s products:

(i) Payment processing services;

(ii) Fulfillment or storage services;

(iii) Listing products for sale;

(iv) Setting prices;

(v) Branding sales as those of the marketplace facilitator;

(vi) Order taking;

(vii) Advertising or promotion; or

(viii) Providing customer service or accepting or assisting with returns or exchanges.”

“Economic nexus” is defined in W. Va. Code § 11-15A-6b(e) and means “a marketplace facilitator, referrer, or retailer, who does not have a physical presence in this state . . . [that] has gross revenue from West Virginia sales equal to or exceeding \$100,000 for an immediately preceding calendar year, or a current calendar year;” or . . . “makes West Virginia sales in 200 or more separate transactions for an immediately preceding calendar year or a current calendar year.”

Marketplace facilitators are required to register with the Tax Commissioner to collect West Virginia sales and use taxes. Registration may be made using the simplified system for registration currently available to remote sellers at our website, or through the Streamlined Sales and Use Tax Governing Board, Inc., or through the Business for West Virginia website at <http://www.business4wv.com>.

Remote sellers who are also marketplace facilitators and who are currently registered to collect West Virginia sales and use taxes do not need to register a second time unless the seller has different physical locations for remote sales than it has for its marketplace facilitator business activity.

The term West Virginia sales and use taxes includes both the State 6% tax and municipal sales and use taxes when the transaction is source to a municipality in West Virginia that imposes sales and use taxes. The transaction sourcing rules are found in W. Va. Code § 11-15B-14, § 11-15B-14a and § 11-15B-15.

For additional information, see the Department's website at: <https://tax.wv.gov/Pages/default.aspx>


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