



# SALT Alert!



## **SALT Alert! 2017-20: Multistate: Numerous States to Participate in MTC Voluntary Disclosure Initiative for Certain Remote Sellers**

**The Multistate Tax Commission (MTC) is facilitating a limited-time voluntary disclosure initiative for both sales and use and income taxes for certain online sellers that use marketplace providers/facilitators to facilitate making retail sales into the state. Most participating states have agreed to forego any tax, penalty and interest for prior periods in return for participating sellers beginning to collect and remit sales and use tax by December 1, 2017 and beginning to file income/franchise returns for the 2017 tax year. The official list of participating states and procedural guidelines were recently posted to the MTC's website and can be accessed [here](#).**

### **Voluntary Disclosure Details**

The MTC's special voluntary disclosure (VDA) program is available only to certain online sellers using a marketplace provider/facilitator to facilitate retail sales into the state that have no physical presence nexus in the state, except for the online sellers' inventory stored in a third-party fulfillment center located in the state or through other nexus-creating activities of the marketplace provider/facilitator on behalf of the online marketplace sellers in the state. Per the MTC's guidance, an online marketplace provider is a person who "facilitates a retail sale by an online marketplace seller by:

1. Listing or advertising for sale by the online marketplace seller on a website, tangible personal property, services, or digital goods that are subject to sales/use tax;
2. Either directly or indirectly through agreements or arrangements with third parties collecting payment from the customer and transmitting that payment to the online marketplace seller; and provides fulfillment services to the online marketplace seller."

Sellers cannot participate if they have previously registered to collect and pay sales/use or income/franchise taxes or had any contact with the state concerning liability or potential liability for those taxes. The program will run from August 17, 2017, through October 17, 2017.

The benefit to participation in the special VDA program is that there is no lookback period. Under regular state VDA programs and the normal MTC VDA program, a three or four year lookback period applies. For purposes of this program, the participating states have agreed to waive sales/use and income/franchise tax liability, including penalties and interest, for prior tax periods unless the state indicates specifically otherwise. The seller, however, must register as a seller or retailer to collect, report, and remit sales and use tax (on all sales, regardless of the distribution channel) and begin filing returns no later than December 1, 2017. As for income/franchise taxes, the taxpayer must commence filing returns and paying tax due beginning with the tax year that includes the effective date of the VDA, but not later than December 1, 2017. So, calendar year taxpayers would start filing income/franchise tax returns beginning with the 2017 tax year.

## Participating States

Currently, the states having indicated they will participate in the two-month VDA are: Alabama, Arkansas, Connecticut, Idaho, Iowa, Kansas, Kentucky, Louisiana, Nebraska, New Jersey, Oklahoma, South Dakota, Texas, Utah, Vermont, and Wisconsin (with a limited lookback period).<sup>1</sup> Colorado has indicated interest, but its participation is pending final approval. The list of states may change, and interested taxpayers should refer to the MTC's website for additional information.

## Application Procedures

To participate in the VDA program, sellers must apply for voluntary disclosure by completing the [MTC's Application for Multistate Voluntary Disclosure between August 17, 2017 and October 17, 2017](#). Sellers may apply anonymously and will not be required to disclose personal information unless and until the VDA is executed. In addition, sellers may withdraw the VDA application any time prior to execution of the VDA. A separate application is required for each state in which the seller is seeking a VDA, and sellers may choose the states in which they wish to pursue the VDA.

States participating in the special remote seller VDA program have agreed not to disclose to other taxing jurisdictions the identity of any taxpayer entering into a voluntary disclosure agreement under this initiative, except as required by law, court order, or under an intergovernmental information exchange agreement in which the requesting party provides the taxpayer's name and identification number. Blanket requests from other jurisdictions for names of participating taxpayers will not be honored.

The application, which can be filed online or submitted via email, is the same application that is used for the MTC's regular voluntary disclosure program. As a result, taxpayers should be warned that the application is not specific to the special remote seller VDA. The taxpayer will need to state in the application that it is applying for relief under the special remote seller initiative. Use of the regular program application creates a couple of other anomalies which may be confusing. First, the application states that the "National Nexus Program staff will not process an application when the good-faith estimate for all tax-types for the look-back period is less than \$500 in this state." However, the guidance on the special remote seller VDA program clarifies that applications under the special VDA initiative will be processed regardless of the amount of back tax liability (unless the state has specifically provided a minimum sales volume threshold as a prerequisite to participation). In addition, for certain states (Arizona, Iowa, Louisiana, Minnesota, and Utah) the application asks specific questions regarding the commencement of business activities and prior period business volume.

Once the application is filed, it will be processed by the MTC staff which will handle the interactions between the states and the applicant's representative. Presuming the

application is complete and the applicant is eligible for the program based on the representations in the application, the applicant should expect to receive a formal voluntary disclosure agreement setting forth the terms and conditions for review. If acceptable to the applicant, the agreement will be sent first to the state for signature and then returned to the applicant who will be required to register with the state and return the signed agreement to MTC. The process is expected to take roughly 30-60 days, and any participating seller will be expected to register and begin collecting sales and use tax by December 1, 2017.

For more information about the MTC's limited-time remote seller VDA, please contact [Shirley Sicilian](#) or [Harley Duncan](#).

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<sup>[1]</sup> Wisconsin will require payment of back tax liability and interest for the following lookback periods: for sale/use tax, commencing January 1, 2015; for income/franchise tax, including tax years 2015 and 2016.

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