

Sales tax compliance for marketplace facilitators and sellers

Presentenced by:
Scott Peterson & George Trantas



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While we hope you'll find this discussion helpful, this session is for informational purposes only and is not legal or tax advice.



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Meet our presenter



Scott Peterson

Vice President of U.S. Tax Policy and Government Relations
Avalara

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Scott is a frequent speaker and a nationally recognized expert on sales tax policy, sales tax administration, and sales tax automation. *Accounting Today* named Scott to the Top 100 Most Influential People in Accounting in 2018, 2019, 2020, 2021, and 2022.

Prior to joining Avalara, Scott was the first Executive Director of the Streamlined Sales Tax Governing Board and Director of the South Dakota Sales Tax Division. He is a veteran of the United States Army and a graduate of University of South Dakota.

Meet our presenter



George Trantas

Senior Director of Global Marketplaces

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George oversees the business development operations strategy for Avalara's global online marketplace business. Prior to Avalara, he was Vice President of Client Success Commerce Services at Pitney Bowes. He also spent more than four years at eBay where he supported the logistics, motor parts, and emerging verticals business units.



Agenda

- Introduction
- The current state of commerce and marketplaces
- Tax compliance considerations for marketplace facilitators
- Tax compliance considerations for marketplace sellers
- Q&A



POLL

Are you a marketplace
facilitator or a
marketplace seller?



The current state of marketplaces

2024

Marketplaces by the numbers



\$468B

Forecasted U.S. consumer spending on online marketplaces in 2024*



67%

Of global ecommerce sales come from marketplaces**

Up 40% from a decade ago



6/9

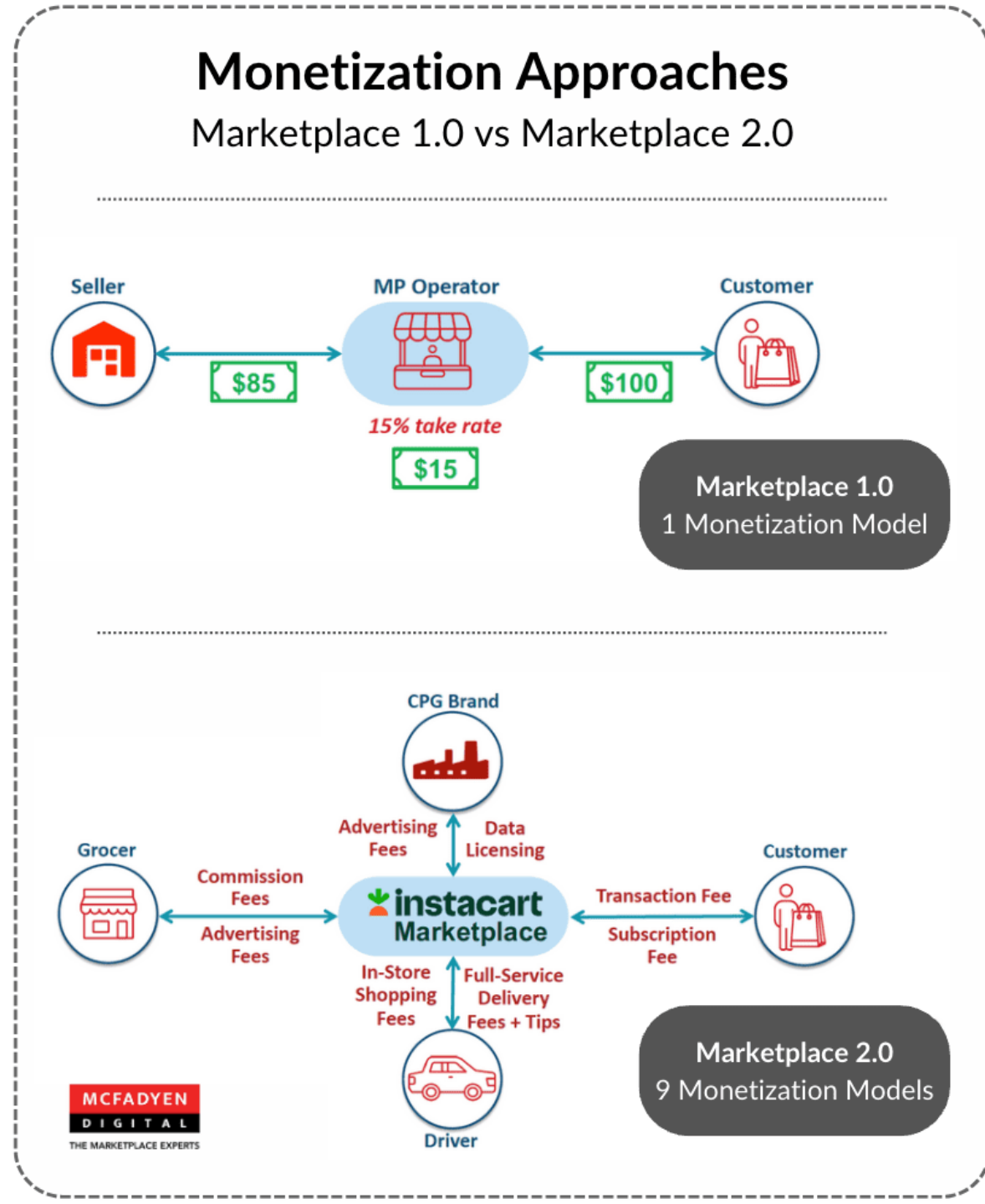
The number of areas marketplaces surpass traditional retailers in meeting important shopping needs**

