



Limited-Time Tax Amnesty for Marketplace Sellers

The Multistate Tax Commission (“MTC”) has implemented a limited-time voluntary disclosure initiative for online marketplace sellers (the “VDI”). The VDI creates an opportunity in many states to have a retailer’s historic liability for sales and use taxes and income taxes waived, including penalties and interest, in exchange for registration and compliance going forward.

Eligibility

The VDI is limited to retailers that sell through “marketplace provider/facilitator” (such as the Amazon FBA program). In order to be eligible for the VDI, the taxpayer’s nexus with the state must be on account of inventory stored in a marketplace provider/facilitator’s warehouse or fulfillment center, or other nexus-creating activities conducted by the marketplace provider/facilitator on behalf of the retailer (e.g., solicitation). Additionally, the retailer must not have registered with the state taxing authority, filed returns for the tax type for which the taxpayer is seeking relief, made payments of such taxes, or have been contacted by the state regarding the tax type.

Participating States & Benefits

Twenty-four states are participating in the VDI—Alabama, Arkansas, Colorado, Connecticut, District of Columbia, Florida, Idaho, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Minnesota, Missouri, Nebraska, New Jersey, North Carolina, Oklahoma, South Dakota, Tennessee, Texas, Utah, Vermont, and Wisconsin. Of the participating states, Nebraska and the District of Columbia have reserved discretion as to whether they will waive historic liability for sales and use tax and income tax. Colorado will require a four-year lookback for historic income tax liability, but will waive historic sales and use tax liability. Wisconsin will require lookback period commencing with tax year 2015 for sales and use tax and income/franchise tax, and Massachusetts and Minnesota will each require a three-year lookback period (or back to the date nexus was established). In all other states, historic liability for tax, plus associated interest and penalty, will be waived. Any sales or use tax actually collected must be remitted, along with interest and penalties.

Participating taxpayers will be required to register to collect sales and use tax as of the effective date of their agreement (not later than December 1, 2017) and, if they have income/franchise tax nexus, commence filing for the taxable year that includes the effective date of their agreement (again, not later than December 1, 2017).

Application Process and Deadline

Taxpayers must apply through the MTC, either by filing an online or paper application, which must include an estimate of historic liability for the prior four years. Applications can be submitted anonymously, and must be filed no later than October 17, 2017. Taxpayers may select the states and tax types for which relief is sought, and information submitted by the taxpayer will generally not be shared with other states.

Questions? Contact:



Justin Hepworth

Phone: 714.424.8293

jhepworth@sheppardmullin.com



Roburt Waldow

Phone: 714.424.2856

rwaldow@sheppardmullin.com