



# STATE OF CONNECTICUT

## DEPARTMENT OF REVENUE SERVICES

OCG-8

### OFFICE OF THE COMMISSIONER GUIDANCE Regarding Marketplace Facilitators and Marketplace Sellers

This publication describes the responsibilities of marketplace facilitators and marketplace sellers in complying with Connecticut sales and use tax legislation enacted by Public Acts 2018, No. 18-152, §§ 2-5, which becomes effective December 1, 2018. As of December 1, 2018, marketplace facilitators are required to collect and remit sales tax on behalf of their marketplace sellers. The Department of Revenue Services (DRS) will update this guidance as it receives additional questions.

#### Question 1: What is a “marketplace seller”?

**Answer:** A “marketplace seller” is any person who has an agreement with a marketplace facilitator regarding retail sales of such person, regardless of whether or not such seller already has, or is required to have, a *Connecticut Sales and Use Tax Permit* from DRS.

#### Question 2: What is a “marketplace facilitator”?

**Answer:** A “marketplace facilitator” is any person who:

1. Facilitated retail sales of at least \$250,000 during the prior twelve-month period by marketplace sellers by providing a forum that lists or advertises tangible personal property subject to sales and use taxes or taxable services, including digital goods, for sale by such marketplace sellers;
2. Directly or indirectly through agreements or arrangements with third parties, collects receipts from the customer and remits payments to the marketplace sellers; **and**
3. Receives compensation or other consideration for its services.

A marketplace facilitator can be located within or outside of Connecticut.

#### Question 3: What is a “forum”?

**Answer:** A “forum” is a physical or electronic place, including, but not limited to, a store, a booth, an Internet website, a catalog, or a dedicated sales software application, where tangible personal property or taxable services are offered for sale.

#### Question 4: Are marketplace facilitators required to register with DRS?

**Answer:** Yes. Effective December 1, 2018, marketplace facilitators must file **Form REG-1, Business Taxes Registration Application**, to register with DRS and obtain a *Connecticut Sales and Use Tax Permit*. This registration is available at [www.ct.gov/register](http://www.ct.gov/register). Any questions regarding the registration process should be directed to the DRS Registration Unit at 860-541-7688.

**Question 5: Are marketplace sellers required to register with DRS?**

**Answer:** Typically, yes, but it depends on the location and business activity of the seller. Please consult the chart below.

<b>Marketplace Seller</b>	<b>Required to Register?</b>
<ul style="list-style-type: none"> <li>If you're an out-of-state retailer and make 200 or more retail sales into Connecticut and have at least \$250,000 in gross receipts from sales into Connecticut on an annual basis (this includes sales made through a marketplace facilitator)<sup>1</sup></li> </ul>	<ul style="list-style-type: none"> <li>You are required to register for sales tax by completing Form REG-1.</li> </ul>
<ul style="list-style-type: none"> <li>If you're an out-of-state retailer required to register based on the above thresholds, but <b>only</b> sell through a marketplace facilitator that is collecting and remitting on your behalf</li> </ul>	<ul style="list-style-type: none"> <li>You are required to register for sales tax by completing Form REG-1. Select the new box in the sales tax section of Form REG-1 declaring that you make sales only through a marketplace facilitator.<sup>2</sup> You will be registered for sales tax on an annual filing frequency.</li> </ul>
<ul style="list-style-type: none"> <li>If you're an out-of-state retailer, and do not meet the annual threshold</li> </ul>	<ul style="list-style-type: none"> <li>You are not required to register, but may register to collect use tax by completing REG-7.</li> </ul>
<ul style="list-style-type: none"> <li>If you're an in-state retailer</li> </ul>	<ul style="list-style-type: none"> <li>You are required to register for sales tax by completing Form REG-1.</li> </ul>
<ul style="list-style-type: none"> <li>If you're an in-state retailer but <b>only</b> sell through a marketplace facilitator that is collecting and remitting on your behalf</li> </ul>	<ul style="list-style-type: none"> <li>You are required to register for sales tax by completing Form REG-1. Select the new box in the sales tax section of Form REG-1 declaring that you make sales only through a marketplace facilitator.<sup>3</sup> You will be registered for sales tax on an annual filing frequency.</li> </ul>
<ul style="list-style-type: none"> <li>If you're located in state and making casual and occasional sales <b>only</b> (i.e., not running a business or using a resale certificate)</li> </ul>	<ul style="list-style-type: none"> <li>You are not required to register for sales tax.</li> </ul>

