

Non-Streamlined State Reaction to the South Dakota v. Wayfair Decision

Alabama
<i>Economic Nexus?</i>
<ul style="list-style-type: none">• There is an economic nexus provision in place; \$250,000 in sales along with one or more of statutorily listed activities.<ul style="list-style-type: none">◦ One of the listed activities is participating in any activity that would allow AL to collect taxes under the US Constitution
<i>Official Guidance</i>
<ul style="list-style-type: none">• A July 3, 2018 notice issued states AL's economic nexus law will apply prospectively after Sept. 30, 2018• Remote sellers with sales above the threshold need to register and start collecting no later than October 1, 2018• Marketplace facilitators with more than \$250,000 in sales are also responsible for either collecting on behalf of sellers or complying with notice requirements.<ul style="list-style-type: none">◦ Reporting or remitting compliance must occur on or before Jan. 1, 2019◦ Voluntary compliance is welcomed◦ If a remote seller can prove taxes are being collected and remitted by a marketplace facilitator, the remote seller has no obligation to collect and remit• Additional rules will be published in the next few months into 2019
Arizona
<i>Economic Nexus?</i>
<ul style="list-style-type: none">• There is no economic nexus provision in place.
<i>Official Guidance</i>
<ul style="list-style-type: none">• "The Arizona Department of Revenue is continuing to analyze the Supreme Court decision and will proceed with any public guidance after it has completed its review of the ruling's implications for Arizona. No time frame on when the analysis will be completed," DOR spokesman Ed Greenberg told Bloomberg Tax.• The Arizona Department of Revenue has updated its nexus publication to emphasize the state's voluntary disclosure program. Arizona DOR Publication No. 623, 06/01/2018. In a statement, the Department noted that it is "committed to the fair treatment of online retailers and bricks and mortar establishments and continues to review the U.S. Supreme Court's decision." The Department also indicated that the state's transaction privilege (sales) tax "remains unchanged." A timeline for anticipated guidance was not available.
California
<i>Economic Nexus?</i>
<ul style="list-style-type: none">• There is no economic provision in place.
<i>Official Guidance</i>
<ul style="list-style-type: none">• Paul Cambra, a spokesman for the tax department, said it's too early to tell how the ruling will play out. Maduros at his confirmation hearing told lawmakers they might need to pass a new law to empower the department to collect taxes from more out-of-state retailers. At the hearing, he estimated the state was missing out on about \$1.8 billion in revenue from internet retailers. ¹• "The department is currently reviewing the court's opinion to determine next steps to support taxpayers," Cambra said. The Government Accountability Office estimated that in 2017, governments could gain about \$8 billion to \$13 billion if states were given the authority to collect from all remote sellers.

Colorado
<i>Economic Nexus?</i>
<ul style="list-style-type: none"> • There is no economic nexus provision in place. <ul style="list-style-type: none"> ◦ There is only a notice and reporting requirement when a remote seller has made more than \$100,000 in sales.
<i>Official Guidance</i>
<ul style="list-style-type: none"> • No official guidance has been issued.

Connecticut
<i>Economic Nexus?</i>
<ul style="list-style-type: none"> • There is an economic nexus provision in place; effective Dec. 1, 2018, 200 transactions or \$250,000 in sales <ul style="list-style-type: none"> ◦ Prior to Dec. 1, 2018 the threshold is 100 sales ◦ Marketplace facilitators are required to collect and remit sales taxes. ◦ Referrers must comply with notice and reporting requirements
<i>Official Guidance</i>
<ul style="list-style-type: none"> • Conn. Special Notice, No. 2018(5), 06/26/18 simply reiterates the legislative changes mentioned above.

District of Columbia
<i>Economic Nexus?</i>
<ul style="list-style-type: none"> • No economic nexus provision in place. <ul style="list-style-type: none"> ◦ There is a provision in place that upon federal legislation or a judicial decision allowing D.C. to force remote vendors to collect and remit sales taxes; collections should start; no threshold has been set.
<i>Official Guidance</i>
<ul style="list-style-type: none"> • No official guidance has been issued.

Florida
<i>Economic Nexus?</i>
<ul style="list-style-type: none"> • There is no economic nexus provision in place.
<i>Official Guidance</i>
<ul style="list-style-type: none"> • No official guidance has been issued. But the Florida Department of Revenue has indicated that it is "reviewing the ruling and its impact on Florida sales tax."

