

E-COMMERCE, REMOTE SALES & THE MODERNIZATION OF THE SALES TAX

Panelists:

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HOW WE GOT HERE:

- *Quill* – 1992
- Streamlined – beginning 2000
- Colorado notice and information reporting law – 2009
- The *Direct Marketing Ass'n* case and the Kennedy concurrence – 2015
- NY State floats the idea of having marketplaces collect tax
- The South Dakota *Wayfair* case – begun in 2016 – decided by the U.S. Supreme Court 2018 – overturning *Quill*
- MTC project to help states with marketplace collection issues

SOUTH DAKOTA-STYLE ECONOMIC NEXUS STATUTES

Threshold >\$100,000 in sales/yr or 200 transactions/yr:

Hawaii, Maine, Vermont (SST)—eff. 7/1/18

Illinois, Indiana (SST), Kentucky (SST), Wisconsin (SST), North Dakota (SST)—eff. 10/1/18

New Jersey (SST), South Dakota (SST), North Carolina (SST)—eff. 11/1/18

DC, Iowa (SST), Nebraska (SST), Utah (SST)—eff. 1/1/19

Wyoming (SST)—eff. 2/1/19

Louisiana (eff. date TBD--Dept. Bulletin 18-002)

Arkansas (SST), Virginia, West Virginia (SST), Rhode Island (SST)—eff. 7/1/19

Note: North Dakota enacted SB 2191, eliminating the “200 transactions” threshold, eff. 1/1/19

Threshold \$250,000 and 200 transactions/yr:

Connecticut—eff. 12/1/18; HB 6720 introduced to require joining SSUTA

Threshold \$100,000 sales/yr:

Idaho—eff. 6/1/19

New Mexico—eff. 7/1/19

Threshold \$500,000 sales/yr:

California—eff. 4/1/19

ECONOMIC NEXUS IMPLEMENTED BY REGULATION/RULING

Threshold \$250,000 sales/yr:

- **Alabama** reg eff. 10/1/18
- **Mississippi** reg eff. 9/1/18

Threshold: >\$100,000 sales/yr or 200 transactions/yr:

- **Maryland** emer. reg eff. 10/1/18 (SB 728 sent to governor)
- **Nevada** emer. reg eff. 10/1/18 (SST); AB 447 introduced
- **Washington** emer. reg eff. 10/1/18 (SST) (2019 SB 5581 enacted, eliminating "200 transactions" threshold 3/18/19, establishing \$100,000 threshold for B&O tax eff. 1/1/20)
- **Wisconsin** emer. reg eff. 10/1/18 (SST)

Threshold >\$100,000 sales/yr:

- **South Carolina** Rev Ruling # 18-14 eff. 11/1/18

ECONOMIC NEXUS IMPLEMENTED BY NOTICE

Threshold >\$100,000 sales or 200 transactions/yr:

- **Michigan** Bulletin 2018-16 eff. 10/1/18 (SST)
- **Nebraska** FAQ eff. 1/1/19 (SST); LB 284 enacted, eff. 4/1/19
- **North Carolina** guidance eff. 11/1/18 (SST); SB 56 enacted 3/20/19
- **West Virginia** notice eff. 1/1/19 (SST); HB 2813 enacted
- **California** notice eff. 4/1/19; AB 147 sent to governor, \$500,000/yr economic nexus threshold, eff. 4/1/19, including marketplace facilitator collection, eff. 10/1/19

Threshold >\$100,000 sales and 10 transactions, or 100 transactions/yr:

- **Minnesota** notice eff. 10/1/18 (SST)

Threshold >\$300,000 sales and 100 transactions/yr:

- **New York** Notice N-19-1, published 1/15/19

ECONOMIC NEXUS REGULATIONS/NOTICES NOT YET IMPLEMENTED

Threshold \$500,000 sales/yr:

- **Tennessee** reg (litigation pending)(Assoc. M.-SST); SB 82, HB 733 introduced to require remote sellers to collect when sales/yr. exceed \$100,000 or 200 transactions, allows flat 2.25% local rate on remote sales, eff. 1/1/20
- **Texas** reg 34 TAC Section 3.286 eff. 10/1/19; HB 2153 passed House, SB 70 introduced, allow flat local rate on remote sales

