PICPA Comments on Department of Revenue Draft Marketplace Sales Guidance
Jan. 22, 2018

• On Page 9 of the draft guidance, it would be helpful if the Department of Revenue (DOR) defined the term “internet advertising services” and explained how these services differ from a referrer making a referral on the internet.

• On Page 9, the sentence “A referrer does not collect a receipt from the purchaser for the sale” should be listed as the fourth requirement defining a referrer to be consistent with 72 P.S. Section 7213(g). In addition, the first sentence on Page 9 should read “A referrer is defined as a person, other than a person engaging in the business of printing or publishing a newspaper, that, pursuant to an agreement or arrangement with a marketplace seller or remote seller, does the following:” and then list the four conditions as reflected in 72 P.S. Section 7213(g). The presentation here is jumbled and should be consistent with the statute to avoid confusion.

• On Page 9, under the section titled “Mandatory Election,” it states that a referrer that makes sales to Pennsylvania customers totaling $10,000 or more in the previous calendar year must elect to take one of two options by March 1, 2018. Does the DOR mean that a referrer must have $10,000 of referral fees from sellers in Pennsylvania, or is it saying that if a referrer refers $10,000 worth of sales by the seller to the seller’s Pennsylvania customers then this provision kicks in? It would be helpful if the Department provided some examples here that are consistent with the requirements of 72 P.S. Section 7213.1.

• On Page 4, under the section titled “Annual Report to Purchaser,” we suggest reformatting this section by adding bullet points to outline the three types of information requirements. Also, the second paragraph (or first bullet point) should read, “A statement which says the following: The marketplace facilitator is required to submit an annual report to the department that includes the name of the purchaser and total dollar amount of the purchases.”

• The guidance appears to be inconsistent in its guidance provided to marketplace facilitators, marketplace sellers, and remote sellers who opt to collect the tax. For example, under marketplace facilitators the guidance states that marketplace facilitators “must collect and remit sales tax on sales made through their forum of: Marketplace sellers maintaining a place of business in Pennsylvania.” Yet for marketplace sellers, the guidance states that for marketplace sellers who maintain a place of business in Pennsylvania the “obligation may be met directly by the marketplace seller…or by the marketplace facilitator.” Additionally, the DOR should provide a mechanism for the both the facilitator and seller to document which party has remitted the tax that would be acceptable during a DOR audit/review.

• The guidance should clearly differentiate between a referrer that makes remote sales in addition to referrals, and a referrer that only makes referrals. Under the statutes, a referrer that makes remote sales can elect to collect sales tax or comply with the notice requirements for its remote sales and can also make a different election for its referrals. It appears that a referrer that only makes referrals can only comply with the notice requirements, since the referrer is not making any remote sales.

• Does the definition of referrer on Page 9 include search engines, email marketing campaigns, and other links built into software? It would also be helpful if the DOR clarifies why newspaper
publishers and internet advertisers are excluded from the statutory definition of a referrer to assist taxpayers in understanding the distinction.

- If a referrer elects to comply with the notice requirements, then the guidance is vague on how a referrer can provide notice to purchasers on its website. It is unclear, for example, whether the referrer can have a link specifically for Pennsylvania purchasers that provides the required notice. In addition, the notice to remote sellers that is required of referrers seems to presume that the referrer knows the ship-to address of the purchaser, which likely is not the case.

- The sample annual report to purchasers shows a section for a summary of the purchases during the previous calendar year but indicates that the total of the purchases must be above $100. Likewise, the annual report to the DOR indicates that it should only include purchasers with total purchases above $100 for the previous calendar year. If there is a *de minimis* threshold of $100, the guidance should specify that only purchasers who make at least $100 in purchases need to receive an annual notice and to be included on the annual report to the DOR.

- The suggested notices are very long, so it would be helpful to clarify whether a link to the full text of the sample notice is sufficient as a transactional notice for remote sellers, marketplace facilitators, and referrers that elect to comply with the notice and reporting requirements.

- Purchase summary report – In listing total purchases, the facilitator/seller is being asked to provide the taxability of the item. As the facilitator/seller does not know whether or not a purchaser may qualify for exemption, they should not be asked to provide taxability guidelines. The statute requires the facilitator/seller to inform the purchaser that the purchase may be subject to tax.