- Attractive delivery
- Competitive pricing
- User-friendly website
- Wide variety of products
- Attractive returns
- Trust products in stock

*EMARKETER, July 2024 **BCG, June 2024

Why marketplaces?

- Marketplaces allow retailers to sell their own products, in addition to those of third-party sellers, with operators earning a commission on each transaction.
- Marketplace sellers can gain visibility from new audiences.
- Marketplaces are evolving.



KEY TERMS:

What are marketplace facilitators?

Businesses that contract with third parties to provide an infrastructure to facilitate retail sales.

Factors states look at to determine if a platform is a marketplace facilitator:

- Collecting/processing payments
- Fulfillment/storage
- Listing products for sale
- Setting prices
- Taking orders
- Providing customer service
- Accepting/assisting with returns or exchanges

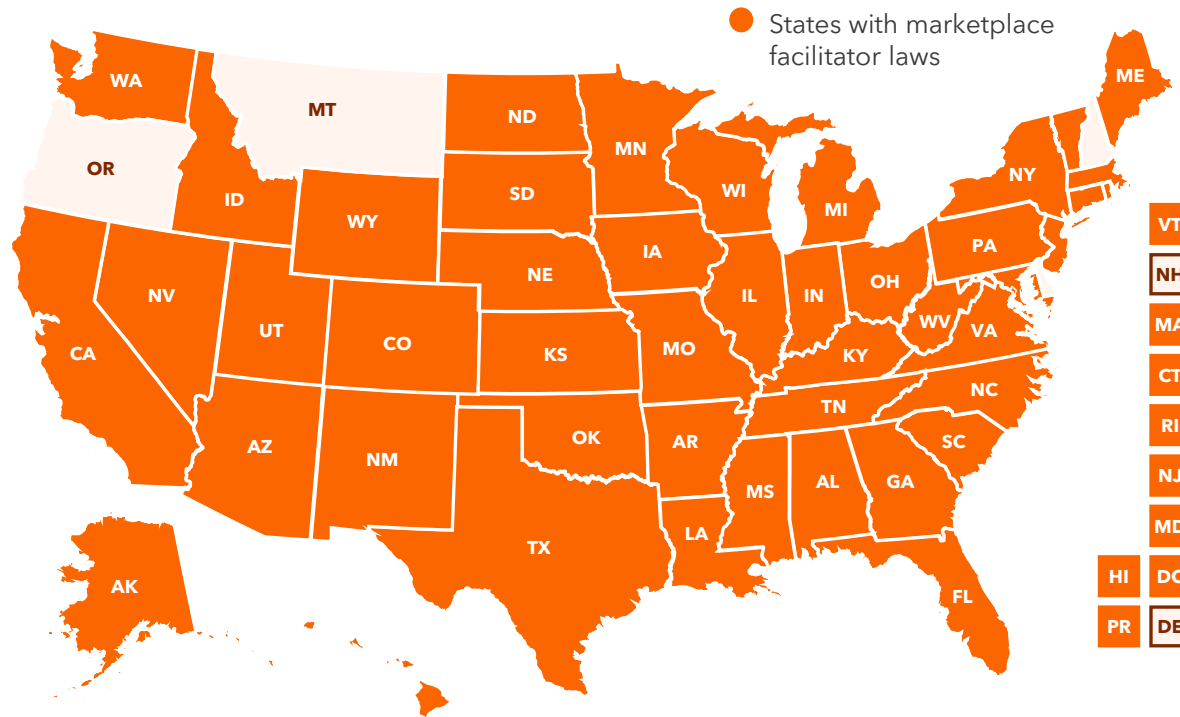
TIP

**Not all
ecommerce
platforms are
marketplace
facilitators.**



The responsibility to collect and remit sales tax lies with facilitators

Marketplace facilitator laws



45 states, plus Washington, D.C., Puerto Rico, and some localities in Alaska have adopted marketplace facilitator laws.

These laws require marketplace facilitators to collect and remit sales tax on behalf of their third-party sellers.

Marketplace sellers are still responsible for monitoring and reporting their marketplace sales.



California's marketplace clarification

In 2023, California approved the adoption of [Regulation 1684.5, Marketplace Sales](#)

- "Facilitating" includes when "the person agrees to do anything directly or indirectly...that makes it possible or easier for the marketplace seller to sell its products through the marketplace."
