

SFY 2017-18 Marketplace Provider Budget Proposal

The legislative proposal to expand sales tax collection responsibilities to online marketplace providers is essential to protect sales tax revenues and to level the playing field for New York's "Main Street" retailers:

1. This proposal does not increase sales taxes.
 - The sales taxes that would be collected by the online marketplace are legally owed by the New York purchasers. The proposal is a necessary, proactive response to the rapidly changing retail Internet economy.
2. Online marketplaces such as Amazon Marketplace, eBay, Etsy, Walmart.com and various "app stores" represent a large and growing share of online retail sales.
 - \$100 billion was transacted on online marketplaces in 2015. This represents one-third of all U.S. retail e-commerce.
 - Retail sales on marketplaces grew in 2015 at nearly a 20% annual pace.
 - Over 2 million third party sellers operate on Amazon's marketplace. eBay hosts 25 million sellers, and Etsy 1.6 million.
3. Under the typical online marketplace business model, the marketplace provider 1) provides a forum in which third-party sellers are able to display their products and transact sales; and 2) facilitates the collection and processing of payments for these third-party sellers. As a general rule, however, online marketplaces do not collect sales tax as part of their service.
4. This dichotomy between the payment collector and the actual seller undermines a central feature of sales tax administration – collection of the tax by the seller from the purchaser on behalf of the state at the time of sale. In the online marketplace model, sellers receive their money from the online marketplace sometime after the sales transaction has occurred. By this time, the opportunity for the seller to collect the tax simultaneously with the sale has passed. Given this major breakdown in the tax collection structure, there is reason to believe noncompliance by third-party sellers is widespread.
5. Currently, the Tax Department has available only costly and inefficient avenues to police compliance. Requests by DTF for information about NY sellers on a large online marketplace for whom the marketplace provider was not collecting taxes were rejected by the marketplace. Even if this information were provided, sellers pursuing each of the thousands of individual sellers identified would be impractical, and a similar exercise would need to be undertaken for other marketplaces.
 - Once identified, NY marketplace sellers not collecting tax would need to be registered and begin filing returns. This could mean hundreds of thousands of new

sales tax vendors (many of them small businesses), perhaps doubling the current 600,000 vendor figure. In contrast, if the marketplace were to collect on behalf of the vendors, only the marketplace would need to register and collect tax, while lifting this burden from the individual sellers. Note that some marketplaces voluntarily collect and remit tax on behalf of all third-party sellers.

6. Under the legislation, tax would be collected and remitted by the marketplace provider on sales to New Yorkers by all third-party sellers, including those that do not have a presence (nexus) in the State.
 - This helps to level the playing field for NY's "Main Street" stores.
 - Almost \$275 million in State and local tax would be raised by the bill in the first full year, and growth of 15% to 20% annually is expected for the foreseeable future.

7. This year's proposal differs from the legislation proposed in the 2015-16 Executive Budget (Part X) in several significant ways.
 - The tax collection requirement would only apply to sales of tangible personal property. Part X also applied to sales of services, hotel occupancy, and admission tickets.
 - Small start-up online marketplaces would be excluded from the collection requirement with the inclusion of a sales threshold (i.e., \$100 million in annual sales).
 - New York is not the only state to pursue this type of legislation. Seven states have proposed a comparable statute, though none has been enacted to date. The National Conference of State Legislatures has also drafted model marketplace provider legislation.