

**Remote Sellers Information Bulletin No. 20-XXX
June XX, 2020**

Registration and Collection of Sales and Use Tax by Marketplace Facilitators

Act 216 of the 2020 Regular Session of the Louisiana Legislature (“Act 216”) was signed on June 11, 2020 and becomes effective July 1, 2020. Act 216 requires Marketplace Facilitators to register with the Louisiana Sales and Use Tax Commission for Remote Sellers (the “Commission”) and collect and remit applicable sales and use tax for sales delivered into Louisiana.

The purpose of this guidance is to publish notice of Act 216 and its provisions.

Definitions of Marketplace Facilitator, Marketplace Seller, and Marketplace

Act 216 defines a Marketplace Facilitator as any person that facilitates a sale for a Marketplace Seller through a Marketplace, owned, operated, or otherwise controlled by the person, by any of the following:

1. Offering for sale through any means, by a marketplace seller, tangible personal property, or sales of services for delivery into Louisiana.
2. Collecting payment from the purchaser and transmitting all or part of the payment to the Marketplace Seller, regardless of whether the person receives compensation or other consideration in exchange for facilitating the sale or providing any other service directly or indirectly through any agreement or arrangement with one or more third parties.

Marketplace Facilitators do not include any of the following:

1. A payment processor that only handles the processing of payments between the Marketplace Facilitator and the purchaser.
2. A platform or forum that provides advertising services as long as it does not engage (directly, indirectly or through an affiliate) in collecting payment as described above.
3. A derivatives clearing organization, a designated contract market, foreign board of trade or swap execution facility, registered with the Commodity Futures Trading Commission (CFTC registered platforms), and any clearing members, futures

commission merchants, or brokers when using the services of CFTC registered platforms.

4. Any person who offers or facilitates the furnishing of sleeping rooms, cottages or cabins by hotels or rental cars by rental car companies.

The Marketplace Facilitator registration and collection requirements also generally do not apply to certain commercial mobile radio service suppliers and sellers of prepaid services that provide 911 access if those entities have sales over one billion dollars and certain information and notifications are provided. Additional information specific to this provision will be published at a later date.

The Marketplace Seller is a person who sells or offers for sale tangible personal property or the sale of services for delivery into Louisiana through a Marketplace that is owned, operated, or controlled by a Marketplace Facilitator.

The Marketplace is any physical or electronic platform or forum, owned, operated, or otherwise controlled by the Marketplace Facilitator through which a Marketplace Seller may sell or offer for sale tangible personal property or sales of services for delivery into Louisiana.

Marketplace Facilitators and Collection Requirements

Act 216 requires Marketplace Facilitators to register with the Commission and collect and remit state and local sales and use tax on all taxable remote sales for delivery into Louisiana that the Marketplace Facilitator transacts on its own behalf or facilitates on behalf of a Marketplace Seller.

Act 216 establishes an exception to the sales and use tax filing and collection obligation for Marketplace Facilitators with fewer than 200 sales or less than \$100,000 of gross sales into Louisiana for the prior or current calendar year. All remote sales, including exempt sales, are considered in determining if either of these thresholds are met. Once either of these sales thresholds are met, the registration, filing and collection obligations commence as explained below.

Marketplace Facilitators are required to register with the Commission within 30 days of meeting either of the two sales thresholds and begin collection of sales and use tax within 60 days of meeting either threshold.

The taxes required to be collected by a Marketplace Facilitator are due and payable monthly. The taxes are required to be transmitted to the Commission on forms prescribed and prepared by the Commission on or before the twentieth day of the month following the month in which the tax is required to be collected. The returns are also required to show any further information that the Commission may require to correctly compute the tax levied.

Miscellaneous Provisions

Act 216 relieves Marketplace Facilitators from any liability for failure to collect sales and use tax if the failure is due to insufficient information from the Marketplace Seller and further provides that the Marketplace Seller will then be liable for any tax due. However, it does not relieve Marketplace Facilitators from liability for failure to collect sales and use tax if the Marketplace Facilitator and the Marketplace Seller are affiliates. An affiliate relationship exists if one entity owns more than 5% of the other entity or both entities are subject to the control of a common entity that owns more than 5% of each of the entities.

Under Act 216, class actions are prohibited against Marketplace Facilitators, including with respect to refund claims, unless the Marketplace Facilitator intentionally collected sales and use tax on remote sales without regard to applicable state and local sales tax law.

Act 216 also permits Marketplace Facilitators who do not meet either of the sales thresholds to voluntarily register with the Commission for collection and filing of sales and use taxes.

Questions concerning this publication may be directed to
LARemoteSellersCommission@la.gov.

Kressynda Krennerich
Chairman
Louisiana Sales and Use Tax Commission for Remote Sellers