

OHIO ISSUES GUIDANCE ON ECONOMIC
NEXUS STANDARDS

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The Ohio Department of Taxation (Department) issued guidance on its website on August 23, 2019 relating to the recently enacted ([see H.B. 166 Buzz](#)) economic nexus provisions for out-of-state sellers and marketplace facilitators.

Out-of-State Sellers

Effective August 1, 2019, out-of-state sellers without a physical presence in Ohio that have either \$100,000 of gross sales or 200 or more transactions in the current calendar year or the previous calendar year are required to register and collect Ohio's seller's use tax. Businesses must begin collecting Ohio tax once one of the thresholds is met. Keep in mind that businesses that have created a physical presence have always had nexus and were required to file.

Out-of-state businesses should review their past activity in Ohio to ensure that a

physical presence hasn't been created prior to August 1, 2019. Activities such as storing inventory (on your own or through a marketplace facilitator like Amazon), sending in sales representatives, sending in employees or a third-party to make repairs, etc. are typical examples of activities that provide a physical presence. If an out-of-state business has created a physical presence prior to August 1, 2019, that business may want to consider a voluntary disclosure to resolve the past periods under more favorable terms (only go back 3 years instead of 7 years if audited and no penalties) than being audited. In situations where tax was collected and not remitted, then a voluntary disclosure will only impose a 10% penalty instead of the 50% penalty imposed under audit. For more information on voluntary disclosures, please see our [Voluntary Disclosure Buzz](#).

Marketplace Facilitators

Beginning September 1, 2019¹ at the earliest, businesses operating marketplaces that facilitate sales of other businesses are also required to register and collect Ohio seller's use tax on the sales facilitated on behalf of other businesses selling through the marketplace. When determining whether a marketplace facilitator meets the economic thresholds (\$100,000 of gross sales or 200 or more transactions in the current calendar year or the previous calendar year), marketplace facilitators must use their own sales or transactions as well as sales or transactions of other businesses facilitated through the marketplace.

ZHF Observations

- The nexus thresholds will need to be analyzed each year to determine if a business is still required to be registered.
- It is our understanding that the Department will continue to de-register businesses that continually file \$0 tax returns. However, to ensure the statute of limitations will continue to apply, such businesses may want to re-register and continue filing \$0 returns.
- Ohio businesses already properly registered to collect sales tax will still be impacted by the new economic nexus standards as Ohio businesses make purchases from out-of-state vendors that are now collecting tax. Ohio businesses will need to make sure that they are paying the correct state and local tax (proper state, proper rate, etc.) and that the item being purchased is actually subject to Ohio sales tax.
- Manufacturers should also analyze the impact of these changes on their tax collection responsibilities. For instance, a non-Ohio manufacturer may

¹ The definition of seller (5741.01(E)) was amended to include marketplace facilitators on the first day of the month that begins at least 30 days after the marketplace facilitator meets the economic thresholds. Since the economic thresholds were established effective August 1, 2019, the earliest date a marketplace facilitator could be required to collect and remit is September 1, 2019.

now be required to collect tax or obtain an exemption certificate on goods shipped from outside Ohio. Also, because many other states have adopted similar nexus provisions, Ohio manufacturers should consider if those laws now change their tax collection responsibilities in those other states.

If you have any questions regarding Ohio's sales and use tax nexus or any other state and local tax issue, please contact [John Trippier](#), [Richard Farrin](#), or [any ZHF professional](#).

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