- These activities include "listing products for sale, communicating the offer or acceptance between the buyer and seller, taking orders for merchandise, or providing **payment processing or fulfillment services.**"

California Proposition 22

- The U.S. Supreme Court upheld California Prop 22, meaning app-based drivers for marketplaces will continue to be treated as independent contractors.

Tax compliance
considerations for
marketplace facilitators

CONSIDERATION #1

Nexus and marketplace facilitators

Sales tax nexus is the connection between a business and a taxing authority that requires the business to submit itself to the jurisdiction of that authority.

- If you have nexus in a state, you must collect & remit sales tax in that state.

Types of nexus:

Property

Employees

Click-through

Affiliate

Economic



South Dakota v. Wayfair changed sales tax for remote sellers

Economic nexus

On June 21, 2018, the U.S. Supreme Court ruled in favor of South Dakota and expanded upon the **physical presence standard**.

- Economic nexus laws allow states to impose a sales tax obligation on remote sellers based on economic activity.

All 45 states

with a state sales tax have adopted economic nexus.

Thresholds vary state-by-state.



South Dakota v. Wayfair changed sales tax for remote sellers

Economic Nexus

On June 21, 2018, the U.S. Supreme Court ruled in favor of South Dakota and expanded upon the physical presence standard.

- When a facilitator reaches an economic nexus threshold in a state, they **must collect and remit sales tax in that state**.
- Facilitators must include their **direct sales AND third-party sales** toward state thresholds.

All 45 states

with a state sales tax have adopted economic nexus.

