

STATES' POST-WAYFAIR IMPLEMENTATION EFFORTS



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**Nexus Committee – Orlando, FL
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WAYFAIR MENTIONED FAVORABLY SOUTH DAKOTA SB 106 FEATURES

- “Safe harbor” for small sellers
 - \$100,000 or less sales per year, or
 - Less than 200 transactions per year
- No retroactive liability
- South Dakota is a member state in the Streamlined Sales and Use Tax Agreement (SSUTA)

SOUTH DAKOTA-STYLE ECONOMIC NEXUS STATUTES IMPLEMENTED

- **Indiana (litigation resolved—Dept. enforcing eff. 10/1/18)**
- **Maine (Tax Alert published 8/9/18—eff. 7/1/18)**
- **North Dakota (eff. 10/1/18—Dept. announcement)**
- **Vermont (eff. 7/1/18—Dept. announcement)**
- **Illinois (HB 3342 eff. 10/1/18)**
- **Hawaii—general excise tax (SB 2542 eff. 7/1/18)**
- **Kentucky (HB 487 Dept. announced eff. 10/1/18)**
- **New Jersey (A.4496 eff. 11/1/18)**
- **South Dakota (S.B. 1 eff. 11/1/18)**
- **Threshold: >\$100,000 in sales/yr. or 200 transactions/yr.**

SOUTH DAKOTA-STYLE ECONOMIC NEXUS STATUTES TO BE IMPLEMENTED

- **Iowa (SF 2417 eff. 1/1/19)**
- **Louisiana (HB 17 eff. 1/1/19--Dept. bulletin 18-001)**
- Wyoming (litigation pending)
- **Utah (S.B. 2001 eff. 1/1/19)**
- **Connecticut (SB 417 \$250,000 and 200 transactions/yr. eff. 12/1/18)**

ECONOMIC NEXUS REGULATIONS IMPLEMENTED

- **Alabama reg (\$250,000 sales/yr)(Department statement dated 7/3/18 indicates intent to enforce prospectively starting 10/1/18)**
- **Maryland COMAR 03.06.01.33 reg (>\$100,000 sales or 200 transactions/yr., eff. 10/1/18)**
- **Mississippi reg (\$250,000 sales/yr, effective 9/1/18—guidance published 8/6/18)**
- **Nevada reg (>\$100,000 sales/yr. or 200 transactions/yr., eff. 10/1/18—Legis. Commission approved)**
- **South Carolina Rev Ruling # 18-14 (>\$100,000 sales/yr. eff. 11/1/18)**
- **Washington (emer. reg. 9/26/18 requiring remote sellers w/>\$100,000 sales or 200 or more transactions to collect, eff. 10/1/18)**

ECONOMIC NEXUS REGULATIONS NOT YET IMPLEMENTED

- Tennessee reg (\$500,000 sales/yr—litigation pending, legislature must approve)
- Texas draft reg (>\$500,000 sales/yr., proposed eff. 1/1/19, but postponing collection requirement until 10/1/19)

MORE STATES THAT HAVE IMPLEMENTED REMOTE SELLER COLLECTION POST-WAYFAIR

- Michigan (Bulletin 2018-16-- require remote sellers w/>>\$100,000 sales or 200 transactions to collect, eff. 10/1/18)
- Minnesota (require remote sellers w/>>\$100,000 sales and 10 transactions, or 100 transactions to collect, eff. 10/1/18)
- North Carolina (guidance published 8/6/18 requiring remote sellers w/>>\$100,000 sales or 200 or more transactions to collect, eff. 11/1/18)
- Wisconsin (Wisconsin Department of Revenue emergency rule requiring remote sellers w/>>\$100,000 sales or 200 or more transactions to collect effective 10/1/18)

MORE STATES IMPLEMENTING POST-WAYFAIR REMOTE SELLER COLLECTION

- **Colorado** (news release published 9/13/18 requiring remote sellers w/>>\$100,000 sales or 200 or more transactions to collect commencing 12/1/18)
- **Nebraska** (FAQ--- require remote sellers w/>>\$100,000 sales and 10 transactions, or 100 transactions to collect, eff. 1/1/19)
- **West Virginia** (notice posted 10/1/18 requires remote sellers w/>>\$100,000 sales or 200 transaction to collect, eff. 1/1/19)

