

## Resources

### Michigan Enacts Mainstreet Fairness: Remote Sellers Required to Collect Sales and Use Tax

January 21, 2015

On Thursday, January 15, 2015, Michigan Governor Rick Snyder signed legislation that will require remote sellers to collect Michigan sales and use tax on sales made to Michigan residents. PA 553-554. The intent of the law is to level the playing field between in-state sellers and remote sellers with respect to tax collection requirements. The law also is intended to allow the State to collect currently existing but unpaid use tax liabilities estimated to amount to tens of millions of dollars.

#### Mainstreet Fairness Legislation Imposes New Collection Requirements Based On Specific, Limited Tests

The new Michigan law creates a tax collection requirement for remote sellers that meet one of two new statutory tests. Under the first test, which often is referred to as “click-through” nexus, a collection obligation is presumed to arise if a remote seller has representatives located in Michigan who facilitate sales by using click-through links that can be accessed on the internet by Michigan customers. Under the second test, the remote seller is presumed to be obligated to collect tax on sales to Michigan residents if the seller has a specified type of affiliate located in Michigan.

The new law also contains a *de minimus* threshold, which is intended to exempt small remote sellers from the collection obligation. Importantly, the new law creates a presumption that a collection obligation exists, which can be rebutted if the remote seller can establish that it is not availing itself of the Michigan market in a manner that is sufficient to create the minimum connection required under Constitutional limitations.[1]

#### Sales And Use Tax Collection Obligation—Not A New Tax

The new law does not create a new tax, but instead imposes a collection obligation on remote sellers for a tax that is already legally due and owing from customers. Even without the new collection obligation, buyers in Michigan owe a 6 percent use tax on all out-of-state purchases that they make online. The new law seeks to impose a collection obligation for remote sellers at the seller level, which is similar to the collection obligation that is imposed on Michigan-based sellers, or other sellers with Michigan retail locations.

A review of the new Act, **PA 553** and **PA 554**, indicates that these provisions are similar to laws enacted in New York (the New York law was held not to be facially discriminatory), Texas, Arkansas, and many other states, and different from the remote seller law in Illinois that was invalidated in 2013 as a violation of the Internet Tax Freedom Act.[2]

Dykema will continue to monitor these issues and provide further updates and analysis. If you have questions about the matters raised in this alert, you may contact Wayne Roberts (wroberts@dykema.com or 616-776-7514), William Lentine (wlentine@dykema.com or 313-568-5371), William Perrone (wperrone@dykema.com or 517-374-9174), or your relationship attorney.

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[1] See, e.g., *Quill v North Dakota*, 504 US 298 (1992).

[2] See *Performance Marketing Association, Inc. v Hamer*, 2013 IL 114496 (October 18, 2013).

### Practice Areas

Taxation

Michigan Enacts Mainstreet Fairness: Remote Sellers Required to Collect Sales and Use Tax (Cont.)

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