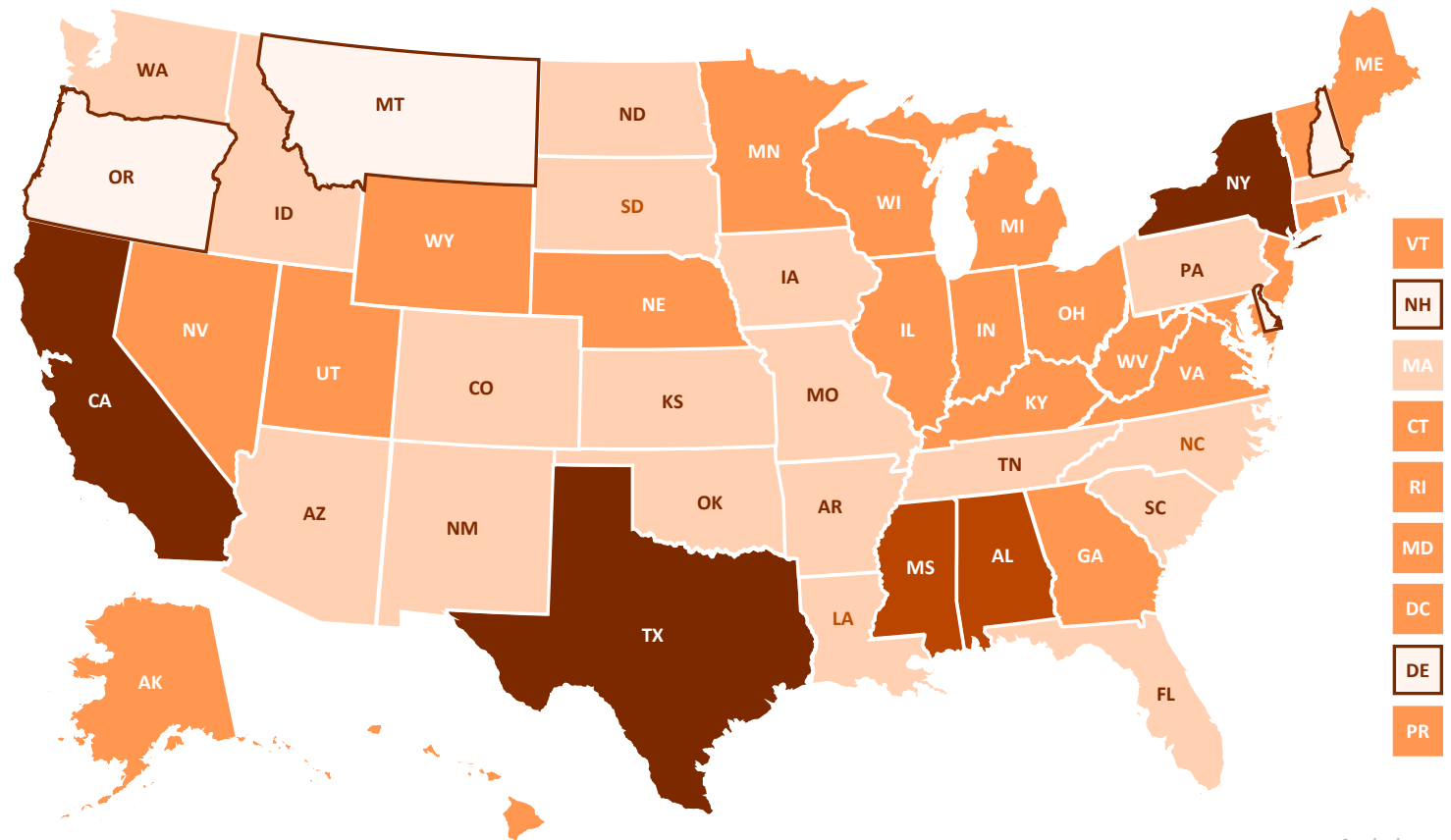
Thresholds vary state-by-state.



Economic nexus thresholds by state

- \$500,000
- \$250,000
- \$100,000 or 200 transactions
- \$100,000
- Does not have economic nexus law

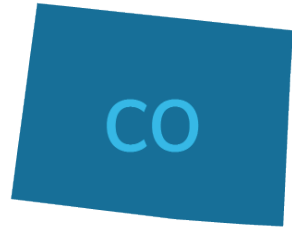
- > Connecticut's threshold is gross receipts of \$100,000 **and** 200 retail transactions
- > New York's threshold is \$500,000 **and** 100 transactions
- > Recent activity with states dropping their transaction threshold



As of 7/1/2024

Use our free [sales tax risk assessment](#) to determine where you have nexus.

Retail delivery fees



Colorado's 29-cent retail delivery fee applies to all deliveries made by motor vehicle in the state that contain at least one item of tangible personal property.

- › Marketplaces are required to collect and remit Colorado's retail delivery fee on behalf of their sellers.



Minnesota will impose a similar, but different, 50-cent fee on retail deliveries of orders totaling \$100 or more, **effective July 1, 2024.**

- › Will apply to delivery of clothing, even though clothing isn't taxable in Minnesota.
- › Retailers with less than \$1 million in Minnesota retail sales and marketplaces with less than \$100,000 in Minnesota retail sales will be exempt from the fee.





POLL

In how many states does
your business have
nexus?

CONSIDERATION #2

Tax types

Marketplaces must account for different tax types based on the products they/their third-party sellers sell.