**Question 6: What if a seller is already registered as a retailer with DRS, but only makes sales through marketplace facilitators?**

**Answer:** If you are already registered as a retailer with DRS, but only make sales through marketplace facilitators that are collecting and remitting sales tax on your behalf, as described in Question 7, then you

<sup>1</sup> For purposes of determining this threshold, look at your Connecticut retail sales during the period from October 1, 2017, to September 30, 2018.

<sup>2</sup> This option may not be immediately available through the online **Taxpayer Service Center (TSC)**. If you register without this box and are set up as a monthly filer, send a secure e-mail through **TSC** asking to change your filing status to annual. Wait for written confirmation from DRS before changing your filing frequency.

<sup>3</sup> This option may not be immediately available through the online **TSC**. If you register without this box and are set up as a monthly filer, send a secure e-mail through **TSC** asking to change your filing status to annual. Wait for written confirmation from DRS before changing your filing frequency.

can request to change your filing status to annual by sending a secure e-mail message to DRS through the online **Taxpayer Service Center (TSC)**. Wait until you receive written confirmation from DRS of your change in filing status before changing your filing frequency.

**Question 7: What else are marketplace sellers required to do?**

**Answer:** A marketplace seller who is a retailer with a valid Connecticut seller's permit is required to collect the sales or use tax imposed for a particular sale, unless:

1. The marketplace seller can show that such sale was facilitated by a marketplace facilitator:
  - A. with whom the marketplace seller has a contract that explicitly provides that the marketplace facilitator will collect and remit sales tax on all taxable sales it facilitates for such seller; **or**
  - B. from whom the seller has requested, and received in good faith, a properly completed **DRS-055, Certificate of Collection**, certifying that the facilitator is registered to collect sales tax and will collect sales tax on all taxable sales by such seller that are facilitated by such facilitator; **and**
2. Any failure of such facilitator to collect the proper amount of tax for such sale was not the result of such seller providing incorrect information.

**Question 8: How should a marketplace seller report sales made through a marketplace facilitator that is collecting and remitting on the seller's behalf?**

**Answer:** Marketplace sellers that are registered with DRS must still report sales made through marketplace facilitators. All sales should be reported as gross receipts, and sales made through marketplace facilitators should be deducted on the same line as a sale for resale. The following example illustrates these reporting requirements.

A marketplace seller is registered with DRS and made \$150,000 of Connecticut retail sales of toys in the month of December. All of the marketplace seller's sales are subject to the tax rate of 6.35% and there are no sales to exempt entities or sales for resale. Of the \$150,000 in Connecticut retail sales, \$100,000 were made through marketplace facilitators. Each of the marketplace facilitators has, either by contract or certificate of collection, informed the marketplace seller that they are registered with DRS and will be collecting and remitting sales tax on all taxable sales they facilitate for the seller. The marketplace seller must report these sales on its **Form OS-114, Connecticut Sales and Use Tax Return**, for the month as follows:

	Column 1 6.35% Tax Rate
Line 1. Gross receipts from sales of goods	\$150,000.00
Line 7. Total: Add Lines 1 through 6	\$150,000.00
Line 8. Deductions*	\$100,000.00
Line 9. Subtract Line 8 from Line 7	\$50,000.00
Line 10a. Amount of tax due. Multiply Line 9 by Tax Rate	\$3,175.00
*Carried forward from Deductions section. Deductions for the sales made through marketplace facilitators should be reported on Line 15 (Sales for resale or sales through a registered marketplace facilitator – sales of goods).	