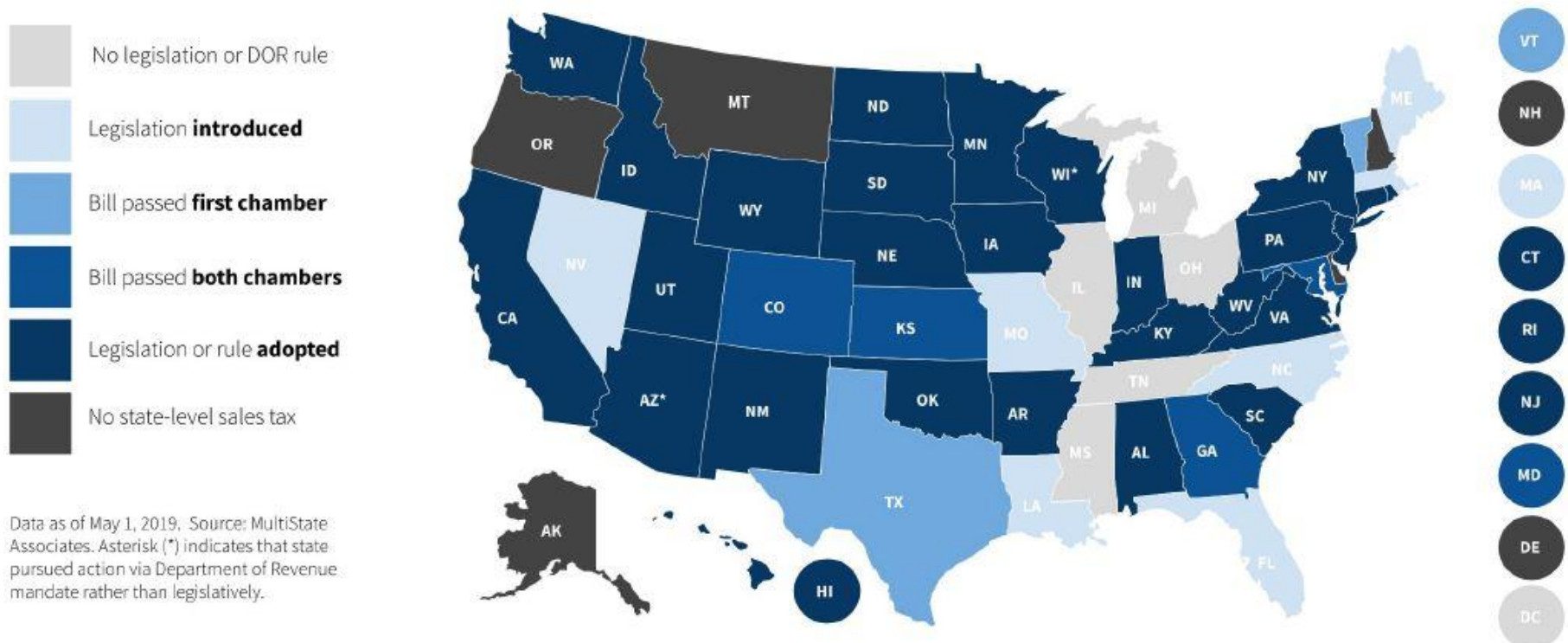
Threshold >\$100,000 sales/yr:

- **Colorado** emer. reg—200 transactions/yr. dropped 4/11/19, enforcement extended to 6/1/19; HB19-1240 introduced 3/12/19 proposing economic nexus (retail sales >\$100,000/yr), marketplace facilitator collection requirements, and destination sourcing with small seller exception, eff. 6/1/19
- **Pennsylvania** Bulletin 2019-01, including marketplace facilitator collection, eff. 7/1/19

State Activity on Marketplace Facilitator Rules

As of May 1, **27 states have enacted legislation or provided regulatory guidance** to require marketplace facilitators to collect sales taxes on transactions made over their marketplaces, and several more states are poised to follow suit before the end of their 2019 legislative sessions (see map below).

Twenty-five of these states have enacted legislation to establish their marketplace collection regime, while Arizona and Wisconsin have thus far relied on Department of Revenue interpretation of existing law. States have generally followed the same template with these laws but have taken different approaches in some areas, such as whether marketplaces are required to collect on all taxable sales or only sales of taxable tangible personal property, the level of sales which triggers a collection requirement, and how to provide liability relief in cases where a marketplace relies on erroneous information provided by a third-party seller.