Hawaii
<i>Economic Nexus?</i>
<ul style="list-style-type: none"> • There is an economic nexus provision in place as of July 1, 2018; 200 transactions or \$100,000 in sales.
<i>Official Guidance</i>
<ul style="list-style-type: none"> • Hawaii has a privilege tax known as the general excise tax or the "GET" • Act 41 of the 2018 session clarified the application of the GET to remote sellers² • Act 41 consists of the economic thresholds and is effective July 1, 2018 <ul style="list-style-type: none"> ◦ <u>Applicable retroactively!</u> ◦ Applies to taxable years beginning after Dec. 31, 2017 ◦ Qualified taxpayers can pay on the periods between Jan 1, 2018 and June 30, 2018 by; <ul style="list-style-type: none"> ▪ Reporting and paying the amount due in full on the next periodic return after July 20, 2018 or ▪ Reporting and paying by spreading the obligation over the remaining tax periods of the current year starting with next periodic return after July 20, 2018. ◦ A qualified taxpayer is defined as a taxpayer with: <ul style="list-style-type: none"> ▪ No GET license as of June 12, 2018;

- No physical presence
- Meets the economic nexus threshold and;
- Has a taxable year between Jan, 1, 2018 and June 30, 2018

Idaho

Economic Nexus?

- There is no traditional economic nexus provision in place.
- Effective July 1, 2018 has an “Amazon Law” that presumes retailer is to collect and remit sales and use taxes if:
 - Retailers enters into agreement with Idaho retailer paying commission for referrals; and
 - Total sales to the Idaho buyers exceeded \$10,000 in the previous year

Official Guidance

- “The Idaho State Tax Commission is still studying how the decision affects out-of-state retailers, such as online sellers, that make sales to Idaho citizens. We’re closely watching any actions by the U.S. Congress on this issue. We’ll also continue to follow developing legal issues arising from the decision.”³

Illinois

Economic Nexus?

- There is an economic nexus provision in place; 200 transactions or \$100,000 in sales.
 - Effective Oct. 1, 2018

Official Guidance

- No official guidance has been issued.
- But the Illinois Department of Revenue provided a statement that: “Director Beard is very pleased that the United States Supreme Court overturned the 1992 decision in Quill and recognized that the physical presence requirement of Quill does not reflect the 21st century marketplace. To be clear, this is not a new tax. Illinois residents are already obligated to pay a Use Tax on out-of-state purchases and this prudent decision will allow states the ability to enforce Use Tax laws that are already in existence, bringing in an estimated \$200 million in new State revenue for Illinois annually. With this decision, we level the playing field for Illinois brick and mortar retailers.”

Maine

Economic Nexus?

- There is an economic nexus provision in place; 200 transactions or \$100,000 in sales.
 - Effective October 1, 2017

Official Guidance

- Maine Finance Commissioner Alec Porteous said the ruling is being reviewed to determine how it will affect the state.
- “On its face, the court’s ruling seemingly validates Maine law,” but the South Dakota case is ongoing because it’s been remanded back to the courts there, Porteous said in a written statement. “It will be important to further study the ruling, determine the extent to which South Dakota’s statute aligns with our own, and prepare any changes to Maine law that may be necessary.”
- Ultimately, a congressional solution might be better to create a framework for the new tax regime, Porteous said.⁴

Maryland

Economic Nexus?

- There is no economic nexus provision in place.
 - However, current law interprets nexus as broadly as allowed under the U.S. Constitution.