Sales tax

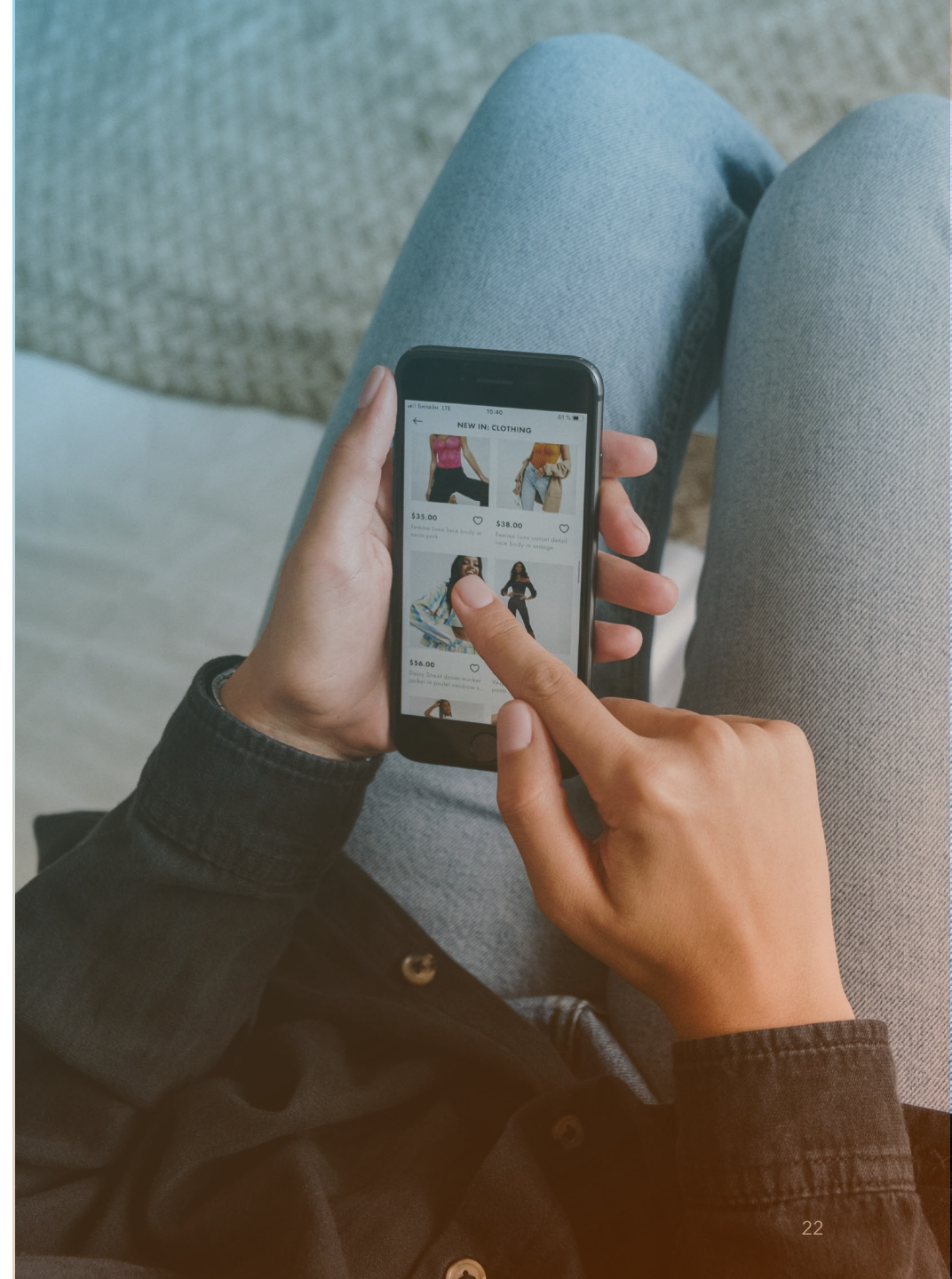
Excise tax

Hospitality

Beverage alcohol

Other examples:

- California electronic waste recycling fee, lumbar products assessment, battery fee, and tire fee
- Retail delivery fees (Colorado and Minnesota)
- Prepared meal delivery fees



CONSIDERATION #3

Product taxability

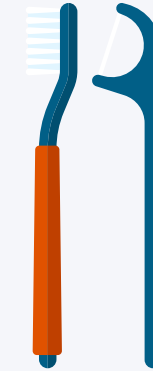
● Exempt ● Taxable

- There are **more than 13,000 sales and use tax jurisdictions** in the U.S.
- Each state and local jurisdiction **has its own tax rates and product taxability rules.**
- Marketplaces must track **information on products they sell and buyer data** to determine the right tax rate.