SALES TAX STATES NOT YET PROVIDING *WAYFAIR* GUIDANCE

Arizona: HB 2702 first reading, economic nexus (>\$100,000 sales volume/200 transactions/yr)

Florida: SB 1112 introduced, economic nexus (>\$100,000 sales/200 transactions/yr) eff. 7/1/19

Kansas: SB 22 vetoed by governor, proposed economic nexus (>\$100,000 sales/yr)

Missouri: HB 548 (simplified sales tax remittance program), HB 648 (require payment processors to collect), HB 724 (join SSUTA), SB 50 (simplified sales tax remittance program), SB 46 (join SSUTA, implement *Wayfair*) introduced. SB 46, 50 passed S. W & M Com. 2/12/19, SB 189 passed S. Com. 3/13/19 (economic nexus >\$100,000 sales/200 transactions/yr) eff. 10/1/19

COLORADO-STYLE NOTICE AND REPORTING LAWS

CO, GA, KY-(notice only), LA, MN, OK, PA, RI, TN-(notice only), VT, WA

2019 Legislation to eliminate notice/reporting and require remote seller collection:

- **Georgia:** HB 182 signed by governor, requires remote sellers to collect if sales >\$100,000sales/200 trans./yr., eff. 1/1/20
- **Kentucky:** HB 354 CCR enacted, repealing notice requirement
- **Oklahoma:** SB 513 passed Senate, HB 2352 (sales>\$100,000/yr) passed House, HB 2201 passed House
- **Rhode Island:** S. 251 Sub A, H. 5278 Sub A enacted, requires remote sellers with sales >\$100,000 sales/200 trans./yr. to collect
- **Washington:** SB 5581 enacted, eff. 7/1/19

HOME RULE LOCAL SALES TAXES

- Colorado SB 19-006 enacted, providing for centralized electronic filing system for local sales/use taxes; HB19-1240 introduced 3/12/19 includes destination sourcing with small seller exception
- Louisiana SB 57 introduced, proposing constitutional amendment authorizing centralized collection of local sales taxes

MARKETPLACE FACILITATOR AS COLLECTOR/REPORTER LAWS

Enacted in 2017:

- **Minnesota** (HF 1 news release published 7/25/18--collect eff. 10/1/18 if place of business in MN)
- **Pennsylvania** (HB 542 collect or report if sales >\$10,000/yr; Bulletin 2019-01, mandatory collection for sales >\$100,000/yr. eff. 7/1/19)
- **Rhode Island** (H5175A collect or report if sales/yr \$100,000/200 trans eff. 8/17/17; 2019 H. 5278 Sub A and S. 251 Sub A enacted, removing reporting requirements and requiring collection)
- **Washington** (HB 2163 collect eff. 1/1/18; 2019 HB 5581 enacted, repealing notice/reporting eff. 7/1/19)

MARKETPLACE FACILITATOR AS COLLECTOR/REPORTER LAWS

Enacted in 2018 pre-*Wayfair*:

- **Alabama** (HB 470 collect if sales/yr \$250,000 or report eff. 1/1/19)
- **Connecticut** (SB 417 collect/referrer report if sales/yr \$250,000 + 200 trans eff. 12/1/18)
- **Iowa** (SF 2417 collect/referrer report if sales/yr \$100,000/200 trans eff. 1/1/19)
- **Oklahoma** (HB 1019XX collect if sales/yr \$10,000 or report eff. 7/1/18)

MARKETPLACE FACILITATOR AS COLLECTOR LAWS

Enacted in 2018 post-Wayfair:

South Dakota (SB 2 collect if sales/yr >\$100,000/200 trans eff. 3/1/19)

New Jersey (A. 4496 collect if sales/yr >\$100,000/200 trans eff. 11/1/18)

DC (B22-1070 collect eff. 4/1/19)

Enacted in 2019:

Nebraska (LB 284) eff. 4/1/19

Idaho (HB 259) **New York** (S. 1509, part G) eff. 6/1/19

Arkansas (SB 576, including OTC collection) **Kentucky** (HB 354) **New Mexico** (HB 6) **Rhode Island** (H. 5278 Sub A, S. 251 Sub A) **Virginia** (HB 1722, SB 1083) **West Virginia** (HB 2813) **Wyoming** (HB 69) eff. 7/1/19

California (AB 147) **North Dakota** (SB 2338) **Utah** (SB 168) eff. 10/1/19

Hawaii (SB 396/SD 1) eff. 1/1/20

South Carolina (SB 214) eff. 4/26/19

MARKETPLACE FACILITATOR AS COLLECTOR LITIGATION

Louisiana (*Normand v. Wal-Mart.com* litigation re obligation of marketplace facilitator to collect at parish level as “dealer;” Wal-Mart’s petition to review to Louisiana S. Ct. challenged as untimely)

South Carolina (Amazon litigation pending—trial held Feb. 4-8, 2019, decision expected in April; SC DOR considers marketplace to be the retailer; ruling #18-14 requiring collection if sales/yr >\$100,000 effective 11/1/18)

State Agency Opinions/Policies:

New York State Tax and Finance Dept. Adv. Op. TSB-1-19(1)S 3/7/19: software vendor operating online marketplace facilitating taxable sales by other software vendors considered co-vendor, required to collect

Tennessee A. G. Op. No. 19-03 (3/12/19): department authorized to promulgate regs to require in-state marketplace facilitators to collect as “dealers”

Wisconsin Dept. of Rev. FAQ (eff. 10/1/18): A marketplace that is a remote seller but does not qualify for the small seller exception (>\$100,000 sales/200 transactions/yr) is required to register and collect Wisconsin sales or use tax on taxable sales made on behalf of third-party sellers.

