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# Marketplace

*The purpose of this Tax Fact is to provide general guidelines on how tax applies to the sale of products and services through a marketplace. It is not intended to answer all questions that may arise. The information contained in this fact sheet is current as of the date of publication.*

July 2023

## Marketplace Providers

As of March 1, 2019, marketplace providers have been required to license their business and remit applicable sales tax on all sales it facilitates into South Dakota if:

- The marketplace provider is a remote seller; or
- The marketplace provider facilitates the sales of at least one marketplace seller that meets the remote seller criteria; or
- The marketplace provider facilitates the sales of two or more marketplace sellers that, when the sales are combined, meets the remote seller criteria.

**A marketplace provider must obtain a sales tax license from the South Dakota Department of Revenue.**

Apply for a sales tax license online at [www.sd.gov/taxapp](http://www.sd.gov/taxapp) or through the Streamlined system at [www.streamlinedsalestax.org](http://www.streamlinedsalestax.org).

If the business does not have a physical presence but has more than \$100,000 in gross sales into South Dakota in the previous or current calendar year, the business is required to license their business and remit applicable sales tax.

*Gross sales or transactions include selling, renting, or leasing products or services (including products delivered electronically) into South Dakota ([SDCL ch. 10-64](#)).*

## Definitions

**Marketplace** - any means where a marketplace seller sells or offers for sale products or services (including products delivered electronically) into South Dakota.

**Marketplace Provider** - any person or business that facilitates a sale for a marketplace seller through a marketplace and is directly, or indirectly through any agreement or arrangement with third parties, collecting payment from a purchaser and transmitting the payment to the marketplace seller. It does not matter if the marketplace provider receives compensation in exchange for facilitating the sale or providing the service.

**Marketplace Seller** - an individual or business that sells or offers for sale products or services (including products delivered electronically) into South Dakota, through a marketplace that is owned, operated, or controlled by a marketplace provider.

## **South Dakota Business**

As a retailer located in South Dakota, your tax collection obligations for South Dakota do not change. All sellers with a physical presence in South Dakota continue to be required to hold a sales tax license and remit sales tax regardless of the amount of sales or number of transactions.

If you are a South Dakota business selling through a marketplace, the marketplace will remit sales tax if any of the thresholds are met. If a marketplace is not licensed, the South Dakota business is required to remit sales tax on all sales it makes into South Dakota.

- If a marketplace is licensed and remitting the sales tax, the South Dakota business will not be responsible for sales tax remittance on sales through that marketplace. The business would be responsible for remittance on all other sales.

If a South Dakota business is not sure if a marketplace provider is licensed, contact the Department of Revenue to verify.

## **Taxability of Services Provided by Marketplace Providers**

South Dakota sales tax applies to most services provided in the state, including services charged by marketplace providers. Marketplace providers may owe sales tax on charges for services provided to sellers.

Not all services are subject to South Dakota sales tax. There is a sales tax exemption for fees or commissions charged for a service that provides for the sale of a product or service. In simple terms, if the fee or commission is only received when a sale is made it is likely the fee or commission is not subject to sales tax. This exemption is provided for under [SDCL 10-45-12.5](#).

It is possible for some charges to be taxable and others to be tax exempt. We encourage you to contact our office to review the charges made by your marketplace to your sellers to determine their taxability.

### **Examples:**

1. *The marketplace provider retains 10% of the sales price for all products sold through their platform. The 10% fee is only received if a sale is made. If no sale is made, there is no fee charged by the marketplace provider to the seller.*
  - The 10% fee retained is exempt from sales tax because the fee is contingent on the sale of a product through the platform.
2. *A marketplace provider charges each seller a monthly fee of \$50 to post up to 20 items on their platform. The \$50 fee is due at the beginning of each month.*
  - The \$50 fee is subject to sales tax. The fee is charged regardless of any sales being made by the seller. This is a charge for the service of posting on the platform.
3. *A seller is charged \$20 each month to use a marketplace platform, plus a 5% commission for each sale that is made on the platform.*
  - The marketplace provider owes sales tax on the \$20 monthly fee. This fee is for the service allowing a seller to use the platform.
  - The 5% commission is not subject to sales tax because the fee is contingent on a sale being made.

## Marketplace Provider FAQs

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### Who is required to obtain a sales tax license?

- If the marketplace provider meets the threshold, they are required to become licensed. Marketplace sellers that meet South Dakota's remote seller law may also be required to get licensed. To learn more about South Dakota's remote seller law ([SDCL 10-64](#)), review the [Remote Seller Bulletin](#).

### Is a marketplace provider required to give a resale certificate to a marketplace seller?

- No, marketplace providers are not required to provide a resale certificate to marketplace sellers.
- Marketplace providers must provide notice to marketplace sellers that South Dakota sales tax is being reported and remitted on all marketplace sales. The notice must include the date the marketplace began complying with South Dakota law. The notice should be conspicuously posted on the marketplace website and provided directly to each marketplace seller. This notice is in place of providing a resale certificate to marketplace sellers.

### What is South Dakota's marketplace provider hold harmless provision?

- The hold harmless provision limits the penalty on a marketplace provider if they receive inaccurate information about goods and services from a marketplace seller ([SDCL 10-65-7](#)).

### Can South Dakota go back and try to recover taxes that weren't collected and paid on purchases made prior to March 1, 2019?

- No, the state cannot go back and retroactively collect sales tax from a marketplace provider. The state is legally precluded from enforcing retroactive tax collection on a marketplace provider for any sale made prior to March 1, 2019 ([SDCL 10-65-8](#)).

### Does South Dakota require a marketplace provider to file separate tax returns for state and municipal sales taxes?

- No, South Dakota state and municipal taxes are reported and paid on the same sales tax return.

### Does South Dakota require a marketplace provider to obtain separate sales tax licenses for their sales and the sales on the marketplace?

- No, a marketplace provider may use the same sales tax license for their sales and sales on the marketplace. Both types of sales would be filed on the same sales tax return for each reporting period.
- If the marketplace chooses to report their sales separately from the sales on the marketplace, they can be issued two tax licenses and file separate sales tax returns.

### Is a marketplace provider required to file a South Dakota sales tax return if there are no sales to report for the period?

- Yes, a marketplace provider must file all sales tax returns even if there are no sales to report.

### Are meal delivery platforms (e.g. UberEats, Grubhub, etc.) marketplace providers under South Dakota's marketplace provider statutes?

- Meal delivery platforms operating in South Dakota have created a physical presence in the individuals delivering meals to customers. Having a physical presence in South Dakota requires the meal delivery platform to be licensed and pay sales tax regardless of the volume of sales or number of transactions.

## Contact Us

If you have any questions, please contact the **South Dakota Department of Revenue**.

**Call toll-free:** 1-800-829-9188

**Business Tax Division Email:** [bustax@state.sd.us](mailto:bustax@state.sd.us)

**Website:** <https://dor.sd.gov/>

**Mailing address and office location:** South Dakota Department of Revenue  
445 East Capitol Ave  
Pierre, SD 57501