Sales & Use Tax Topics: Marketplaces

COLORADO
Department of Revenue
Taxation Division

Colorado law imposes sales tax on retail sales of tangible personal property, commodities, and certain services. A retailer making sales in Colorado is typically required to collect state and applicable state-administered local sales taxes.

The Colorado General Assembly enacted legislation effective October 1, 2019, explicitly assigning sales tax collection responsibilities to a type of retailer known as a marketplace facilitator. These collection responsibilities apply to any sale made in or through a marketplace facilitator's marketplace as defined by the legislation. This publication discusses the sales tax requirements and conditions applicable to sales made in Colorado through marketplaces operated by marketplace facilitators.

The Colorado Department of Revenue administers not only state sales tax, but also the sales taxes imposed by a number of cities, counties, and special districts. However, the Department does not administer and collect sales taxes imposed by certain self-collecting home-rule cities, which instead administer their own sales taxes. The information in this publication pertains only to the state and local sales taxes administered by the Colorado Department of Revenue.

Marketplace sales

A marketplace is a physical or electronic forum, including, but not limited to, a store, a booth, an internet website, a catalog, or a dedicated sales software application, where tangible personal property, commodities, or services are offered for sale, lease, or rental.

Sourcing of marketplace sales

A retail sale is considered to be made in Colorado if it is sourced to Colorado in accordance with Colorado law. Generally, a retail sale is sourced to the location where the purchaser takes possession of the purchased property ("destination sourcing"). See *Part 1: Retail Sales* of the *Colorado Sales Tax Guide* for additional information regarding the sourcing of sales.

Marketplace facilitators

A marketplace facilitator is an individual or legal entity that operates a marketplace. A marketplace facilitator is subject to the requirements detailed in this publication only if it performs all three of the following functions:

1) The marketplace facilitator contracts with one or more marketplace sellers to facilitate the marketplace sellers' sales for a fee, a commission, or other consideration.

2) The marketplace facilitator directly or indirectly transmits or otherwise communicates the offer or acceptance between a purchaser and the marketplace seller.

3) The marketplace facilitator directly or indirectly, including through agreements or arrangements with third parties, collects payment from the purchaser and transmits it to the marketplace seller.

Anyone who exclusively provides internet advertising services or lists products for sale and who does not perform the three functions listed above is not considered a marketplace facilitator.

Marketplace sellers & multichannel sellers

A marketplace seller is an individual or legal entity who has an agreement with a marketplace facilitator and offers for sale tangible personal property, commodities, or services in or through the marketplace facilitator's marketplace. A marketplace seller who also offers tangible personal property, commodities, or services for sale through other means—such as their own store, or on their own website—is a multichannel seller.

Requirements for marketplace facilitators

In general, a marketplace facilitator must collect and remit to the Department all applicable state and state-administered local sales taxes for any sale made in Colorado through its marketplace. A marketplace facilitator has all the administrative and substantive rights, obligations, and liabilities of a retailer with respect to any sale made by a marketplace seller or multichannel seller through the facilitator's marketplace.

If a marketplace facilitator makes direct sales of its own goods and services through its marketplace, it bears the same sales tax obligations with respect to those sales as any other retailer. See the *Colorado Sales Tax Guide* for additional information.

The following sections discuss the licensing, collection, remittance, filing, and recordkeeping requirements for marketplace facilitators. A marketplace facilitator may be exempt from these requirements if sales made through the marketplace fall below certain thresholds. See the following section titled *Exceptions for small marketplaces* for additional information.

Exception for small marketplaces

A marketplace facilitator who does not maintain any place of business in Colorado directly, indirectly, or by a subsidiary is exempted from state sales tax licensing and collection requirements if the total retail sales the marketplace facilitator makes or facilitates in Colorado annually in both the current and previous calendar years were less than $100,000. The threshold applies to all retail sales of tangible personal property, commodities, and services the marketplace facilitator makes directly or facilitates regardless of whether such sales were subject to Colorado sales tax.