2019 MARKETPLACE FACILITATOR AS COLLECTOR BILLS

Arizona: HB 2702 first reading

Florida: SB 1112 introduced 2/15/19, eff. 7/1/19

Georgia: HB 276, SB 128 passed differing versions, no agreement, session ended

Indiana: SB 322 amended and passed House, Senate passed SB 322 on 2/20/19, eff. 7/1/19

Kansas: SB 22 vetoed by governor, proposed marketplace collection

Louisiana: HB 524, HB 547 pre-filed 3/20/19

Maine: HB 1452 introduced 4/2/19

Maryland: SB 728 sent to governor, eff. 10/1/19

Massachusetts: Governor's FY 19 Budget Message; H. 1, S. 1637, S. 7762 introduced

Missouri: SB 46, 50 passed Sen. W & M Com. 2/12/19, eff. 1/1/20

2019 MARKETPLACE FACILITATOR COLLECTION BILLS CONT.

Nevada: AB 445 introduced 3/25/19

North Carolina: SB 622 introduced 4/3/19

Oklahoma: SB 513 passed Senate, HB 2352 and HB 2201 passed House (option to collect or report)

Texas: SB 890 introduced, HB 1525 passed House, eff. 10/1/19

Vermont: H 117 introduced

Wisconsin Governor proposed marketplace facilitator collection requirements in FY 2019-21 Biennial Budget Proposal 2/28/19

MTC “WHITE PAPER” ON MARKETPLACE FACILITATOR COLLECTION LAWS: TOPICS ADDRESSED

- Definitions: marketplace, marketplace seller, marketplace facilitator
- Marketplace facilitator, not marketplace seller, should register.
- Marketplace facilitator should be the entity audited.
- Economic nexus threshold should include both marketplace seller and facilitator sales. Eliminate the “transactions” threshold.
- Marketplace facilitator should receive and maintain exemption certificates.
- Liability protection should be provided to marketplace facilitators for collection errors due to erroneous information from marketplace seller.
- Marketplace facilitators should be protected against risk of class action lawsuits.



Department of
Revenue
Washington State

*"Working together to
fund Washington's future"*

WASHINGTON STATE MARKETPLACE FAIRNESS IMPLEMENTATION

PATTI WILSON, PROJECT MANAGER
MAY 2, 2019

Washington State's Threshold

- Effective October 1, 2018
- Remote sellers & facilitators
- Requires sales tax collection
- >\$100,000 or 200 transactions*

*200 transactions threshold eliminated on March 14, 2019 (SSB 5581)



Steps To Implementing

- Sub-Groups
 - Communications
 - Compliance
 - Policy
 - Reporting
- Project Manager
- Project Team

Project Team

- Audit
- Compliance
- Policy
- Call center
- Letter rulings
- Communications
- Tax return filing



Work to Date

- Added 1-800 number
- Top 1,000 list
- Policy review
- Letter rulings/emails
- Website landing page
 - <https://dor.wa.gov/marketplacefairness>

Marketplace Fairness - leveling the playing field

Out-of-state businesses without a physical presence in Washington, but who make sales to Washington consumers, must follow tax collection laws and may be required to register their business in Washington. They may also be required to collect and submit Washington sales tax if they meet either of [two thresholds](#).

Business types

Depending on its activities, one business can be a [marketplace facilitator](#), a [marketplace seller](#), a [remote seller](#), a [referrer](#), or any combination of the four. There are different tax responsibilities depending on which definition a business fits.

Policy response to Wayfair Supreme Court decision

Notification regarding Wayfair's impact on the Marketplace Fairness Act and the requirement to make a retail sales tax choice.

Questions?

If you have questions regarding your tax reporting requirements, email DORMarketplaceFairness@dor.wa.gov or call 1-800-426-1776.