**Question 9: Other than registering with DRS, what else are marketplace facilitators required to do?**

**Answer:** A marketplace facilitator is considered the retailer of each sale it facilitates on its forum for a marketplace seller. Therefore, each marketplace facilitator must:

1. Collect and remit sales tax on each sale it facilitates that is subject to Connecticut sales and use taxes and destined for a Connecticut address, regardless of whether or not the marketplace seller is registered, or required to be registered, with DRS;
2. Be responsible for all obligations imposed by Connecticut sales and use tax laws, as if the marketplace facilitator was the retailer of such sale, including timely filing all returns; **and**
3. Keep such records and information as may be required by DRS under Conn. Gen. Stat. § 12-426(3) to ensure proper collection and remittance of the tax, including any exemption certificates, resale certificates, or other relevant documentation. DRS will be developing additional guidance specific to the record-keeping requirements for marketplace facilitators.

In order to ensure that marketplace sellers are not responsible for collecting and remitting sales tax on the same sales occurring through the marketplace facilitator's forum, the marketplace facilitator must either enter into a contract with its marketplace sellers that explicitly provides that the marketplace facilitator will collect and remit sales tax on all taxable sales, or provide its marketplace sellers with a properly completed **DRS-055, *Certificate of Collection***, certifying that the facilitator is registered to collect sales tax and will collect sales tax on all taxable sales by such seller that are facilitated by such facilitator. The *Certificate of Collection* will be available on the DRS website by December 1, 2018.

**Question 10: How does a marketplace facilitator report sales made on its forum for marketplace sellers?**

**Answer:** When filing sales tax returns, the marketplace facilitator can choose to file through two registration numbers.

- If the marketplace facilitator makes no sales of its own and only facilitates sales of marketplace sellers, then it should report the sales of all of its marketplace sellers under the one tax registration number the facilitator was assigned when it registered with DRS.
- If the marketplace facilitator itself also sells products or services, whether on its own forum or otherwise, the marketplace facilitator can report its sales together with its marketplace sellers or obtain a separate tax registration sub-number for the sales of its marketplace sellers. To do this through the DRS online *TSC*, log in through your existing registration and add another location in order to obtain a separate permit and sub-number to be used for marketplace seller sales. Once that is complete, use that separate tax registration sub-number to report sales of marketplace sellers separately from its own sales.

**Question 11: What if a marketplace facilitator is unable to comply with the requirements of Connecticut law by December 1, 2018?**

**Answer:** Connecticut's law, Public Act No. 18-152, does not provide DRS with the authority to grant any extensions. Accordingly, a marketplace facilitator is liable to collect and remit Connecticut sales and use tax on all taxable transactions that take place on its forum starting December 1, 2018.

**Question 12: For the marketplace facilitator annual threshold, what twelve-month period should be used and which sales apply?**

**Answer:** The twelve-month period that should be used for purposes of the \$250,000 threshold is the period from October 1 to September 30. In determining whether a marketplace facilitator is required to register with DRS as of December 1, 2018, the facilitator must determine the amount of retail sales it facilitated during the period from October 1, 2017, to September 30, 2018. Sales made to all purchasers, wherever located, count toward the \$250,000 threshold, not just sales to Connecticut purchasers. A marketplace

facilitator must perform this analysis each year to determine whether it has met the threshold amount of retail sales.

**Question 13: How will audits of sales made on the forum of a marketplace facilitator work?**

**Answer:** A marketplace facilitator will generally be responsible for any audit deficiency assessments made against it by DRS for sales facilitated on its forum and will have all rights and remedies afforded to retailers to contest any such assessments. An exception would be if the marketplace seller supplied incorrect information to the marketplace facilitator about the sale, at which point the marketplace seller would be responsible for that assessment amount, plus any applicable penalty and interest. For example, if a marketplace seller incorrectly codes a hard copy of a book it sells on the forum of a marketplace facilitator as a digital good and the marketplace facilitator then collects and remits tax at the rate of 1% (the rate of tax applicable to digital goods in Connecticut) on the book instead of the proper rate of 6.35%, the marketplace seller would be liable for the difference.

