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)
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.
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
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