More information

- [Marketplace facilitator](#)
- [Marketplace seller](#)
- [Remote seller](#)
- [Referrer](#)
- [Consumer](#)

[Registration thresholds for out-of-state businesses: retail sales](#)

[Bill implementation timeline](#)

[Washington businesses selling to customers in other states](#)

[Use tax notice and reporting](#)

[List of other state thresholds](#)

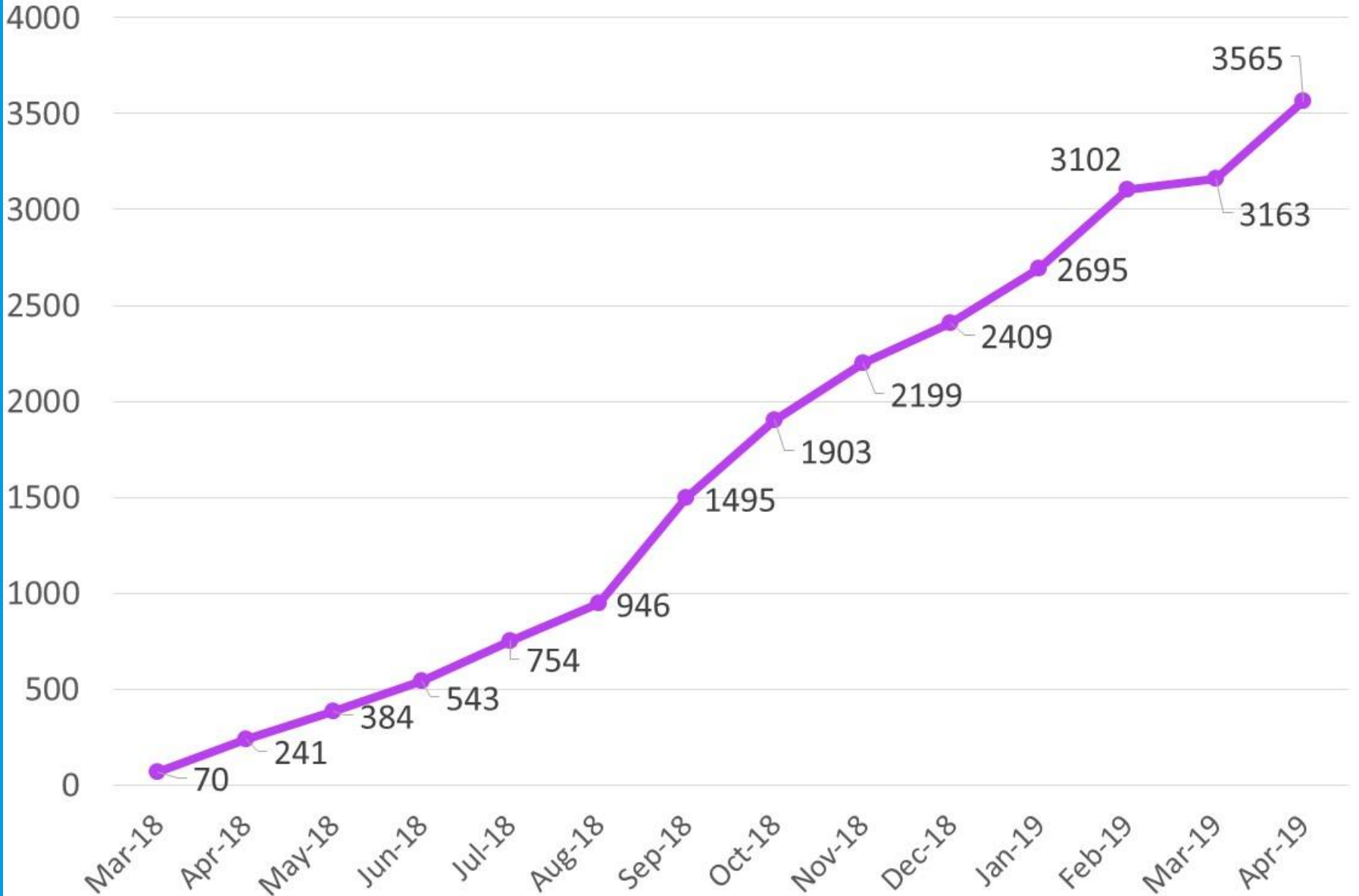
[SST mitigation to local governments eliminated](#)

[Sales and use tax tools](#)

[Penalties](#)

[General Q&A](#)

Marketplace Accounts



2019 LEGISLATION

SSB 5581 signed March 14, 2019

- 200 transaction threshold (3/14/2019)
- Election requirement eliminated (7/1/2019)

January 1, 2020

- Economic nexus threshold changes
- Collection of other taxes required
- Liability relief for correct information eliminated

On the Horizon

- Enforcement plan
- SSB 5581 implementation
- Consumer refund process
- Marketplace rule
- Stakeholder work – grocery delivery