

12 CSR 10-113.400 Marketplace Facilitator

PURPOSE: Chapter 144, RSMo, contains the statutory provisions governing application of use tax. This rule explains who qualifies as a marketplace facilitator and how a seller should report their use tax transactions.

(1) In general, a marketplace facilitator must collect and remit use tax on behalf of sellers that utilize the marketplace facilitator's service or services to list tangible personal property or services for sale regardless of the forum. A marketplace facilitator who also has their own tangible personal property or services for retail sale must remit tax for those sales separately.

(2) Definition of Terms.

(A) Nexus—contact with the state.

(B) Economic Nexus—selling tangible personal property for delivery into this state, provided the seller's gross receipts from taxable sales from delivery of tangible personal property into this state in the previous calendar year or current calendar year exceeds one hundred thousand dollars (\$100,000).

(C) Marketplace Facilitator—a person that facilitates a retail sale by a marketplace seller by listing or advertising for sale by the marketplace seller, in any forum, tangible personal property or services that are subject to tax under Chapter 144, RSMo, and either directly or indirectly through agreements or arrangements with third parties collects payment from the purchaser and transmits all or part of the payment to the marketplace seller.

(D) Marketplace Seller—a seller that makes sales through any electronic marketplace operated by a marketplace facilitator.

(3) Basic Application of Taxes.

(A) A marketplace facilitator that facilitates a retail sale of tangible personal property or taxable services that are delivered into the state for a marketplace seller should collect and remit use tax on behalf of the marketplace seller.

(B) A marketplace seller should not report any sales made through a marketplace facilitator where the marketplace facilitator reported and remitted the tax. A marketplace seller must keep records of all sales made through a marketplace facilitator.

(C) If a marketplace facilitator has a physical presence in the state then it should continue to remit sales tax on those sales even if it is also remitting use tax on behalf of marketplace sellers.

(D) A marketplace facilitator is engaging in business in this state if the sales it facilitates and its own sales combined are more than one hundred thousand dollars (\$100,000) annually.

(4) Examples.

(A) A seller sells its own tangible personal property or services in the state and also sells tangible personal property or services for other sellers. The seller has sales of sixty thousand dollars (\$60,000) and facilitates sales of seventy thousand dollars (\$70,000). Because the total sales are in excess of one hundred thousand dollars (\$100,000), the seller is a marketplace facilitator and should collect and remit on behalf of the other sellers.

(B) A seller sells its own tangible personal property or services in the state and also sells tangible personal property or services for other sellers. The seller has sales of forty thousand dollars (\$40,000) and facilitates sales of thirty thousand dollars (\$30,000). Because the total sales are less than one hundred thousand dollars (\$100,000), the seller does not have economic nexus and should not collect and remit on behalf of the other sellers.

(C) A marketplace facilitator has a physical presence in the state and makes its own sales of tangible personal property or services. It should collect and remit sales tax on its own sales. It should collect and remit use tax on the sales it facilitates for other sellers.

(D) A seller has no physical presence in the state and sells less than one hundred thousand dollars (\$100,000) of its own tangible personal property through its website to addresses in the state of Missouri. The seller does not facilitate sales for others. The seller is not a marketplace facilitator or marketplace seller.

AUTHORITY: sections 144.270 and 144.705, RSMo 2016.* Original rule filed Jan. 10, 2023, effective July 30, 2023.

*Original authority: 144.270, RSMo 1939, amended 1941, 1943, 1945, 1947, 1955, 1961, 2008, and 144.705, RSMo 1959.