If the retail sales made or facilitated by the marketplace facilitator in Colorado in the previous year were less than $100,000, then the marketplace facilitator must begin collecting sales tax if its retail sales into Colorado during the current calendar year exceed $100,000. The marketplace facilitator must apply for and obtain a sales tax license and begin collecting Colorado sales tax by the first day of the first month commencing 90 days after the facilitator's aggregate Colorado sales in the current year exceed $100,000. If a marketplace facilitator fails to obtain a sales tax license and to begin collecting sales tax within the prescribed period of time, the facilitator is nonetheless liable for all applicable state and state-administered sales taxes for any subsequent sale made or facilitated in Colorado.

If the retail sales made or facilitated by the marketplace facilitator in Colorado in the previous year exceed $100,000, the marketplace facilitator is subject to all of the requirements discussed in the following sections for the entire calendar year.

A marketplace facilitator who maintains any place of business in Colorado directly, indirectly, or by a subsidiary must comply with the requirements discussed in this publication, regardless of the volume of sales made through the marketplace into Colorado.

Licensing requirements

A marketplace facilitator making or facilitating retail sales of tangible personal property, commodities, and taxable services in Colorado must first obtain a retail sales tax license. Marketplace facilitators do not need separate licenses or accounts for their own direct sales and sales made by marketplace sellers through the marketplace, unless the marketplace facilitator has formed separate legal entities with separate federal employer identification numbers for direct and facilitated sales. Licensing requirements apply to marketplace facilitators regardless of whether any marketplace or multichannel sellers making sales through the marketplace are also required to obtain a license.

See *Part 5: Sales Tax Licensing* of the *Colorado Sales Tax Guide* for additional information regarding licensing requirements.

Collection requirements

Marketplace facilitators must collect all applicable state and state-administered local sales taxes for any sale made in Colorado through their marketplace. See the section titled *Sourcing of marketplace sales* for information about determining the applicability of local taxes. The marketplace facilitator must add the applicable tax to the sales price or charge for any taxable sale. The tax due constitutes a part of the price or charge that the purchaser is obligated to pay.

Marketplace facilitators are responsible for all duties attendant to the collection of tax, including without limitation:

- Determining whether the sale is subject to tax;
- Calculating the taxable price;
- Sourcing the sale and determining the applicable tax rates;
- Collecting and verifying any retail or wholesale license, exemption certificate, or other document necessary to evidence qualification for exemption; and
- Bearing the burden of proving the proper exemption for any sale for which the marketplace facilitator did not collect tax.

The duties of collection cannot be delegated to marketplace sellers or multichannel sellers. A marketplace facilitator may seek guidance from marketplace sellers or multichannel sellers, but remains liable to the Department for the collection and remittance of all applicable taxes, fees, and charges with the exception of the relief from tax liability for certain marketplace sales. See the following section titled *Examinations, audits, and adjustments* for additional information.

Regardless of the amount of sales tax collected by a marketplace facilitator, the facilitator is responsible and liable for the payment of an amount equivalent to the amount of taxable sales made directly or facilitated for others in Colorado multiplied by the applicable state and local tax rates. A marketplace facilitator must collect taxes on all taxable sales made through its marketplace even if the marketplace seller or multichannel seller for whom the sale was facilitated would not otherwise be obligated to collect such taxes.

See *Part 6: Sales Tax Collection* of the *Colorado Sales Tax Guide* for additional information regarding licensing requirements.

Filing requirements

Marketplace facilitators must file sales tax returns reporting all sales made through their marketplaces, whether taxable or exempt, at regular intervals in accordance with prescribed filing schedules. The return must properly account not only for all state sales tax, but also for all sales tax collected and due for each state-administered local jurisdiction into which the marketplace facilitator makes sales. Forms, filing instructions, and electronic filing options are available online at *Colorado.gov/Tax*.

