



This Week in State Tax (TWIST)

December 5, 2022



to listen to the
podcast please
[click here.](#)

California: Proposed Marketplace Regulation Would Clarify Aspects of the Marketplace Facilitator Law

The California Department of Tax and Fee Administration has proposed amendments to CCR section 1684.5, which addresses marketplace sales. Under California law, on and after October 1, 2019, a marketplace facilitator is a retailer engaged in business in the state if its total combined sales (i.e., including both sales of its own property and sales it facilitates on behalf of marketplace sellers) of tangible personal property for delivery into California exceed \$500,000. Similarly, a marketplace seller must include both direct sales and marketplace facilitated sales in determining whether it exceeds the economic nexus threshold. One amendment to the regulation would confirm that a marketplace facilitator and a marketplace seller must include both taxable and nontaxable sales in determining whether it exceeds the \$500,000 threshold. Another amendment would clarify that to be considered a “marketplace” a physical or electronic place must offer tangible personal property for sale by multiple marketplace sellers. As such, a company that sells web hosting services and related services (e.g., payment processing) to other sellers who use the services to create their own e-commerce websites would not be considered a marketplace facilitator. The revised regulation also makes clear that a person is not required to provide payment processing services to be considered a marketplace facilitator.

Another set of amendments to the regulation addresses the statutory carve out for websites that are merely advertising tangible personal property for sale and refer a purchaser to the seller to complete the sale. Under California law, such entities are not considered to be facilitating a sale. The amended regulation adopts a new subsection to address “advertising” to clarify that when the advertising exclusion applies to a sale, the person publishing the advertisement is not considered the seller and retailer for the sale and that such person is not the retailer selling or making the sale of the tangible personal property sold through the advertisement. This is true regardless of whether the person is a marketplace facilitator, the seller is a marketplace seller, the tangible personal property is advertised in a marketplace, or the advertisement contains an offer to sell tangible personal property. One of the new examples in the “advertising” section confirms that when a person takes orders for sellers that advertise goods on the person’s website, that person is facilitating the sale of tangible personal property and would be considered the retailer for those sales. “Order taking” would be newly defined to mean the process of getting or obtaining a buyer’s order to buy a marketplace seller’s tangible personal property by telephone, fax, email or any other physical or electronic means, including, but not limited to, the customer including the items in a physical or virtual shopping cart at checkout. Please contact [Jim Kuhl](#) with questions on California’s marketplace facilitator rules.



For more news and insights on tax developments, follow KPMG’s U.S. Tax practice on Twitter – [@KPMGUS_Tax](#).

kpmg.com/socialmedia

