



MARKETPLACE FACILITATORS

This publication provides general information registration and sales tax reporting for marketplace facilitators. It is not a substitute for tax laws or regulations.

GENERAL INFORMATION

- Beginning July 1, 2019, marketplace facilitators that do not have a physical presence in West Virginia must collect West Virginia sales and use taxes on sales to West Virginia customers on and after July 1, 2019, when the marketplace facilitator has economic nexus (see page 2 for definition) with the State of West Virginia.
- **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.
 - (C) This term does not include a payment processor business appointed by a merchant to handle payment transactions from various channels, such as credit cards and debit cards, and whose sole activity with respect to marketplace sales is to handle payment transactions between two parties.

Other definitions relating to this collection requirement are found in Appendix A.

TYPES OF MARKETPLACE FACILITATORS

- In general, marketplace facilitators will be one of two types:
 - Type 1 – Some marketplace facilitators are also remote sellers who are selling their own products and services. Any remote seller presently required to collect and remit West Virginia sales and use taxes will be required to collect and remit West Virginia sales and use taxes when they facilitate a sale made on or after July 1, 2019.
 - Type 2 – Some marketplace facilitators only facilitate sales made for third parties. In these transactions, the marketplace facilitator is the merchant of record. Type 2 marketplace facilitators are required to collect West Virginia sales and use taxes on sales to West Virginia customers facilitated on and after July 1, 2019, when the facilitator has economic nexus with West Virginia.

WEST VIRGINIA SALES AND USE TAXES DEFINED

- The term "West Virginia sales and use taxes" includes the State consumers sales and service tax imposed pursuant to W. Va. Code §11-15-1 *et seq.*; the use tax imposed pursuant to W. Va. Code §11-15A-1 *et seq.*; and municipal sales and use tax imposed pursuant to W. Va. Code §8-1-5a or W.

Va. Code §8-13C-4 and 5 when the purchaser resides in a municipality that imposes a sales and use tax. A list of municipalities imposing sale and use taxes is posted at:

<https://tax.wv.gov/Business/SalesAndUseTax/MunicipalSalesAndUseTax/Pages/MunicipalSalesAndUseTax.aspx>

ECONOMIC NEXUS

- A marketplace facilitator, referrer or remote seller must collect West Virginia sales and use taxes when:
 - (1) The marketplace facilitator, referrer or remote seller makes or facilitates West Virginia sales on its own behalf or on behalf of one or more marketplace sellers equal to or exceeding \$100,000 in gross revenue for an immediately preceding calendar year, or a current calendar year; or
 - (2) The marketplace facilitator, referrer or remote seller makes or facilitates West Virginia sales on its own behalf or on behalf of one or more marketplace sellers in 200 or more separate transactions for an immediately preceding calendar year or a current calendar year.

DUTY TO COLLECT TAX

- For purposes of collection of West Virginia sales and use taxes, the phrase “retailer engaging in business in this state” also means and includes a remote seller, marketplace facilitator or referrer that meets the economic nexus requirements. A marketplace facilitator or referrer is required to collect and remit West Virginia sales and use taxes on all taxable sales of tangible personal property, custom software or services:
 - (i) Made by the marketplace facilitator or referrer; or
 - (ii) facilitated for marketplace sellers to purchasers in this state. W. Va. Code §11-15A-6b(a).

AGENCY

- A marketplace facilitator or referrer is deemed to be an agent of any marketplace seller making retail sales through the marketplace facilitator's physical or electronic marketplace or directly resulting from a referral of the purchaser by the referrer. W. Va. Code §11-15A-6b(b).

SALES MADE THROUGH A SOLICITOR IN THIS STATE

- A retailer is deemed to have a solicitor in this state if the retailer enters into an agreement with a resident under which the resident, for a commission, fee or other similar consideration, directly or indirectly refer potential customers, whether by link on an internet site, or otherwise, to the retailer. This determination may be rebutted by a showing of proof that the resident with whom the retailer has an agreement did not engage in any solicitation in this state on behalf of the retailer that would satisfy the nexus requirement of the United States Constitution during the calendar year in question.

REGISTRATION

- A marketplace facilitator not currently registered with the Tax Commissioner must register prior to collecting West Virginia sales and use taxes. Marketplace facilitators that do not have a physical presence in West Virginia may register at:
<https://tax.wv.gov/Business/SalesAndUseTax/ECommerce/RemoteSellers/Pages/RemoteSellersAndWestVirginiaTax.aspx>

RECORD KEEPING

- A marketplace facilitator or referrer shall keep records demonstrating compliance with the requirements of W. Va. Code §11-15A-6b. This includes but is not limited to documentation of sales made by marketplace sellers through the marketplace facilitator's physical or electronic marketplace or directly resulting from a referral by the referrer to West Virginia customers and the West Virginia sales and use taxes collected and remitted to the Tax Commissioner.

