

TENNESSEE DEPARTMENT OF REVENUE
REVENUE RULING # 26-04

Revenue rulings are not binding on the Department. This ruling is based on the particular facts and circumstances presented, and is an interpretation of the law at a specific point in time. The law may have changed since this ruling was issued, possibly rendering it obsolete. The presentation of this ruling in a redacted form is provided solely for informational purposes, and is not intended as a statement of Departmental policy. Taxpayers should consult with a tax professional before relying on any aspect of this ruling.

SUBJECT

The application of Tennessee sales and use tax to the provider of a digital auction platform.

SCOPE

Revenue Rulings are statements regarding the substantive application of law and statements of procedure that affect the rights and duties of taxpayers and other members of the public. Revenue Rulings are advisory in nature and are not binding on the Department.

FACTS

Company provides its customers with a digital infrastructure (the "Platform") in the form of both offline, downloaded or remotely accessed software, as well as an online hosting environment to enable its customers to manage and independently conduct auctions of real and tangible personal property. The Platform supports multiple auction types (e.g., online-only auctions, pre-bidding auctions, hybrid live and online auctions, and listings where the bidding occurs off-platform). Customers maintain full control over their auction events, including setting bidding terms, managing customer's customer eligibility, and choosing the form of payment. Some customers may opt to list items exclusively on their white-label websites—i.e., custom-branded sites powered by Company's technology but fully controlled by the customer. Company does not market or represent individual auctions as its own. While Company provides the digital environment necessary to conduct these auctions and to transmit bids electronically, it does not set prices, take title to any items or buy or list products for sale, participate in the underlying bidding activity between its customers and their customers ("customers' customers"), or finalize sales.

Company earns revenue through sales of its technology. It generates platform subscription fees for providing access to the cloud software solution platform on a recurring basis. It charges listing fees when Company's customer creates a selling event/auction. Company also earns revenue from optional premium features, which include enhanced search functionality, bidder analytics, and expanded marketing modules, as well as through banner ads, custom websites, and support/training.¹

¹ Company provides platform/technology support to its customers. Platform support relates exclusively to the functionality and performance of Company's software. Examples include: (1) assisting Company's customers with login or access issues, (2) troubleshooting slow page loads or connectivity problems, (3) resolving data upload errors, or (4) assistance in configuring

Company has developed interfaces within its Platform that enable its customers to independently select from various payment methods. Company's customers may accept payment directly by cash, check, bank transfer, or other tender type. Company maintains referral relationships with certain payment processors. Customers independently maintain direct contractual relationships with their chosen payment processors. Company provides technology support for certain technical integrations or referrals limited to ensuring that the technical integration functions properly (e.g., Company's customer credentials connect successfully to the third-party service). Company generates referral fees when its customer contracts with payment processors that have referral arrangements with Company.

Company does not process payments, handle refunds or chargebacks, nor does it collect or remit taxes on behalf of customers. In the majority of transactions, Company does not have visibility into whether a bidder ultimately pays or whether the sale is completed. In limited circumstances, Company may see that a winning bid was awarded or that a transaction closed, but in no circumstances does it have access to payment data or confirmation that the buyer fulfilled its payment obligation.

Company does not monitor or manage payment disputes or enforce fulfillment. In the case of non-payment by a customer's customer, the Platform's functionality has the ability to send an automated notification or allow Company's customer to select another winning bidder. This is a setting that can be enabled by Company's customer, but resolution of that issue is entirely between Company's customer and its customer.

RULINGS

1. Is Company a marketplace facilitator as defined by TENN. CODE ANN. § 67-6-102(56)(A) such that it is required to collect and remit Tennessee sales and use tax on sales made through its Platform?

Ruling: No, Company is not a marketplace facilitator because it does not meet the necessary requirements as provided in TENN. CODE ANN. § 67-6-102(56)(A).

2. If Company adds to its Platform a feature allowing its customers to collect sales and use tax, does this change the result?

Ruling: No. The addition to Company's product of a feature allowing its customers to collect and remit sales and use tax does not change the fact that Company is not a marketplace facilitator and is not required to collect and remit sales and use tax on sales made through the Platform.

3. Does Company have an obligation to maintain transaction-level records for sales made through the Platform?

auction settings within the software. Company neither engages in dispute resolution between customers and customer's customers, nor does it provide auction-specific customer support or assistance with transactions. However, if issues arise, such as a customer's customer failing to pay or a customer failing to ship, the Platform may notify the responsible party and expect that party to resolve the matter. If complaints persist, the Platform may remove the user for non-compliance. Company is not involved in managing customer/customer's customer interactions and post-auction fulfillment.

Ruling: No. Company is not a dealer with respect to sales made through its Platform for Tennessee sales and use tax purposes and is not required to maintain transaction-level records with respect to those sales.

ANALYSIS

Under the Retailer's Sales Tax Act,² retail sales in Tennessee of tangible personal property and specifically enumerated services are subject to the sales tax, unless an exemption applies. "Retail sale" is defined as "any sale, lease, or rental for any purpose other than for resale, sublease, or subrent."³

TENN. CODE ANN. § 67-6-102(86)(A) defines "sale" in pertinent part to include "any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever of tangible personal property for a consideration."

