

Marketplace Facilitator & Marketplace Seller Nexus

1. What are all of the ways in which a marketplace facilitator or marketplace seller may have nexus with Michigan?

A marketplace facilitator or marketplace seller may have nexus with Michigan in any of the following ways:

1. Physical presence. For more information, see Revenue Administrative Bulletin (RAB) 1999-1;
2. Representational, attributional, or “click-through” presence. For more information, see RAB 2015-22; or
3. Economic presence (also referred to as “economic nexus”). For more information, see RAB 2018-16.

2. When will a marketplace facilitator or marketplace seller have economic presence in Michigan?

A marketplace facilitator or marketplace seller will have economic presence in Michigan and be required to report and pay sales or use tax if, in the previous calendar year, it has over \$100,000 in sales to, or more than 200 transactions with, Michigan customers. This is commonly referred to as the “economic nexus threshold.”

3. How is the economic nexus threshold calculated for marketplace facilitators?

The economic nexus threshold is calculated using all gross sales to, or transactions with, Michigan customers by the marketplace facilitator and all gross sales to, or transactions with, Michigan customers that are made by marketplace sellers through the marketplace established by the marketplace facilitator.

4. How is the economic nexus threshold calculated for marketplace sellers?

The economic nexus threshold for marketplace sellers includes all gross sales directly to, or transactions with, Michigan customers and all gross sales to, or transactions with, Michigan customers that are completed through a marketplace facilitator.

5. What types of “sales” must be included in the economic nexus threshold for marketplace facilitators?

For purposes of establishing the economic nexus threshold, all gross sales to Michigan customers are included in the economic nexus threshold. This includes taxable, nontaxable, and exempt sales. For more information, see RAB 2018-16 — Sales and Use Tax Nexus Standards for Remote Sellers.

6. When must a marketplace facilitator or marketplace seller report and pay tax upon meeting the economic nexus threshold during the tax year?

The requirement to report and pay tax in Michigan based on economic presence is determined according to the activity *of the previous calendar year*. Any taxpayer that determines that it has met the sales or transaction thresholds during the year should register for Michigan tax and be prepared to begin filing returns and collecting tax *in the following tax year*. Taxpayers do not need to begin collecting and

remitting tax immediately upon determining that the economic nexus threshold has been met during the year.

7. What sales period should market facilitators use to determine their economic presence in Michigan for 2020?

While the economic presence for all remote sellers is effective beginning October 1, 2018, the requirement for marketplace facilitators with nexus to collect and remit tax in Michigan is effective January 1, 2020. Accordingly, marketplace facilitators should use 2019 calendar year sales (1/1/19 – 12/31/19) in order to determine the potential filing requirement beginning in 2020.

8. Can an out-of-state seller that only has sales through a marketplace facilitator have a 2019 filing requirement based on economic presence?

In certain cases, yes. While a *marketplace facilitator* that has nexus with Michigan is generally responsible for reporting and remitting tax on all sales through the marketplace, that requirement is not effective until January 1, 2020. Because the economic nexus requirement is effective for transactions completed on or after October 1, 2018, a *marketplace seller* may have a filing requirement for 2019 if the seller's activity between October 1, 2018 and December 31, 2018 exceeds the economic nexus threshold. Beginning in 2020, that marketplace seller may no longer have a filing requirement to the extent that all of its activity must be reported by a marketplace facilitator with nexus with Michigan.

Marketplace Facilitators & Marketplace Sellers

1. When does the requirement for marketplace facilitators to collect and remit tax for sales facilitated through the marketplace begin?

For marketplace facilitators that have nexus with Michigan, the requirement to collect and remit tax on sales facilitated through the marketplace is effective beginning January 1, 2020.

2. What is a marketplace facilitator?

A marketplace facilitator is a person who facilitates a retail sale by listing or advertising for sale tangible personal property in a marketplace. To be a marketplace facilitator, the facilitator must, either directly or indirectly, collect payment from the customer and transmit that payment to the marketplace seller.

A marketplace facilitator does not include any person who, despite providing various forms of advertisement services (e.g., internet, print, electronic) through a platform or forum, does not directly or indirectly collect payment from the customer and transmit that payment to the marketplace seller. These typically include marketplaces like newspaper classifieds where customers may view an advertisement for a product, but must then meet directly with the marketplace seller to complete the transaction. In addition, a marketplace facilitator does not include the sale of telecommunications services, or any sale of, or charges for, rooms, lodging, or accommodations provided by a hotelkeeper, motel operator, or other person required to remit tax under the General Sales Tax Act or Use Tax Act.

