

# DOR answers to local questions on EHB 2163 implementation

**How does the Department know if a remittance is marketplace facilitator/remote seller revenue? Will marketplace facilitator/remote seller revenue be delineated in the Distribution Detail which is available from the DOR Fortress Online portal?**

The Department has developed a method to identify marketplace facilitators/remote sellers in order to calculate mitigation payments. Information from remote sellers and marketplace facilitators will be included in the local tax distribution files (available from the DOR Fortress Online portal); however, the businesses will not be identified as marketplace facilitators/remote sellers.

**Why is there a need for a reconciliation at the end of the 18-month period?**

The legislation does not explain why a reconciliation is necessary.

**Isn't the reduction of mitigation payments during the 18-month period based on actual marketplace facilitator/remote seller revenue?**

Yes. The marketplace facilitator/remote seller revenue will be based on actual taxpayer reporting.

**If it is based on an estimate and there is a risk that there will be an amount owed to the state, how much of a risk is it? It would be difficult for a City to absorb a significant reduction in Sales Tax revenues distributions due to this reconciliation unless it is planned.**

The amount of risk relates to the amount of consumer use tax reported annually in April for activities occurring in the prior year.

**If there is a legal challenge to EHB 2163, what will be the State's response or action? Will they still require sellers to elect to either comply with use tax notice and reporting or collect the sales tax and remit?**

The State/Department will defend it:

- If named as a defendant in the litigation, or
- If the plaintiff challenges the constitutionality of the statute.

Unless the court places an injunction on the state implementing **EHB2163**, the Department will continue to administer and enforce the law enacted in the bill.

**Will the state hold the sales tax pending outcome of legal action? If the State remits the taxes to jurisdictions, will it have to be repaid if the courts rule it is unconstitutional?**

Generally speaking, sales tax remitted to the Department is deposited into the General Fund. Thus, the Department does not hold onto the tax pending the outcome of litigation. Should the plaintiff(s) prevail, the Court may order the Department to provide refunds. However, it is difficult to speculate as to possible remedies, which will depend on the specific details and scope of the litigation, if and where it was to happen.

Without the specific details and scope of the potential litigation, the Department declines to speculate as to possible remedies.

**What will be the impact to implementation of EHB 2163 if the Supreme Court accepts review of the South Dakota internet sales tax case?**

The U.S. Supreme Court review of the South Dakota case will not affect the Department's implementation of **EHB2163**.