Bottled water in Connecticut

- Convenience store
- **Grocery store**



Toothbrushes & dental floss

- New York
- **Pennsylvania**



Takeout in Colorado

- Straws
- **Cups, cup lids**



Ice cream in Maryland

- Haagen-Dazs (14oz)
- **Ben & Jerry's (16oz)**

CONSIDERATION #4

Tracking & managing exempt sales

- Transactions can be exempt from paying all or a portion of the sales tax for a variety of reasons.
- If sales tax isn't collected on a transaction, the marketplace is responsible for collecting an exemption or resale certificate.
- Exemption and resale certificates vary by state and scenario.

SCENARIOS WHEN A SALE MAY BE EXEMPT



Your customer has an exemption based on their qualified status and specific purchase.



You are selling to an exempt entity such as a government agency or nonprofit organization.



An otherwise taxable product or service is being purchased 'for resale' by your customer.

CONSIDERATION #5

W-9 and 1099 obligations

Marketplace facilitators are responsible for collecting a W-9 from sellers.

- The IRS delayed their decision to lower the threshold requirement for facilitators to report third-party platform payments totaling more than \$600 per year on form 1099-K.

The 1099-K threshold for the 2024 tax year is \$5,000 in payments from at least one business transaction.*

*[Internal Revenue Service, November 2023](#)



CONSIDERATION #6

Monitoring requirements for high-volume sellers

The Integrity, Notification, and Fairness in Online Retail Marketplaces for Consumers Act (INFORM Consumers Act) went into effect in June 2023.

REQUIRES ONLINE MARKETPLACES TO:

0101011
1010101
0110110

Collect and verify certain information from high-volume third-party sellers

010
1010101
0110110

Disclose certain high-volume seller information to buyers



Provide "clear and conspicuous" consumer reporting options on high-volume seller pages



Comply with data privacy and security requirements

California recently passed SB 1144 to strengthen its version of the INFORM Act to extend regulations to high-volume sellers that bypass online marketplace transactions.



CONSIDERATION #6 - REPORTING

Directive on Administrative Co-operation 7 (DAC7)

This reporting obligation in the EU requires digital platform operators to disclose data on income derived by sellers via platforms.

Both EU and non-EU platform operators are impacted if they facilitate:

- Reportable commercial activities of EU sellers
- The rental of immovable property located in the EU.
- Operators are required to report on year 2023 in 2024



POLL

What's the hardest part
of managing sales tax for
your business?

Tax compliance considerations for marketplace sellers

CONSIDERATION #1

Nexus and marketplace sellers

- Sellers must understand the business activities that can trigger nexus (obligation to collect) across **all** their sales channels.
- Even if the marketplace facilitator collects and remits sales tax on marketplace transactions, sellers are not off the hook.

Some states include marketplace sales in their economic nexus thresholds.

- Having items in storage in a state can be nexus-triggering [Fulfillment by Amazon (FBA)].
- Review your business activities often and understand the appropriate next steps when nexus has been established.

A GROWING LIST

Nexus-creating activities:



Economic activity



Multi-state locations



Hosted data centers



On-site field service/repair/supervision



License/royalties/fees



Own/lease/rent real or personal property



Field sales/service staff



Maintain inventory



Marketing/web advertising



Tradeshows



Commissioned agents or contractors (1099s)



Investors/board members/employees



Drop shipments

CONSIDERATION #2

Registration complexities



REMOTE Multichannel seller

You sell through a marketplace and other channels into the state and have no physical presence:

- Must register and collect tax on sales not taxed by marketplace facilitator.



REMOTE Marketplace seller

You **only** sell through a marketplace into the state and have no physical presence:

- Not required to collect sales tax on sales taxed by marketplace facilitator.
- May still be required to register if you meet economic nexus thresholds.