A marketplace facilitator that remits the sales tax due by the applicable due date is permitted to retain the service fee allowed with respect to all marketplace sales. For sales made prior to January 1, 2020, the service fee is 3.33% of all state sales tax reported. For sales made on and after January 1, 2020, the service fee is 4.0% of all state sales tax reported, except that the marketplace facilitator is not permitted to retain more than $1,000 in any one filing period. This limit applies to the total sales tax collected by the marketplace facilitator, including tax collected for sales the marketplace facilitator made directly and sales facilitated for marketplace sellers. State-administered local jurisdictions may also allow a service fee from the collected local taxes, although service fee percentages vary by jurisdiction. See publication *Colorado Sales/Use Tax Rates* (DR 1002) for service fee percentages for state-administered local sales taxes.

See *Part 7: Filing and Remittance* of the *Colorado Sales Tax Guide* for additional information about sales tax filing and payment.

Recordkeeping requirements

Marketplace facilitators are required to keep any books, accounts, and records necessary to determine the correct amount of tax for a minimum of three years. Such books, accounts, and records must include records of all direct and facilitated sales made through the marketplace and all information necessary to determine the correct amount of state and state-administered local sales taxes for which the marketplace facilitator is liable. A marketplace facilitator must produce all such books, accounts, invoices, and records upon request from the Department.

Marketplace facilitators must keep records proving the correctness of their return including:

- Invoices, receipts, or other documentation detailing the goods and services sold, the price of each item, and the taxes collected thereon;
- Evidence of proper exemption such as detailed item descriptions, valid wholesale or retail sales tax licenses, valid certificates of exemption, and direct pay permits;
- Evidence of proper sourcing such as the address where the purchaser received the goods or services sold, the primary property location for leased property, and documentation supporting eligibility for the electronic address database safe harbor; and
- Worksheets, reports, journals, and other records supporting the computation of the return.

See *Part 9: Recordkeeping Requirements* of the *Colorado Sales Tax Guide* for additional information regarding licensing requirements.

Examinations, audits, and adjustments

If upon examination of a filed return, the Department determines the correct amount of tax has not been paid, the Department will issue a notice of deficiency to the marketplace facilitator. In general, the Department may issue such notice no later than three years after the return was filed or three years after the return was due, whichever is later.

As discussed above, a marketplace facilitator is responsible and liable for the payment of an amount equivalent to the amount of taxable sales made directly or facilitated for others multiplied by the applicable state and local tax rates. State statute provides limited relief from a tax liability resulting from the failure to collect the proper amount of tax if a marketplace facilitator is able to demonstrate to the satisfaction of the Department that:

- The marketplace facilitator made a reasonable effort to obtain accurate information regarding the responsibility to collect on facilitated sales from the marketplace seller; and
- The failure to collect tax was due to incorrect factual information provided by the marketplace seller.

In order to avail itself of this relief, a marketplace facilitator must collect, maintain, and provide upon audit complete and accurate information regarding the identity of the marketplace seller that provided the incorrect factual information. This includes the marketplace seller's legal name, the street address of the marketplace seller's principal place of business, current mailing address, and a complete record of the incorrect factual information provided by the marketplace seller.

Marketplace facilitator relief applies only to incorrect factual information provided by the marketplace seller. The relief does not apply to the marketplace seller's advice or opinion on matters such as:

- Whether the sale is subject to tax;
- The proper calculation of the taxable purchase price;
- The proper sourcing of a sale and the applicable tax rates;
- The validity and applicability of any retail or wholesale license, exemption certificate, or other document necessary to evidence qualification for exemption; and
- Whether any exemptions apply.

Marketplace facilitators are not relieved of liability if the marketplace seller providing the information is an affiliate of the marketplace facilitator.

Refund claims

If a marketplace facilitator makes an overpayment of tax, the marketplace facilitator may claim a refund of such overpayment. Marketplace facilitators may also claim refunds on behalf of a purchaser who purchased goods or services through the marketplace, but are not required to do so. A refund claim must be made using the applicable Department form(s) and submitted to the Department within three years from the due date of the return on which the overpayment was made or within one year of the date of overpayment, whichever is later.

