



Ohio Revised Code

Section 5741.071 Waiver for facilitator not to be treated as a seller.

Effective: July 18, 2019

Legislation: House Bill 166 - 133rd General Assembly

(A) A marketplace seller may request and shall obtain a waiver from the tax commissioner for a marketplace facilitator not to be treated as a seller pursuant to division (E) of section 5741.01 of the Revised Code with respect to a specific marketplace seller if the following conditions are met:

- (1) The marketplace seller certifies it has annual gross receipts within the United States, including the gross receipts of any affiliate, as defined in section 122.15 of the Revised Code, of at least one billion dollars;
- (2) The marketplace seller or its affiliate, as defined in section 122.15 of the Revised Code, is publicly traded on at least one major stock exchange;
- (3) The marketplace seller is current on all taxes, fees, and charges administered by the department of taxation that are not subject to a bona fide dispute;
- (4) The marketplace seller has not, within the past twelve months, requested that a waiver related to the marketplace facilitator at issue be canceled nor has the waiver been revoked by the commissioner; and
- (5) The marketplace seller has not violated division (B) of section 5739.30 of the Revised Code.

(B) A marketplace seller shall request a waiver on the form prescribed by the commissioner. A request for a waiver shall contain a signed declaration from the marketplace facilitator acquiescing to the request for a waiver. A waiver request that is not ruled upon by the commissioner within thirty days of the date it was filed is deemed granted. A waiver that is granted by the commissioner or deemed to be granted is effective on and after the first day of the first month that begins at least thirty days after the commissioner grants the waiver or the waiver is deemed granted. The waiver is valid until the first day of the first month that begins at least sixty days after it is revoked by the commissioner or cancelled by the marketplace seller.



(C)(1) If a waiver is granted by the commissioner, the commissioner shall notify the marketplace seller and the seller shall be considered the vendor pursuant to division (C) of section 5739.01 of the Revised Code or a seller pursuant to division (E) of section 5741.01 of the Revised Code, as applicable.

(2) A marketplace seller is required to notify the marketplace facilitator of the status of the waiver of the marketplace seller. However, if a waiver is denied by the commissioner, a copy of the denial shall be provided to the marketplace facilitator.

(3) A marketplace seller that has been issued a waiver under this section may cancel the waiver by sending notice to the commissioner and to the marketplace facilitator identified in the waiver application. The commissioner may revoke a waiver if the commissioner determines that any of the conditions described in divisions (A)(1) to (5) of this section are no longer met by the marketplace seller. The commissioner shall notify the marketplace seller and the marketplace facilitator upon revoking a waiver.

(D) Notwithstanding section 5703.21 of the Revised Code, the commissioner may divulge information related to the status of the waiver sought by or granted to the marketplace seller for a particular marketplace facilitator to either the impacted marketplace seller or marketplace facilitator.

(E) The commissioner may promulgate rules the commissioner deems necessary to administer this section.