**Question 14: Is the marketplace facilitator responsible for maintaining records associated with the return or exchange of a product that was purchased on the forum of a marketplace facilitator?**

**Answer:** Yes. As the retailer of each sale facilitated on its forum for a marketplace seller, the marketplace facilitator is responsible for keeping records associated with all returns and exchanges of products that were purchased on its forum. For details governing the treatment of Connecticut sales and use taxes in connection with returns or exchanges, please see **Informational Publication 2011(17), *Sales and Use Taxes on Returned Goods, Even Exchanges, and Trade-Ins***. Refunds on returned goods would also be handled by the marketplace facilitator.

**Question 15: If a marketplace facilitator offers a cash discount to a customer in connection with the sale of a product it facilitates on its forum for a marketplace seller, is the discount included in the sales price of the product?**

**Answer:** No. Cash discounts are excluded from the definition of sales price for Connecticut sales and use tax purposes. For example, a marketplace seller lists a book for sale for \$33.75 on the forum of a marketplace facilitator and the marketplace facilitator offers a \$2.00 discount to the purchaser who buys the book for \$31.75. The marketplace facilitator is required to collect and remit sales tax to Connecticut on \$31.75, even though the marketplace seller receives \$33.75 from the marketplace facilitator.

**Question 16: Can purchasers who overpaid sales tax to a marketplace facilitator request a refund of the tax?**

**Answer:** Yes. A purchaser who overpaid sales or use tax to a marketplace facilitator at the original time of purchase may submit a claim for refund with DRS following the procedures set forth in **Policy Statement 98(5), *Sales and Use Tax Refund Policy***. Refunds of sales tax in connection with returned merchandise would be handled by the marketplace facilitator; see Question 14.

**Question 17: Is any relief provided for marketplace facilitators or marketplace sellers that fail to collect the tax due on taxable sales?**

**Answer:** Yes, for a limited period of time and under certain circumstances. For a taxable sale occurring between December 1, 2018, and December 31, 2019, if a marketplace facilitator or marketplace seller incurs liability for failure to collect the tax due on a taxable sale, DRS will reduce the tax liability by 5%, reduce the interest, and waive any associated penalties, if the facilitator or seller can show to the satisfaction of DRS that:

1. The facilitator and the marketplace seller are not “affiliated persons,” as described in Conn. Gen. Stat. § 12-407(a)(15)(C), as amended by Public Acts 2018, No. 18-152, § 3<sup>4</sup>;
2. The failure to collect sales tax due was not due to an error in sourcing the sale; **and**
3. The sale occurred on or before December 31, 2019.

**Additional Questions Regarding the Guidance for Marketplace Facilitators and Marketplace Sellers:** Send an e-mail to the DRS Legal Division at [legal.division@po.state.ct.us](mailto:legal.division@po.state.ct.us)

**For Further Information Regarding Registration, Filing or Collection:** Call the DRS during business hours, 8:30 a.m. to 4:30 p.m., Monday through Friday:

- **1-800-382-9463** (Connecticut calls outside the Greater Hartford calling area only); **or**
- **860-297-5962** (from anywhere).

**TTY, TDD, and Text Telephone users only** may transmit inquiries anytime by calling 860-297-4911.

**For Forms and Publications:** Visit the DRS website at [portal.ct.gov/DRS](http://portal.ct.gov/DRS)

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Sales and Use Taxes

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<sup>4</sup> Persons are affiliated persons with respect to each other where one of such persons has an ownership interest of more than 5%, whether direct or indirect, in the other, or where an ownership interest of more than 5%, whether direct or indirect, is held in each of such persons by another person or by a group of other persons who are affiliated persons with respect to each other.