COLORADO-STYLE NOTICE AND REPORTING LAWS

- Colorado
- **Georgia (HB 61 collect if \$250,000 sales/200 trans. or report eff. 1/1/19)**
- Kentucky (notice only)
- Louisiana
- Minnesota
- **Oklahoma (HB 1019XX remote sellers, referrers, marketplaces collect if \$10,000 sales or report eff. 7/1/18)**
- Pennsylvania (notice only)
- Rhode Island (collect if \$100,000 sales/200 trans. or report eff. 8/17/17)
- Tennessee (notice only)
- Vermont
- Washington (collect or report if sales/yr. between \$10,000 and \$100,000 eff. 10/1/18)
- Various thresholds

CLICK-THROUGH NEXUS STATES

- AR CA CO CT GA IL KS LA ME MI MN MO NC NV NY
OH PA RI TN VT WA
- **New: ID (HB 578 \$10,000 sales threshold, eff. 7/1/18)**
- Various thresholds (most use \$10,000 or more in annual sales to customers in the state)
- Click-through nexus now irrelevant? See Robert D. Plattner, “After *Wayfair*. Saying Goodbye to Click-Through Nexus,” *Tax Analysts State Tax Notes* (10/1/18)

COOKIE NEXUS

Massachusetts Reg 830 CMR 64 H.1.7 \$500,000 sales and 100 transactions/yr. threshold eff. 10/1/17; challenge pending in Virginia Circuit Court (*Crutchfield Corp. v. Harding*, No. CL 1700145-00)

Ohio Rev. Code § 5741.01 (I)(2)(i) \$500,000 sales threshold; challenge pending in *American Catalog Merchants Association v. Testa*, Ohio district court

Iowa S. F. 2417 \$100,000/yr. sales or 200 trans./yr. eff. 1/1/19

MARKETPLACE FACILITATOR AS COLLECTOR/REPORTER LAWS

- 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)
- Minnesota (news release published 7/25/18--collect eff. 10/1/18 if place of business in MN)
- New Jersey (A. 4496 collect if sales/yr >\$100,000/200 trans eff. 11/1/18)
- Oklahoma (HB 1019XX collect if sales/yr \$10,000 or report eff. 7/1/18)
- Pennsylvania (collect or report)
- Rhode Island (collect or report if sales/yr \$100,000/200 trans)
- South Carolina (Amazon litigation pending; draft ruling collect if sales/yr >\$250,000 effective upon earlier of physical presence or 10/1/18)
- South Dakota (SB 2 collect if sales/yr >\$100,000/200 trans eff. 3/1/19)
- Washington (collect eff. 1/1/18)

MARKETPLACE FACILITATORS COLLECTING IN WA, PA, OK

- Amazon and Etsy commenced collection of sales/use tax on behalf of third-party sellers on sales to Washington, pursuant to H.B. 2163. Amazon and Etsy have also commenced collecting on behalf of third-party sellers on sales to Pennsylvania and Oklahoma.
- eBay will commence collecting sales/use tax on sales into WA effective 1/1/19, and PA and OK effective 7/1/19.

CA/NY/MA/RI/SC REQUESTS FOR AMAZON MARKETPLACE SELLER DATA

- Amazon is complying with CA and NY requests for data on its marketplace sellers.
- Amazon has complied with a similar request from MA.
- Amazon is providing to RI marketplace seller identification data, pursuant to its 2017 legislation.
- In *Amazon Services LLC v. South Carolina Department of Revenue*, the Department is seeking a list of Amazon's online marketplace sellers, and Amazon is in the process of producing that list.

SALES TAX STATES NOT YET PUBLISHING *WAYFAIR* GUIDANCE

- AZ AR CA DC FL KS MO NM NY VA

CONTACT INFORMATION

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