



## MULTISTATE INDIRECT TAX

# New Florida requirement to collect and remit sales tax for remote sellers and marketplace providers

## Tax Alert

### Overview

On April 19, 2021, Florida Governor Ron DeSantis signed Senate Bill 50 (“S.B. 50”).<sup>1</sup> Notable provisions of the new law include:

- The definition of “retail sale” has been revised to include “remote sales” and sales facilitated through a physical or electronic marketplace.
- Marketplace providers and out-of-state retailers with no physical presence in Florida will now be required to collect Florida sales tax on sales of taxable items delivered to purchasers in Florida if the marketplace provider or out-of-state retailer’s taxable remote sales into Florida exceed \$100,000 in the previous calendar year.
- Marketplace providers and out-of-state retailers with no physical presence in Florida will also now be required to collect applicable local discretionary surtaxes on sales of taxable items delivered into a county that imposes a surtax.
- Marketplace providers and out-of-state retailers with no physical presence in Florida will be required to register with the Department of Revenue (“Department”) to file returns and remit taxes collected electronically.
- Marketplace providers and out-of-state retailers are granted relief of liability for tax, penalty, and interest for certain remote sales made prior to the effective date of the bill if the marketplace provider or out-of-state retailer registers with the Department by October 1, 2021.
- Florida’s current sales and use tax bracket system is replaced with a rounding method.
- Additional sales tax collected on remote sales under the provisions of S.B. 50 are to be deposited into Florida’s Unemployment Compensation Trust Fund (“Trust Fund”) until the Trust Fund is replenished to pre-COVID-19 levels.
- Two months after the Trust Fund is fully replenished, the Florida commercial rent tax is required to drop from 5.5% to 2%.

This Alert summarizes the more significant provisions of S.B. 50.

## Remote sellers and marketplace providers now required to collect sales tax

Effective July 1, 2021, S.B. 50 revises the definition of “retail sale” to include “remote sales” and sales facilitated through an electronic marketplace. This imposes sales tax on “remote sales” and now requires marketplace providers and out-of-state retailers to collect and remit sales tax on taxable sales delivered to purchasers in Florida if they exceed \$100,000 in taxable remote sales delivered into Florida in the previous calendar year. This collection responsibility also extends to applicable local discretionary surtaxes if imposed by the county where the taxable item is delivered. Marketplace providers and out-of-state retailers who exceed \$100,000 in taxable remote sales delivered into Florida in the previous calendar year will now be required to register with the Department to file returns and remit taxes collected electronically. The term “marketplace provider” does not include providers of travel agency services, delivery network companies, or payment processor businesses.<sup>2</sup>

## Previous liabilities relieved with registration by October

S.B. 50 provides relief from liability for tax, penalty, and interest for remote sales that occurred before the July 1, 2021 effective date, provided the marketplace provider or out-of-state retailer registers with the Department before October 1, 2021. In addition, S.B. 50 specifically prohibits the Department from using data received from a registered marketplace provider or a remote seller for the purposes of identifying use tax liabilities occurring before July 1, 2021 from unregistered purchasers.<sup>3</sup>

## Florida’s sales and use tax bracket system repealed

S.B. 50 repeals Florida’s sales and use tax bracket calculation system and replaces it with a rounding algorithm. Previously, taxpayers were required to use the bracket system to determine the applicable sales tax for transactions that fell between whole dollar amounts. Replacing the bracket system is a rounding algorithm requiring the computation of tax to be carried to the third decimal place. Whenever the third decimal is greater than four, the tax must be rounded up to the next cent. Additionally, a dealer may apply the rounding algorithm to the taxable amount of each individual taxable item on an invoice, or the aggregate amount of all taxable items on an invoice.<sup>4</sup>

## Unemployment Trust Fund to be replenished by remote sellers’ taxes

Beginning in July 2022, S.B. 50 directs the Department to distribute \$90 million monthly to the Florida Unemployment Trust Fund to replenish funds used during the COVID-19 pandemic until the Trust Fund exceeds \$4,071,519,600 in funds.<sup>5</sup>

## Commercial rent tax set to be reduced to 2%

Two months following replenishment of the Florida Unemployment Trust Fund to the Pre-COVID-19 level, S.B. 50 reduces the commercial rent tax from the current 5.5% rate to 2%. The commercial rent tax applies to rental or license fees for the use of commercial real property. Local surtaxes on commercial rent tax are unchanged.<sup>6</sup>

## Get in touch

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### Footnotes

<sup>1</sup> S.B. 50 is available at <https://www.flsenate.gov/Session/Bill/2021/50/BillText/er/PDF>.

<sup>2</sup> S.B. 50, secs. 2, 5 & 6, amending Fla. Stat. §§ 212.02 & 212.0596 and creating Fla. Stat. § 212.05965.

<sup>3</sup> S.B. 50, sec. 25.

<sup>4</sup> S.B. 50, sec. 11, amending Fla. Stat. § 212.12.

<sup>5</sup> S.B. 50, sec. 13, amending Fla. Stat. § 212.20.

<sup>6</sup> S.B. 50, secs. 13 & 14, amending Fla. Stat. §§ 212.20 & 212.031.

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