ASSISTANCE AND ADDITIONAL INFORMATION

- For assistance or additional information, you may call a Taxpayer Service Representative at:
1-800-WVA-TAXS
(1-800-982-8297)

Or visit our website at:

www.tax.wv.gov

File and pay taxes online at:

<https://mytaxes.wvtax.gov>

Email questions to:

taxhelp@wv.gov

APPENDIX A - DEFINITIONS

AFFILIATED PERSON	<p>Affiliated person is defined in W. Va. Code §11-15A-1(b)(1) and means a person that, with respect to another person:</p> <p>(A) Has an ownership interest of more than five percent, whether direct or indirect, in the other person; or</p> <p>(B) Is related to the other person because a third person, or group of third persons who are affiliated persons with respect to each other, holds an ownership interest of more than five percent, whether direct or indirect, in the related persons.</p> <hr/>
MARKETPLACE	<p>Marketplace is defined in W. Va. Code §11-15A-1(b)(7) and includes any means by which any marketplace seller sells or offers for sale tangible personal property, custom software, or services, for delivery into this state, regardless of whether the marketplace seller has a physical presence in this state.</p> <hr/>
MARKETPLACE FACILITATOR	<p>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:</p> <p>(A) Directly, or indirectly, through one or more affiliated persons, in any of the following:</p> <ul style="list-style-type: none">(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 <p>(B) In any of the following activities with respect to the seller's products:</p> <ul style="list-style-type: none">(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. <p>(C) This term does not include a payment processor business appointed by a merchant to handle payment transactions from various channels, such as credit cards and debit cards, and whose sole activity with respect to marketplace sales is to handle payment transactions between two parties.</p> <hr/>
MARKETPLACE SELLER	<p>Marketplace seller is defined in W. Va. Code §11-15A-1(b)(9) and means a seller that makes retail sales through any physical or electronic marketplaces operated by a marketplace facilitator or directly resulting from a referral by a referrer, regardless of whether the seller is required to be registered with the Tax Commissioner as provided in §11-12-1 <i>et seq.</i> of this code.</p> <hr/>
PLATFORM	<p>Platform is defined in W. Va. Code §11-15A-1(b)(12) and means an electronic or physical medium, including, but not limited to, a website or catalog, operated by a referrer.</p> <hr/>
REFERRAL	<p>Referral is defined in W. Va. Code §11-15A-1(b)(17) and means the transfer by a referrer of a potential customer to a marketplace seller who advertises or lists products for sale on the referrer's platform.</p> <hr/>

REFERRER	<p>Referrer is defined in W. Va. Code §11-15A-1(b)(18)(A) and means a person, other than a person engaging in the business of printing a newspaper or publishing a newspaper as defined in §11-15A-1(b)(10) of this code, who contracts or otherwise agrees with a seller to list or advertise for sale one or more items in any medium, including a website or catalog; receives a commission, fee, or other consideration from the seller for the listing or advertisement; transfers, via telephone, internet link, or other means, a purchaser to a seller or an affiliated person to complete the sale; and does not collect receipts from the purchasers for the transaction.</p> <p>(B) "Referrer" does not include a person that:</p> <ul style="list-style-type: none"> (i) Provides internet advertising services; and (ii) Does not ever provide either the marketplace seller's shipping terms or advertise whether a marketplace seller charges sales and use taxes.
RELATED PERSON	<p>Related person is defined in W. Va. Code §11-15A-1(b)(19) and has the same meaning prescribed by section 267 or 707(b) of the Internal Revenue Code, as defined in §11-21-9 of this code.</p>
REMOTE SELLER	<p>Remote seller is defined in W. Va. Code §11-15A-1(b)(20) and means any seller, other than a marketplace facilitator or referrer, who does not have a physical presence in this state that, through a platform, sells tangible personal property or services to persons in this state, the sale or use of which is subject to the tax imposed by this article. The term does not include an employee who in the ordinary scope of employment renders services to his or her employer in exchange for wages and salaries.</p>
RETAIL SALE AND SALE AT RETAIL	<p>Retail sale and sale at retail are defined in W. Va. Code §11-15B-2(48) and mean:</p> <ul style="list-style-type: none"> (A) Any sale, lease or rental for any purpose other than for resale as tangible personal property, sublease or subrent; and (B) Any sale of a service other than a service purchased for resale.
RETAILER	<p>Retailer is defined in W. Va. Code §11-15A-1(b)(23) and means and includes every person engaging in the business of selling, leasing or renting tangible personal property or custom software or furnishing a taxable service for use within the meaning of this article, or in the business of selling, at auction, tangible personal property or custom software owned by the person or others for use in this state: Provided, That when in the opinion of the Tax Commissioner it is necessary for the efficient administration of this article to regard any salespersons, representatives, truckers, peddlers or canvassers as the agents of the dealers, distributors, supervisors, employees or persons under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of the dealers, distributors, supervisors, employers or persons, the Tax Commissioner may so regard them and may regard the dealers, distributors, supervisors, employers, or persons as retailers for purposes of W. Va. Code §11-15A-1 <i>et seq.</i></p>
SALE	<p>Sale is defined in W. Va. Code §11-15A-1(b)(25) and means any transaction resulting in the purchase or lease of tangible personal property, custom software or a taxable service from a retailer.</p>
SELLER	<p>Seller is defined in W. Va. Code §11-15A-1(b)(26) and means a retailer, and includes every person selling or leasing tangible personal property or custom software or furnishing a taxable service in a transaction that is subject to the tax imposed by this article.</p>
SOLICITOR	<p>Solicitor is defined in W. Va. Code §11-15A-1(b)(27) and means a person that directly or indirectly solicits business for a retailer.</p>
WEST VIRGINIA SALES AND USE TAXES	<p>West Virginia sales and use taxes includes the State consumers sales and service tax imposed pursuant to W. Va. Code §11-15-1 <i>et seq.</i>; the use tax imposed pursuant to W. Va. Code §11-15A-1 <i>et seq.</i>; and municipal sales and use tax imposed pursuant to W. Va. Code §8-1-5a or W. Va. Code §8-13C-4 and 5 when the purchaser resides in a municipality that imposes a sales and use tax.</p>