

Three sales tax laws all marketplace sellers need to know



In order to grow and reach more customers, more and more businesses turn to online marketplace facilitators such as Amazon, Etsy, eBay, and Walmart as an additional sales channel.

Selling via an online marketplace can help businesses scale quickly and easily, but there are a number of sales tax considerations that can impact marketplace sellers. In this document, we'll review three sales tax laws all marketplace sellers need to know:

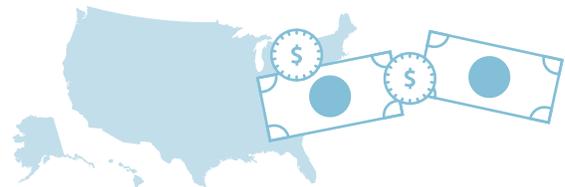
1. **Economic nexus laws** impose a sales tax obligation on businesses that surpass a revenue and/or transaction threshold in a jurisdiction.
2. **Marketplace facilitator laws** require online marketplace facilitators such as Amazon, Etsy, eBay, Walmart, etc., to collect and remit sales tax on behalf of their marketplace sellers.
3. **Non-collecting seller use tax reporting laws** require non-collecting sellers to provide states with purchaser information to facilitate use tax collection.

Read on to learn more about how these three laws might impact your business and your sales tax obligations if you sell through an online marketplace.

1 Economic nexus laws

Since the Supreme Court of the United States ruled in favor of the state in [South Dakota v. Wayfair, Inc.](#) in June 2018, economic nexus laws are on the rise. Prior to this decision, states could only enforce a sales tax obligation on a business that had a physical presence in the state. As a result of the ruling, states can now require remote sellers to collect and remit sales tax based on economic activity alone.

Prior to the Wayfair ruling, marketplace sellers only needed to monitor which jurisdictions they had a physical presence in, as that was the de facto standard for establishing a sales tax obligation. While marketplace sellers still need to monitor where they have a physical presence, because of the new economic nexus laws, marketplace sellers now need to closely monitor sales and transaction volumes in jurisdictions.



Did you know?

All states' economic nexus laws are different, however the most common law states that if a business reaches \$100,000 in sales or 200 transactions in the current or previous calendar year then they have surpassed an economic nexus threshold and have a tax obligation in the jurisdiction.

Economic nexus laws (continued)

As of April 1 2019, more than 35 states enforce economic nexus laws where economic activity triggers an obligation to collect and remit tax. Each state defines its own thresholds, effective dates, and applicable sales periods for its economic nexus laws. Each state also decides whether to include gross or exempt sales and services in those thresholds, so it can be challenging to understand the various economic nexus laws and how your business might be impacted.



To see a breakdown of each state's unique economic nexus laws, view our [state-by-state guide to economic nexus laws](#).

2 Marketplace facilitator laws

Marketplace facilitator laws impose an obligation on the **marketplace facilitator** to collect and remit sales tax on behalf of its marketplace sellers. These laws are significant because they shift the burden of collection and remittance of sales tax off the seller and onto the platform that facilitates the sale (the marketplace facilitator).

Many of these laws began to appear in 2017, shortly after states realized that while Amazon had started taxing sales of its own products, it wasn't charging customers sales tax on third-party, or marketplace, sales. Given that more than half of all Amazon transactions occur through its marketplace, a significant portion of sales were going untaxed.

Many marketplace facilitators take the position that they're not the actual seller – they're merely an agent providing a platform or channel that facilitates sales – and therefore aren't responsible for collecting the sales tax; that obligation has historically fallen on the seller.

States, however, don't want to miss out on potential revenue. To capture it more effectively, more than a dozen states have adopted marketplace facilitator laws to ensure they're not missing out on sales tax revenue as a result of the marketplace channel. Like many facets of sales tax, marketplace facilitator laws vary by state in their application.

Sales tax collection is a pass-through activity and the business is merely the intermediary passing the collected taxes from the purchaser to the tax authority.

These laws directly impact those that sell on a marketplace because a portion of the seller's taxes might be collected and remitted on their behalf in states with marketplace facilitator laws. It's critical that a seller confirms how sales tax via the marketplace is handled. The risk exists that neither party collects and remits the required sales tax. Or, if a business doesn't realize that it wasn't the one that collected the tax and then remits a tax amount they believe they collected, those funds are coming out of their pocket.

Each marketplace interprets these laws differently, so it's important for marketplace sellers to consult with their tax advisors and work with the marketplace facilitator to understand how the law should be applied.



To see a breakdown of each state's unique marketplace facilitator laws, view our [state-by-state guide to marketplace facilitator laws](#).

3 Non-collecting seller use tax reporting laws

Even if you have no obligation to collect and remit sales tax in a specific jurisdiction, you may still have a different obligation due to non-collecting seller use tax reporting requirements. These laws are imposed on businesses that are not obligated to collect sales tax in a tax jurisdiction, and typically require non-collecting businesses to carry out several activities, such as:

- Notifying customers about their potential use tax liability
- Supplying customers with an annual purchase summary report
- Providing the tax authority with a customer information report so that the tax authority can ensure use tax is reported on sales

These laws may impact those that sell via a marketplace in a number of ways. In some scenarios,

if the marketplace seller reaches a threshold to hit the non-collecting seller use tax reporting laws but doesn't have an obligation to collect tax in that jurisdiction, they may need to comply with the non-collecting seller use tax reporting laws. In other instances, the marketplace facilitator that they leverage may decide to comply with non-collecting seller use tax reporting laws instead of the marketplace facilitator laws. In this instance, the marketplace facilitator may provide the taxing jurisdiction with the sellers' activity and put the burden of reporting onto the marketplace seller.

Just like economic nexus laws and marketplace facilitator laws, use tax reporting laws vary by state.



To see a breakdown of each state's unique non-collecting seller use tax reporting laws, view our [state-by-state guide non-collecting seller use tax reporting laws](#).

Selling via a marketplace can have complex considerations around sales tax compliance and it's important to remember there are many sales tax considerations beyond these three laws. To ensure you're up to speed on sales tax implications for marketplace sellers, review our other materials on our [marketplace seller resource hub](#).

Because each marketplace is unique, we recommend sellers work directly with the marketplace facilitator to determine how sales tax collection and remittance is handled on their platform. Although we hope you find the information helpful, this guide does not offer a substitute for professional legal or tax advice. If you have questions about your tax liability or concerns about compliance, please consult your qualified legal, tax, or accounting professional. This document was compiled in May 2019. Because states constantly update and amend their sales and use tax laws, see each state's website for the most up-to-date and comprehensive information.

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