IN-STATE Multichannel seller

You have a physical presence in the state and sell through a marketplace(s) and other channels in the state:

- Must register and collect tax on sales not taxed by marketplace facilitator.



IN-STATE Marketplace seller

You have a physical presence in the state and only sell through a marketplace(s):

- Required to register with the state; contact state to learn more.

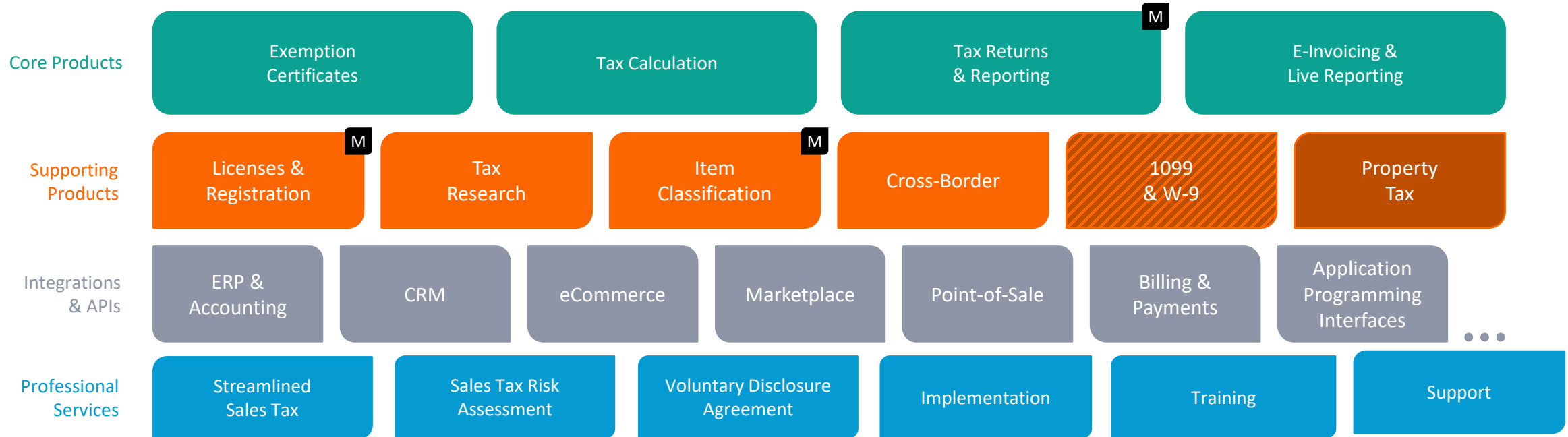
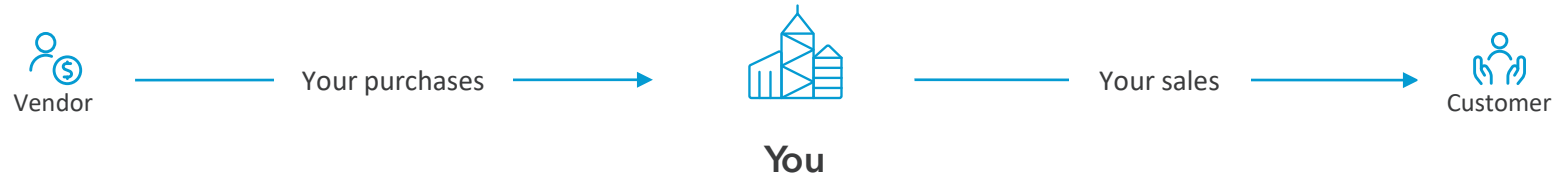


CONSIDERATION #3

Reporting and returns

- Even though the marketplace is responsible for collecting and remitting sales tax, sellers must report on their sales across all channels, **including marketplaces**.
- You must be able to track and aggregate data across multiple sales channels.
- Some states may require you to have a sales tax license even all of your sales are done on a marketplace.
- If you get audited, you must be able to account for why you collected the amount of sales tax that you did relative to income.

Avalara products and services



^M Managed services



POLL

Would you like a follow up from an Avalara sales representative?

Q&A

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Tax compliance done right