

Marketplace Provider Tax

Part BB in Assembly Bill 3009 and Senate Bill 2009
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UPDATE

Victory! New York State finalized its 2017 budget, and it did not include the Marketplace Provider Tax. As Tech:NYC said in our statement, “With this budget, Governor Cuomo is showing the kind of leadership New York needs to support a thriving and influential technology sector. It will encourage internet marketplaces, and all technology companies, to grow here, not to mention ridesharing companies to continue investing here. It reflects the way people buy things and get around today and in the future and it helps create and keep more jobs here. By protecting the ordinary people across New York State who use today's technologies along with the companies who provide that technology, New York is sending the message that those companies aren't just welcome here, they're critical to our commercial and creative future.”

TL;DR

The New York marketplace tax would be a first-in-the-nation tax on internet marketplaces doing \$100m+ in sales annually. It would apply to certain transactions only, creating serious operational burdens and sending a message to internet marketplaces, and tech companies more broadly, that they are not welcome here.

SUMMARY

Governor Cuomo's proposed budget includes a provision that would require internet marketplace providers such as Amazon, eBay, and Etsy to calculate, collect, and remit sales tax for certain sales of tangible goods conducted on their platforms. The bill would exempt marketplace providers with annual sales below \$100 million. New York would be just the third state to even pass such a law (the laws passed in the other two states, South Dakota and Alabama, are stuck in litigation—as New York's will almost certainly be as well). While the State Senate opposes the tax, the Assembly has followed the Governor in supporting it. The three parties—the Governor's office, the Senate, and the Assembly—have until March 31 to negotiate a final budget and decide whether or not the marketplace tax should be included.

IMPACT ON MEMBERS

This tax will have at least three negative impacts on New York's tech ecosystem. First, because it would only apply to marketplace providers with a nexus to New York, those providers will have an incentive to move their offices outside of New York in order to avoid the tax. Second, 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.

Finally, 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.