Tennessee's sales tax liability is imposed on the dealer. "Dealer" is defined under TENN. CODE ANN. § 67-6-102(23)(C) to include any person "who offers for sale at retail, or who has in such person's possession for sale at retail . . . tangible personal property." TENN. CODE ANN. § 67-6-501(a) provides that "every dealer making sales, whether within or outside the state, of tangible personal property, for distribution, storage, use, or other consumption in this state, or furnishing any of the things or services taxable under this chapter" is liable for the collection and remittance of sales and use tax.⁴

Tennessee law requires a marketplace facilitator to collect and remit sales and use tax on sales made through its marketplace if it made or facilitated total sales to consumers in this state of more than \$100,000 during the previous twelve-month period.⁵ The definition of sale includes any sale "made or facilitated by a marketplace facilitator,"⁶ and the definition of dealer includes a person that "acts as a marketplace facilitator."⁷ Moreover, TENN. CODE ANN. § 67-6-501(f) specifically states that a marketplace facilitator is responsible for collecting and remitting sales and use tax:

When a marketplace seller uses a marketplace facilitator to facilitate sales of tangible personal property or any of the things or services taxable under this chapter, the marketplace facilitator is liable for the taxes imposed by this chapter on the sales price of the tangible personal property or the things or services taxable under this chapter regardless of whether the marketplace seller has a sales tax certificate of registration

² Tennessee Retailers' Sales Tax Act (codified at TENN. CODE ANN. §§ 67-6-101 to -907) (2022 and Supp. 2023).

³ TENN. CODE ANN. § 67-6-102(84) (Supp. 2023).

⁴ TENN. CODE ANN. § 67-6-501(a) (2022).

⁵ TENN. CODE ANN. § 67-6-501(f).

⁶ TENN. CODE ANN. § 67-6-102(86)(L).

⁷ TENN. CODE ANN. § 67-6-102(23)(N).

or would have been required to collect sales or use taxes had the sale not been facilitated by the marketplace facilitator.⁸

A “marketplace” is “a physical or electronic place, platform, or forum, including, but not limited to, a store, booth, internet website, catalog, or dedicated sales software application, where tangible personal property or any of the things or services taxable under this chapter are offered for sale.”⁹ And “marketplace seller” is a “person who makes sales through any marketplace operated, owned, or controlled by a marketplace facilitator.”¹⁰

Moreover, a “marketplace facilitator” is defined as a person who, “[f]or consideration, regardless of whether characterized as fees from the transaction, contracts, or otherwise agrees to” facilitate sales subject to sales and use tax through a physical or electronic marketplace and “[e]ither directly or indirectly through contracts, agreements, or other arrangements with third parties, collects the payment from the purchaser. . . and transmits payment to the marketplace seller.”¹¹

Marketplace Facilitator

Company’s Platform is an electronic platform where tangible personal property subject to the Tennessee sales and use tax is offered for sale, and as such, it is a marketplace.¹² Company, however, is not a marketplace facilitator. Company’s role is limited to providing the Platform and technical support for the Platform. In no case does Company collect payment from its customers’ customers and remit payments to its customers. Moreover, it does not contract with third-party payment processors to indirectly collect payments. Although Company integrates the ability for its customers to select payment methods within its Platform and maintains referral relationships with certain payment processors, in no case does Company receive or have access to funds related to underlying financial transactions associated with those integrations or referrals. Company’s customers use their own payment processors who collect payment and transmit payment back to them. Company’s electronic Platform facilitates sales, but it neither directly nor indirectly collects payments from its customers’ customers as required to meet the definition of a marketplace facilitator.¹³ Accordingly, Company is not required to collect and remit Tennessee sales and use tax on sales made on the Platform.¹⁴

Customer Collection Feature

⁸ TENN. CODE ANN. § 67-6-501(f).

⁹ TENN. CODE ANN. § 67-6-102(55).

¹⁰ TENN. CODE ANN. § 67-6-102(57).

¹¹ TENN. CODE ANN. § 67-6-102(56)(A).

¹² See TENN. CODE ANN. § 67-6-102(55).

¹³ The requester asks multiple questions about “indirect” payment processing. The definition of marketplace facilitator does not reference “indirect” payment processing. TENN. CODE ANN. § 67-6-102(56)(B)(ii) specifically states that a marketplace facilitator does not include a person whose role with respect to a marketplace is “limited to payment processing services between two (2) or more parties.” Company does not provide payment processing services. Connecting its customers to payment processors does not render Company a payment processor, directly or indirectly.

¹⁴ See TENN. CODE ANN. § 67-6-102(56)(A).

The addition to the Platform of a feature allowing Company's customers to collect sales tax on transactions made through the Platform does not change the fact that Company does not itself collect payments from its customers' customers or through its relationship with a third party.¹⁵ Company's customers will be collecting the sales tax through existing payment collection mechanisms and relationships with third parties that do not involve Company. In other words, the customer collection feature only provides technical integration for Company's customers to collect sales tax from purchasers and does not permit the Company to collect payment for its customers for future remittance to the customers. Therefore, Company will not be considered a marketplace facilitator and will not be responsible for collecting and remitting sales and use tax for sales made on its Platform with the addition of a sales tax collection feature to the Platform that only permits Company's customers to collect sales tax from purchasers.

Recordkeeping

Transaction-level recordkeeping requirements fall on the dealer for purposes of the Tennessee sales and use tax. TENN. CODE ANN. § 67-6-523(a) requires dealers to "keep and preserve suitable records of the sales or purchases" as well as "such other books of account as may be necessary to determine the amount of tax due." Because Company is not a marketplace facilitator, it is not the dealer for sales and use tax purposes for items sold through the Platform.¹⁶ Therefore, Company is not required to maintain records for transactions involving its customers' sales occurring through the Platform.

APPROVED: David Gerregano
Commissioner of Revenue

DATE: May 13, 2026

¹⁵ See *Id.*

¹⁶ See Tenn. Code Ann. § 67-6-102(23)(N).