3. What is a marketplace seller?

A marketplace seller is a person that makes retail sales through a physical or electronic marketplace operated by a marketplace facilitator.

4. What are the respective tax obligations for transactions made through a marketplace facilitator?

For transactions made through a marketplace, the marketplace facilitator that has nexus with Michigan is statutorily treated as the person engaged in the business of making retail sales and therefore subject to the tax reporting, collection, and remittance obligations in Michigan. Although the marketplace seller is not required to separately collect and remit tax for any of its facilitated sales, the marketplace seller must provide the marketplace facilitator with sufficient and accurate information to allow the marketplace facilitator to accurately remit any tax.

5. Is a marketplace seller that has nexus with Michigan required to report, collect, and remit tax on facilitated sales in circumstances where the marketplace facilitator does not have nexus with Michigan?

Yes. Marketplace facilitators are only treated as the person engaged in the making of retail sales where that marketplace facilitator has nexus with Michigan. In a case where a marketplace seller has nexus (for example, through physical presence) in Michigan and completes transactions through a marketplace facilitator that does not have nexus with Michigan, the marketplace seller will be required to collect and remit tax on those transactions.

6. Is a marketplace facilitator that has nexus with Michigan only required to collect and remit tax on transactions related to marketplace sellers that have nexus with Michigan?

No. A marketplace facilitator that has nexus with Michigan is required to collect and remit tax due on all taxable sales without regard to whether the marketplace seller for which sales are facilitated has nexus with Michigan.

7. Can a marketplace facilitator take advantage of benefits such as early payment discounts in remitting the tax from facilitated sales?

Yes. Discounts are generally available to taxpayers who remit tax on or before the twelfth day of the month in which payment is due. Marketplace facilitators may therefore claim a discount, if applicable, for any tax remitted on facilitated sales. Additional information related to the computation of the discount is available in the instructions for Form 5080 – *Sales, Use and Withholding Taxes Monthly/Quarterly Return*.

8. If a marketplace seller has facilitated sales through several marketplaces, what are the marketplace seller's potential filing obligations?

The marketplace seller will have no sales tax filing obligation as long as all of its sales are made through marketplaces managed by marketplace facilitators that have nexus with Michigan. In such a case, the marketplace seller's activity through each of the marketplaces will be reported by the respective marketplace facilitators. That marketplace seller will therefore only have a filing obligation to the extent that it has retail sales outside of the marketplace or through a marketplace facilitator that does not have nexus with Michigan.

9. What are a marketplace seller’s filing obligations if it has retail sales both within and outside (direct sales, in-store sales, etc.) of a marketplace managed by a marketplace facilitator that has nexus with Michigan?

Because a marketplace facilitator that has nexus with Michigan is the retailer who must report and remit tax under the General Sales Tax Act or Use Tax Act, a marketplace seller should only report and remit tax on sales made outside of the marketplace. In reporting that activity, the sales made through the marketplace facilitator that has nexus with Michigan should be excluded entirely from the marketplace seller’s return, as such sales will instead be reported by the marketplace facilitator.

10. If a marketplace seller is registered to collect and remit Michigan sales tax for sales facilitated through a marketplace, can that marketplace seller continue to collect and remit tax for sales that are made through a marketplace facilitator on or after January 1, 2020?

No. The marketplace facilitator with nexus with Michigan is statutorily treated as the person engaged in the business of making retail sales for purposes of the General Sales Tax Act or Use Tax Act without regard to the historical reporting practices of the marketplace seller. The marketplace facilitator is therefore the party that is required to remit tax for all sales completed through the marketplace.

11. Who will be liable for tax in the event that the marketplace facilitator fails to pay the tax on transactions made through the marketplace?

Generally, the marketplace facilitator is liable for the remittance of tax on all sales facilitated through the marketplace. A marketplace seller will not be liable for any unpaid tax related to transactions made through a marketplace facilitator. In some cases, a marketplace seller could be liable for tax if that seller fails to provide the marketplace facilitator with correct or sufficient information and the marketplace facilitator demonstrates that such a failure resulted in the incorrect remittance of tax to the Department.

