

Marketplace Provider Tax

Policy Brief :: Last Updated 2.8.18

TL;DR

Governor Cuomo has included a proposed marketplace tax in his 2018 budget that would impact internet-based marketplaces in New York. The proposal includes a tax on internet marketplaces that generate \$100M+ in sales annually, and require noticing and reporting compliance for marketplaces that facilitate less than \$100M in annual sales.

Summary

Governor Cuomo's proposed [2018 budget](#) includes a provision called the New York Internet Fairness Conformity Tax, which would require internet marketplace providers to calculate, collect, and remit sales tax for sales between an out-of-state seller and an in-state buyer. Three parties—the Governor's office, the Senate, and the Assembly—have until April 1 to negotiate a final budget and decide whether or not the marketplace tax should be included.

The proposal would also require that marketplaces that facilitate less than \$100M in annual sales comply with notice and reporting requirements, such as notifying out-of-state sellers that sell into NYS that they might have to remit taxes; filing of annual information returns to the state on behalf of out-of-state sellers; and providing annual statements of purchases to NYS purchasers.

Other states have also been active in pursuing marketplace taxes and taxes generally for online retailers. Additionally, the U.S. Supreme Court said in January that it would hear arguments this year in determining whether state governments can collect sales taxes from online retailers that do not have a physical presence in those states.

Impact on Members

This tax will have at least two negative impacts on New York's tech ecosystem. First, this tax sends the wrong message to all tech companies, regardless of their business, about New York's desire to establish a welcoming environment for our community.

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Second, there are significant operational challenges associated with imposing this tax. Members who qualify as marketplace providers would be required to calculate, collect, and remit sales tax for products purchased by New Yorkers from out-of-state sellers. This would introduce overly burdensome operational complexities, such as applying varying sales tax standards to different products, in varying jurisdictions. The onus of categorizing products would fall upon the sellers, many of whom are small business owners themselves, who have little or no knowledge about the nuances of sales tax. The issue will become further complicated if or when other states and jurisdictions begin imposing a similar tax.