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# Sales Tax Information for Marketplace Sellers and Marketplace Facilitators

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## Introduction

This publication provides tax information for marketplace facilitators and marketplace sellers. See Utah Code §59-12-107.6 for more marketplace information. See Pub 25 for general sales and use tax information.

Tax Commission publications are reference tools. They are not all-inclusive and should not be used as legal references. Any changes to tax law will supersede information in this publication.

## Definitions

See Utah Code §59-12-102.

### Products

Tangible personal property, products transferred electronically and services.

### Marketplace

A physical or electronic place where products are offered for sale. Examples include stores, booths, websites, catalogs and dedicated sales software applications.

### Marketplace Seller

A seller of products through a marketplace. Marketplace sellers do not need to have a Utah sales tax license for facilitated sales unless they have Utah nexus (see Pub 37) and make sales outside a marketplace.

### Marketplace Facilitator

A marketplace owner, operator or controller who both facilitates sales and collects payments through the marketplace.

#### Facilitating sales includes:

- Making products available for sale on the marketplace, regardless of ownership or control of the products.
- Communicating offers or acceptances of sale between a seller and a buyer.
- Providing resources that connect sellers and buyers.
- Providing software or research and development directly related to a marketplace.

- Offering sellers fulfillment or storage services.
- Setting prices for a seller's products.
- Offering customer service to sellers or buyers, such as help with orders, returns or product exchanges.
- Identifying sales as those of the marketplace.

#### Collecting payments includes:

- Using a third party to collect payments and transmitting them to a marketplace seller.
- Providing payment-processing services.
- Charging a fee for product sales on the marketplace.
- Providing a virtual currency option for purchases.

A marketplace facilitator does not include a person who only provides payment-processing services or facilitates restaurants' sales as of July 1, 2020 (see Pub 55, *Sales Tax Information for Restaurants*).

## Tax Requirements

### Sellers

A marketplace seller with a Utah sales tax license must file sales tax returns but does not report sales made through a marketplace. Sellers are not liable for taxes a facilitator is required to collect.

Sellers cannot opt-out of having a facilitator collect tax for their sales.

### Facilitators

Marketplace facilitators are considered the seller of goods and services they facilitate.

A marketplace facilitator is subject to Utah sales tax if, in either the previous or the current calendar year, they sell or facilitate the sale of products that result in either:

- gross revenues of more than \$100,000; or
- 200 or more separate transactions.

To determine if you meet or exceed either threshold, separately total your own sales and the sales you facilitate.

An out-of-state facilitator must begin collecting Utah sales tax no later than the first day of the calendar quarter that is at least 60 days after the day on which they meet or exceed either threshold.

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**Example:** A facilitator makes more than 200 sales in Utah for the first time on March 8. Sixty days later is May 7, which is in the second calendar quarter (April–June). The next calendar quarter is July–September, so the facilitator must begin collecting Utah sales tax no later than July 1.

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In addition to sales tax, facilitators are responsible for collecting all sales-related taxes (transient room, tourism, motor vehicle rental and municipal telecommunications license taxes).

A facilitator's books and records must separately show their own sales and the sales they facilitate.

### Not Liable

A marketplace facilitator is not liable for failing to collect taxes if they can show that:

1. they made or facilitated the sales through their marketplace,
2. they and the seller are not affiliates, and
3. the failure to collect tax was due to a good-faith error other than a sourcing mistake (see Pub 25 to learn about sourcing).

In order to not be held liable for failure to collect tax, a facilitator must also have an error rate of less than or equal to:

- 7 percent for calendar years 2019 and 2020
- 5 percent for calendar year 2021
- 3 percent for calendar year 2022

The error rate is calculated as a percentage of total sales and use tax due on facilitated sales sourced in Utah.

## What's Subject to Tax

See Pub 25 for a full explanation of what is and is not subject to sales tax.

In general, the following are subject to tax:

- A product's total purchase price.
- Fees a marketplace charges buyers for using the marketplace.

The following are NOT subject to tax:

- Delivery charges.
- Cash discounts or discount terms a marketplace seller or facilitator offers to buyers.
- Coupons that a third party does not reimburse.
- Payment processing and marketplace fees a facilitator charges a seller.

## Tax Rates (Sourcing)

Find tax rates online at [tax.utah.gov/sales/rates](https://tax.utah.gov/sales/rates).

A facilitator must collect sales tax for products delivered to Utah locations at the tax rate of the buyer's location.

Lodging rentals are subject to the tax rate at the location of the rental, not the provider's mailing address.

See Pub 25 for sourcing requirements for telecommunication charges and sales of leases, vehicles and transportation equipment.

## Exemption Certificates

A marketplace facilitator who sells products exempt from sales tax must keep completed exemption certificates in their records. A marketplace facilitator may assume a buyer's exemption certificate is valid. A facilitator may use a certificate on file for a buyer's future purchases.

## Refunds

If a marketplace facilitator overcharges sales tax, the buyer may file a claim for a refund from the facilitator. Adjustments for returned merchandise are the facilitator's responsibility. See Pub 25 for more information about refunds.