Protest rights

A marketplace facilitator who receives a notice of deficiency or notice of refund rejection may protest the notice to dispute it. Any protest must be submitted within 30 days of the date of the notice. The protest must contain at least the following information:

- the taxpayer's name, address, and account number;
- the tax period(s) involved;
- the type and amount of tax in dispute;
- an itemized schedule of the findings with which the taxpayer does not agree; and
- a summary statement of the grounds upon which the taxpayer relies for the purpose of showing the tax is not due.

The protest must be signed by the marketplace facilitator and filed in duplicate.

Only the taxpayer to whom the notice was issued may file a protest. A marketplace facilitator may not protest a notice issued to a marketplace seller or a multichannel seller even if the marketplace facilitator facilitated the sales at issue in the notice. Similarly, a marketplace seller or a multichannel seller may not protest a notice issued to a marketplace facilitator who facilitated the sales at issue on the seller's behalf.

Requirements for marketplace sellers

Marketplace sellers generally do not have the rights, obligations, and liabilities of a retailer with respect to sales facilitated by a marketplace facilitator in or through a marketplace. A marketplace seller that only offers its products and services for sale — and, in fact, only sells its products and services — through one or more marketplaces operated by a marketplace facilitator is not required to obtain a Colorado sales tax license.

A marketplace seller may wish to obtain a wholesale license. Many suppliers will require marketplace sellers to present either a wholesale or a retail sales tax license in order to purchase inventory tax free for resale. A wholesale license will allow the marketplace seller to demonstrate that purchases are for resale. A wholesaler is required to file only one annual return to confirm that it did not make any taxable sales.

Multichannel sellers

A marketplace seller who also offers tangible personal property, commodities, or services for sale through other means—such as their own store, or on their own website—is a multichannel seller.

With respect to any sale a multichannel seller makes that is not facilitated by a marketplace facilitator, the multichannel seller is subject to all of the same licensing, collection, remittance, filing, and recordkeeping requirements as any other retailer. A multichannel seller will generally be required to obtain a sales tax license, collect sales taxes, and file sales tax returns with the Department. See the *Colorado Sales Tax Guide* for information about general requirements applicable to retailers.

Small retailer exception

A multichannel seller who does not maintain any place of business in Colorado directly, indirectly, or by a subsidiary is exempted from state sales tax licensing and collection requirements if the multichannel seller's direct sales of tangible personal property, commodities, and services into Colorado annually in both the current and previous calendar years were less than $100,000. In determining exemption based on this threshold, a multichannel seller should not consider any retail sales that were facilitated by a marketplace facilitator.

If a multichannel seller's retail sales made in Colorado in the previous year were less than $100,000, then the multichannel seller must begin collecting once its retail sales into Colorado exceed $100,000 during the current calendar year. The multichannel seller must apply for and obtain a sales tax license and begin collecting Colorado sales tax by the first day of the first month commencing at least 90 days after the multichannel seller's aggregate Colorado sales in the current year exceed $100,000. If the retail sales made by the multichannel seller in Colorado in the previous year exceed $100,000, the multichannel seller is subject to all of the requirements discussed in the *Colorado Sales Tax Guide* for the entire calendar year.

A multichannel seller who maintains any place of business in Colorado directly, indirectly, or by a subsidiary must obtain a retail sales tax license regardless of the volume of sales made in Colorado.

Relief from tax liability for marketplace sales

In general, marketplace sellers, including multichannel sellers, are relieved of tax compliance obligations with respect to any sale they make through marketplaces operated by marketplace facilitators. However, marketplace sellers and multichannel sellers may be liable if a marketplace facilitator's failure to collect applicable taxes was the result of incorrect information provided by the marketplace seller or multichannel seller. Multichannel sellers continue to be responsible for collecting all state and state-administered local sales taxes applicable to their retail sales in Colorado made outside of marketplaces operated by marketplace facilitators.