<i>Official Guidance</i>
<ul style="list-style-type: none"> • The comptroller issued a statement reminding out of state vendors that Maryland law interprets nexus as broadly as the U.S. Constitution allows and that they should examine the Wayfair decision and determine how it applies to their business.⁵
Massachusetts
<i>Economic Nexus?</i>
<ul style="list-style-type: none"> • There is no traditional economic nexus provision in place. • But there is Cookie and app nexus policy by regulation, with similarities to other states' economic nexus policies (currently in effect). • Current law interprets nexus to the extent of constitutional limits; however, most of the requirements of out of state vendors required to collect and remit sales taxes are based on essentially click-through nexus.
<i>Official Guidance</i>
<ul style="list-style-type: none"> • The Department of Revenue's existing regulation 830 CMR 64H.1.7 (Vendors Making Internet Sales), which took effect in October 2017, continues to apply and is not impacted by the Supreme Court's decision. This regulation, developed with the guidance of the Massachusetts Attorney General's Office, explains how the general sales and use tax applies to vendors making Internet sales. • Online vendors seeking to register with DOR for compliance with the existing Massachusetts regulation 830 CMR 64H.1.7 should visit Mass.gov/masstaxconnect.
Mississippi
<i>Economic Nexus?</i>
<ul style="list-style-type: none"> • There is an economic provision in place; \$250,000 in sales.
<i>Official Guidance</i>
<ul style="list-style-type: none"> • The Mississippi Department of Revenue issued guidance highlighting the Department's economic nexus regulation and contending that "the effect of the U. S. Supreme Court's decision is that all out-of-state sellers who lack physical presence in MS must now collect tax on sales to MS residents." Statement, Mississippi Department of Revenue, 06/21/2018.
Missouri
<i>Economic Nexus?</i>
<ul style="list-style-type: none"> • There is no economic nexus provision in place.
<i>Official Guidance</i>
<ul style="list-style-type: none"> • No official guidance has been issued.
Montana
<i>Economic Nexus?</i>
<ul style="list-style-type: none"> • There is no economic nexus provision in place. • Sales and use taxes only apply to accommodations, campgrounds and rental vehicles.
<i>Official Guidance</i>
<ul style="list-style-type: none"> • No official guidance has been issued. • Although the state does not impose a sales or use tax, Montana's governor issued a statement expressing disappointment at the decision. His office said the state is "still assessing the overall impacts."
New Mexico
<i>Economic Nexus?</i>
<ul style="list-style-type: none"> • There is no economic nexus provision in place.
<i>Official Guidance</i>

- No official guidance has been issued.
- The New Mexico Taxation and Revenue Department issued a statement that "Our team of economists, attorneys, and tax experts are reviewing the ruling to determine the potential implications for New Mexico."

New York

Economic Nexus?

- There is no economic nexus provision in place.

Official Guidance

- No official guidance has been issued.
- The New York State Department of Taxation and Finance issued a statement that it is reviewing the decision.

Pennsylvania

Economic Nexus?

- There is an economic nexus provision in place; \$10,000 in sales requires remote sellers to collect and remit taxes or comply with detailed notice or reporting requirements.

Official Guidance

- No official guidance has been issued.
- The Pennsylvania Department of Revenue issued a statement that it is reviewing the Supreme Court's decision and anticipates "providing further comment at a later date." The Department noted its existing marketplace sales law scheme.

South Carolina

Economic Nexus?

- There is no economic nexus provision in place.

Official Guidance

- South Carolina has issued a statement that large online retailers who enjoy the benefits and privileges of doing business in South Carolina should be required to pay sales tax, and has announced that it will review the South Dakota v. Wayfair decision before putting a collection practice in place.⁶

Texas

Economic Nexus?

- There is no economic nexus provision in place.

Official Guidance

- Texas comptroller Glenn Hegar stated his department will be reviewing rules to be updated but stressed any changes will be prospective.
- Early 2019 is the target date for the needed rule amendments.
- Agency staff intends to meet regularly to solicit input from interested parties, including retailers, remote sellers, trade associations and the Comptroller's Taxpayer and Business Advisory Group. The agency also will consult with local taxing entities on potential impacts to local collections and allocations.
- The Comptroller's office also expects the Texas Legislature to play an important role in addressing key issues when they return in January 2019.⁷

Virginia

Economic Nexus?

- There is no economic nexus provision in place.

Official Guidance

- No official guidance has been issued.
- The Virginia Department of Taxation indicated that it "is currently analyzing the opinion" and "will assess what it means for Virginia and our taxpayers, and will determine our next steps."

¹ <https://www.sacbee.com/news/politics-government/the-state-worker/article214098319.html>.

² Department of Taxation Announcement No. 2018-10, June 27, 2018.

³ <https://tax.idaho.gov/n-feed.cfm?idd=4190>.

⁴ <https://www.pressherald.com/2018/06/21/supreme-court-rules-that-states-can-collect-online-sales-tax/>.

⁵ Maryland comptroller press release, "Tax Alert Regarding the United States Supreme Court Decision," July, 2018.

⁶ Checkpoint Explanations: SC: 23,120 Out-of-State Sellers.

⁷ <https://comptroller.texas.gov/about/media-center/news/2018/180627-wayfair.php>.