12. Can a marketplace facilitator be relieved of liability for the tax?

While a marketplace facilitator with nexus with Michigan is liable for the collection and remittance of tax on all sales facilitated through the marketplace, a marketplace facilitator may be relieved of that liability to the extent that the marketplace facilitator demonstrates that the failure to remit the correct amount of tax was due to incorrect or insufficient information provided by the marketplace seller.

This relief is not available if the marketplace seller is an “affiliate” of the marketplace facilitator. An “affiliate” is defined as any person that is part of the same controlled group of corporations as the seller or any person that, notwithstanding its form of organization, bears the same ownership relationship to the seller as a corporation that is a member of the same controlled group of corporations.

13. Will the seller and the marketplace facilitator both be subject to audit by the Department?

In most cases, for sales made by marketplace sellers facilitated by a marketplace facilitator, the Department is only permitted by law to audit the marketplace facilitator. In rare cases, such as where the marketplace seller fails to provide the marketplace facilitator with sufficient information and the marketplace facilitator is relieved of liability due to such failure, then the marketplace seller may instead be subject to audit.

14. How should an exemption claim be made for sales through a marketplace facilitator?

A claim of exemption should be made by the purchaser to the marketplace facilitator. The marketplace facilitator is treated as the person engaged in the business of making retail sales for all sales facilitated through the marketplace and therefore assumes the responsibility for obtaining and preserving the requisite information for exemption claims made by purchasers. This generally includes obtaining identifying information of the purchaser and the reason for claiming the exemption at the time of purchase. For additional information related to exemption claims, including the procedures and formats required for such claims, please see RAB 2016-14 *Sales and Use Tax Exemption Claim Procedures and Formats*. Marketplace sellers who receive exemption claims from purchasers should timely transmit that information to the marketplace facilitator to allow for the accurate reporting of tax.

15. If sales tax was collected in error on a transaction through a marketplace facilitator, how can the purchaser obtain a refund?

Because a marketplace facilitator that has nexus with Michigan is statutorily treated as the retailer required to collect and remit tax to the Department, a purchaser should pursue any potential refund directly from the marketplace facilitator instead of the marketplace seller. A purchaser may generally request a refund for tax paid in error directly from the marketplace facilitator who, after refunding the purchaser the amount of tax previously collected and remitted to the Department, may thereafter request a refund of the same amount from the Department. In some cases, such as where tax was collected because the purchaser failed to claim an available exemption at the time of purchase, the purchaser may claim a refund directly from the Department as long as certain conditions are met, including a written certification from the marketplace facilitator that tax was collected and actually paid to the Department. For additional information regarding when a purchaser may claim a refund directly from the Department, see Form 5633 – *Purchaser Refund Request for a Sales or Use Tax Exemption*.

16. If sales or use tax is not collected by a marketplace facilitator or marketplace seller at the time of sale, is the purchaser still subject to use tax?

If neither the marketplace facilitator nor marketplace seller have nexus with Michigan, then sales or use tax is not required to be collected from the purchaser at the time of sale. Because the purchase of tangible personal property for storage, use, or consumption in Michigan remains subject to use tax to the extent that sales tax was not previously paid, purchasers must report and remit use tax on that transaction. Purchasers that are individuals should report and remit use tax on purchases of tangible personal property on the MI-1040 - *Michigan Individual Income Tax Return*. Purchasers that are businesses should report and remit use tax on Form 5080 – *Sales, Use and Withholding Taxes Monthly/Quarterly Return* or, for businesses not required to be registered to pay tax in Michigan, Form 5087 – *Purchaser's Use Tax Return*. Purchasers should retain documentation that tax was paid at the time of purchase to avoid potential use tax liability.

17. Under what circumstances should a marketplace facilitator pay use tax instead of sales tax to the Department?

If a sale is made into Michigan and the property's ownership transfers in Michigan, the marketplace facilitator should pay sales tax. Conversely, if a sale is made and delivered to a Michigan customer but the property's ownership transfers outside Michigan, the marketplace facilitator should pay use tax. Most often, ownership will transfer in Michigan and sales tax will be due. In addition, a marketplace facilitator that does not have nexus but voluntarily pays tax on sales into Michigan should pay use tax.