WEST VIRGINIA CODE: §11-15A-6b

§11-15A-6b. Collection of tax by marketplace facilitators and referrers.

(a) Duty to collect tax. — For purposes of §11-15A-1 et seq. of this code and for collection of use tax required under §11-15A-6 and §11-15A-6b of this code, the phrase retailer engaging in business in this state also means and includes a remote seller, marketplace facilitator, or referrer that meets the requirements of subsection (e) of this section. A marketplace facilitator or referrer is required to collect and remit the use tax on all taxable sales of tangible personal property, [custom software] or services: (i) Made by the marketplace facilitator or referrer; or (ii) facilitated for marketplace sellers, to purchasers in this state.

(b) Agency. — For purposes of §11-15A-6b of this code, a marketplace facilitator or referrer is deemed to be an agent of any marketplace seller making retail sales through the marketplace facilitator's physical or electronic marketplace or directly resulting from a referral of the purchaser by the referrer.

(c) Sales made through a solicitor in this state. — A retailer is deemed to have a solicitor in this state if the retailer enters into an agreement with a resident under which the resident, for a commission, fee, or other similar consideration, directly or indirectly refers potential customers, whether by link on an internet site, or otherwise, to the retailer. This determination may be rebutted by a showing of proof that the resident with whom the retailer has an agreement did not engage in any solicitation in this state on behalf of the retailer that would satisfy the nexus requirement of the United States Constitution during the calendar year in question.

(d) Record keeping. — In addition to other applicable record keeping requirements, the Tax Commissioner may require a marketplace facilitator or referrer to provide or make available to the Tax Commissioner any information the commissioner determines is reasonably necessary to enforce the provisions of §11-15A-1 et seq. of this code. Such information may include documentation of sales made by marketplace sellers through the marketplace facilitator's physical or electronic marketplace or directly resulting from a referral by the referrer. The Tax Commissioner may prescribe by procedural rule promulgate, as provided in §29A-3-1 et seq. of this code, the form and manner for providing this information.

(e) Economic nexus. — A marketplace facilitator, referrer, or remote seller shall collect the tax imposed by §11-15A-2 of the code when:

(1) The marketplace facilitator, referrer, or remote seller makes or facilitates West Virginia sales on its own behalf or on behalf of one or more marketplace sellers equal to or exceeding $100,000 in gross revenue for an immediately preceding calendar year, or a current calendar year; or

(2) The marketplace facilitator, referrer, or remote seller makes or facilitates West Virginia

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sales on its own behalf or on behalf of one or more marketplace sellers in 200 or more separate transactions for an immediately preceding calendar year or a current calendar year.

(f) Effective date. — This section enacted in 2019 shall apply to sales by a marketplace facilitator, or referrer, made on and after July 1, 2019.

WV Legislature