Marketplace sellers and multichannel sellers must keep records documenting they have contracted with a marketplace facilitator to sell through a marketplace, and the contract must explicitly provide that the marketplace facilitator will collect and remit Colorado state and state-administered local sales taxes on all sales subject to tax. In lieu of an explicit contract provision, a marketplace seller may obtain certification from a marketplace facilitator that the marketplace facilitator is registered to and will collect and remit Colorado state and state-administered local sales taxes on all sales subject to tax. The certification may take any form so long as the certification explicitly states that the marketplace facilitator will collect all state and state-administered local taxes applicable to sales in Colorado.

Marketplace sellers and multichannel sellers must also keep records supporting the exclusion of facilitated sales from sales tax returns. In addition to the contract or certification discussed above, marketplace sellers and multichannel sellers are advised to obtain reports from marketplace facilitators detailing each sale and the tax collected thereon.

Marketplace sellers and multichannel sellers should maintain their own records in a manner that will allow sales to be traced from their own sales journals and reports to reports provided by marketplace facilitators. For example, if a marketplace facilitator assigns a unique order number to each sale, the marketplace seller is advised to record this order number with the sales journal entry for such sale.

Refund claims

If a marketplace seller or a multichannel seller files a return and remits taxes on facilitated sales in error, the marketplace seller or multichannel seller may file a claim for refund for such taxes. The claim must include documentation sufficient to demonstrate that the sale was facilitated by a marketplace facilitator who was responsible for the collection and payment of tax.

Marketplace sellers and multichannel sellers may not make refund claims on behalf of purchasers who purchased goods or services in a sale facilitated by a marketplace facilitator. The purchaser should make the claim with the Department directly or work with the marketplace facilitator to make a claim.

Protest rights

A marketplace seller or multichannel seller who receives a notice of deficiency or notice of refund rejection may dispute the notice by filing a protest. Any protest must be submitted within 30 days of the date of the notice. See *Part 10: Refunds and Assessments* of the *Colorado Sales Tax Guide* for additional information.

Only the taxpayer to whom the notice was issued may file a protest. A marketplace facilitator may not protest a notice issued to a marketplace seller or a multichannel seller even if the marketplace facilitator facilitated the sales at issue in the notice. Similarly, a marketplace seller or a multichannel seller may not protest a notice issued to a marketplace facilitator who facilitated the sales at issue on the seller's behalf.

Additional resources

The following is a list of statutes, regulations, forms, and guidance pertaining to marketplace sales. This list is not, and is not intended to be, an exhaustive list of authorities that govern the tax treatment of every situation. Individuals and businesses with specific questions should consult their tax advisors.

Statutes and regulations

- § 39-21-113, C.R.S. Reports and returns – rule.
- § 39-26-102, C.R.S. Definitions.
- § 39-26-103, C.R.S. Licenses – fee – revocation – definition.
- § 39-26-104, C.R.S. Property and services taxed.
- § 39-26-105, C.R.S. Vendor liable for tax – repeal.
- § 39-26-106, C.R.S. Schedule of sales tax.
- § 39-26-116, C.R.S. Record of sales.
- § 39-26-703, C.R.S. Disputes and refunds.
- House Bill 19-1240. Concerning sales and use tax administration…
- Special Rule 44. Marketplaces Owned, Operated, or Controlled by Marketplace Facilitators.

Forms and guidance

- *Colorado.gov/Tax*
- *Colorado.gov/Tax/sales-use-tax*
- *Colorado Sales Tax and Withholding Account Application (CR 0100AP)*
- *Colorado Retail Sales Tax Return (DR 0100)*
- *Colorado Sales/Use Tax Rates (DR 1002)*
- *Address Change or Business Closure (DR 1102)*
- *Colorado Sales Tax Guide*

Nothing in this publication modifies or is intended to modify the requirements of Colorado's statutes and regulations. Marketplace facilitators and marketplace sellers are encouraged to consult their tax advisors for guidance regarding specific situations.