

TAX ALERT

ONLINE MARKETPLACE SELLERS: VOLUNTARY DISCLOSURE PROGRAM AVAILABLE THROUGH OCTOBER 17, 2017 BY HAROLD HECHT, SETH RABE AND KATIE MASSEY

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As highlighted in our recent article in the Mazars Ledger, "[Vendors Beware! Fulfillment By Amazon Can Create State Tax Headaches](#)", online vendors using services such as Fulfillment by Amazon (FBA) could have additional state tax collection and filing obligations as the result of maintaining inventory at the online marketers' warehouses throughout the U.S.

The Multistate Tax Commission (MTC) is now offering a voluntary disclosure program for online marketplace sellers in which, as of August 18, 2017, 24 states including the District of Columbia are participating fully or in part. The program will waive unpaid tax, penalties and interest for both income/franchise and sales/use tax. While a typical voluntary disclosure relief initiative would only limit lookback and waive penalties related to unpaid tax obligations, the MTC is providing a unique opportunity for those selling online via platforms like Amazon and other marketplaces to transition into state tax compliance, while removing the burden of back tax liability (however some states, as noted in the "Participating States" section below, are not waiving back taxes). Taxpayers can apply to the program anonymously and will not be required to disclose their identity until the voluntary disclosure agreement is executed. The program is available to eligible online marketplace sellers between August 17, 2017 and October 17, 2017.

Eligibility Criteria

Taxpayers electing to participate in the Voluntary Disclosure Initiative cannot have previously registered with the state taxing authority, filed returns for the tax type in which the taxpayer is seeking voluntary disclosure relief, made any payments related to the tax, or had any correspondence with the state regarding a potential liability for the tax type. The taxpayer must be an online marketplace seller using a service such as FBA or a similar platform to facilitate retail sales into a state in which it has no location, property, employees, or agents except for inventory in a third party warehouse or fulfillment center.

Application Process

Applications must be submitted between August 17, 2017 and October 17, 2017. Applications must state that the taxpayer is applying for voluntary disclosure relief under the online marketplace seller initiative and provide complete and accurate disclosure of the information requested. Online marketplace sellers must include an estimate of back tax liability to the state for the prior 4 years. Applications in which the estimated back tax liability is less than \$500 will still be considered for the online marketplace seller initiative even though the application states otherwise. Taxpayers can select if they would like to participate in the voluntary disclosure relief program for sales/use tax, income/franchise tax, or both. By participating in the program, taxpayers are agreeing to begin collecting and remitting sales & use tax, beginning no later than December 1, 2017 and, if subject to income/franchise tax, the taxpayer further agrees to timely file

income/franchise returns and pay such taxes due, commencing with the tax year including the effective date (**not later than December 1, 2017**) of the voluntary disclosure agreement.

The states participating in this special time-limited voluntary disclosure initiative have agreed not to disclose to other taxing jurisdictions the identity of any taxpayer entering into a voluntary disclosure agreement under this special time-limited initiative, except as required by law, pursuant to a court order, or in response to an inter-government exchange of information agreement in which the requesting entity provides the taxpayer's name and taxpayer identification number. Blanket requests from other jurisdictions for the identity of such taxpayers will not be honored.

Participating States

Seventeen states will be fully participating in the Online Marketplace Seller Voluntary Disclosure Initiative to the full extent laid out by the Multistate Tax Commission: Alabama, Arkansas, Connecticut, Florida, Idaho, Iowa, Kansas, Kentucky, Louisiana, Missouri, New Jersey, North Carolina, Oklahoma, Tennessee, Texas, Utah, and Vermont.

An additional seven states will participate with modifications:

- Colorado will waive any back tax liability for sales/use tax, but will not waive back tax for income/franchise tax beyond its normal four year lookback period.
- D.C.'s standard lookback period is 3 years for sales/use and income/franchise tax. D.C. will consider granting shorter or no lookback period for applications received under this initiative
- Massachusetts requires compliance with its standard 3-year lookback period; this lookback period in a particular case may be less than 3 years, depending on when vendor nexus was created.
- Minnesota's customary lookback period is 3 years for sales/use tax and 4 years (3 look-back years and 1 current year) for income/franchise tax. Minnesota will grant shorter lookback periods to the time when the marketplace seller created nexus
- Nebraska will consider waiving back tax liability for sales/use tax and income tax.
- South Dakota does not impose income tax.
- Wisconsin will require payment of back tax and interest for any liability related to tax periods beginning January 1, 2015 and thereafter for both income/franchise tax and sales/use tax.

In Summary

Online marketplace sellers often have unaddressed tax obligations, particularly related to Fulfillment by Amazon and other




online marketplaces. The participating states are offering a unique, time-limited program to assist companies in complying with their state tax obligations. Please contact your Mazars USA professional or our State & Local Tax Services team for consultation or any questions regarding state and local tax requirements.

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