

## **GIL 1-19-2 Sales and Use Tax: Temporary Penalty and Interest Relief for Certain Remote Sellers and Marketplace Facilitators**

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November 8, 2019

Dear XXXX,

Guidance has been requested about whether DOR would provide interest and penalty relief to remote sellers that were required to, but have not yet complied with [LB 284 \(2019\)](#). Because of the nature of the inquiry, we are providing this General Information Letter (GIL) in response.

GILs address general questions; provide analysis of issues; and direct taxpayers to the Nebraska statutes, DOR regulations, revenue rulings, or other sources of information to help answer a question. A GIL is a statement of current DOR policy, and taxpayers may rely on DOR to follow the principles or procedures described in a GIL until it is rescinded or superseded. You may also find current regulations, revenue rulings, information guides, taxpayer rulings, and other GILs that may be helpful to you at [revenue.nebraska.gov](http://revenue.nebraska.gov).

On June 21, 2018, the U.S. Supreme Court issued its decision in [South Dakota v. Wayfair, Inc., 138 S. Ct. 2080 \(2018\)](#). Before *Wayfair*, Nebraska could not require a retailer without a physical presence in Nebraska to collect sales tax on sales delivered or sourced to a Nebraska address. After *Wayfair* and the later passage of LB 284 (2019), many remote sellers now have a sales tax collection responsibility in Nebraska. For purposes of this GIL, and the penalty and interest relief that it grants, a remote seller is a seller that was not engaged in business in Nebraska as defined in [Neb. Rev. Stat. § 77-2701.13](#) prior to the enactment of LB 284.

Operative April 1, 2019, LB 284 requires remote sellers to obtain a sales tax permit and collect Nebraska and local sales taxes on sales delivered or sourced to a Nebraska address, provided the remote seller meets one of the following thresholds:

- The remote seller made more than \$100,000 in gross Nebraska retail sales, including sales through a marketplace facilitator or Multivendor Marketplace Platform (MMP), in the prior or current calendar year; or
- The remote seller made 200 or more separate retail sales transactions in Nebraska, including sales made through an MMP, in the prior or current calendar year.

See [Neb. Rev. Stat. § 77-2701.13\(2\)-\(3\)](#). An MMP is a website or service where customers can buy goods or services from many different vendors. The same requirements and thresholds apply to MMPs.

On July 11, 2019, DOR issued the following guidance to assist remote sellers in complying with LB 284:

- Remote sellers who were engaged in business in Nebraska prior to the passage of LB 284 who met either threshold were required to obtain a sales tax permit immediately, and to begin collecting and remitting sales tax on sales delivered or sourced to a Nebraska address effective January 1, 2019. For more information, see the [Frequently Asked Questions](#).
- Remote sellers that exceeded either threshold during 2018 or by the end of February 2019, were required to obtain a sales tax permit and begin collecting sales tax on April 1, 2019. See the [Notice for Remote Sellers and Marketplace Facilitators](#).
- Remote sellers that exceeded either threshold after the end of February 2019 were required to obtain a sales tax permit and begin collecting and remitting sales tax on or before the first day of the second calendar month after the threshold was exceeded. See [Neb. Rev. Stat. § 77-2705\(3\)\(c\)](#).

DOR acknowledges many other states have also passed laws similar to LB 284 that became operative after *Wayfair*. Moreover, DOR also acknowledges that remote sellers and MMPs may have faced difficulty in timely complying with all of these laws.

Under [Neb. Rev. Stat. § 77-2711\(15\)](#), the Tax Commissioner has discretion to waive penalties and interest imposed on unpaid sales tax. Subject to the following requirements, the Tax Commissioner has decided to grant a temporary penalty and interest waiver to remote sellers and MMPs that were not engaged in business prior to April 1, 2019; met one of the thresholds during 2018 or 2019; and have not yet complied with the requirements of LB 284. This relief does not apply to sellers who are physically present in Nebraska.

To qualify for the temporary penalty and interest waiver, the remote seller or MMP must, by January 20, 2020: (1) obtain a sales tax permit, [Nebraska Tax Application, Form 20](#); (2) report and remit all sales tax and local sales tax due since April 1, 2019; and (3) submit a [Request for Abatement of Penalty, Form 21](#), and a [Request for Abatement of Interest, Form 21A](#), with a reference to this GIL written across the top of both forms. Remote sellers and MMPs that fail to meet the January 20, 2020 deadline will be assessed penalties and interest for all periods dating back to and including April 1, 2019. Remote sellers and MMPs who would otherwise be eligible for this relief, but who have already obtained a permit and paid penalty or interest for late periods since April 1, 2019, are also eligible for this relief by complying with these requirements.

Remote sellers that are unsure if they may have been engaged in business as defined in [Neb. Rev. Stat. § 77-2701.13](#) prior to the enactment of LB 284 (2019), may contact DOR at 402-471-5418 to determine if they are eligible for the relief as provided by this GIL or by a Voluntary Disclosure Agreement.

For the Tax Commissioner

George Kilpatrick  
Manager, Policy Section  
Nebraska Department of Revenue