

Streamlined States Reaction to the South Dakota v. Wayfair Decision

Arkansas
<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

Georgia
<i>Economic Nexus?</i>
<ul style="list-style-type: none">• There is an economic nexus provision in place; 200 transactions or \$250,000 in sales<ul style="list-style-type: none">◦ Effective 1/1/19• If delivery retailer does not collect sales tax they must notify purchasers who spent \$500 or more in aggregate during the prior year.<ul style="list-style-type: none">◦ Must be sent to customer and filed with Department on or before 1/30 of each year◦ “Delivery retailer” is a retailer that does not collect and remit the tax imposed, and that in the previous or current calendar year obtains gross revenue over \$250,000 from retail sales of tangible personal property to be delivered electronically or physically to a location within Georgia or used, consumed, distributed, or stored for use or consumption in Georgia, or conducts 200 or more retail sales of tangible personal property to be delivered electronically or physically to a location within Georgia or used, consumed, distributed, or stored for use or consumption in Georgia.¹◦ A “purchaser” is a person or their agent who gives consideration to a delivery retailer in exchange for tangible personal property to be delivered electronically or physically to a location within Georgia or used, consumed, distributed, or stored for use or consumption in Georgia.²
<i>Official Guidance</i>
<ul style="list-style-type: none">• No official guidance has been issued.

Indiana
<i>Economic Nexus?</i>
<ul style="list-style-type: none">• There is an economic nexus provision in place; 200 transactions or \$100,000 in sales• Also has voluntary disclosure program in place until Dec. 31, 2018 for remote sellers who have inventory in the State, but who have not been collecting.
<i>Official Guidance</i>
<ul style="list-style-type: none">• The Indiana Department of Revenue has stated that the Department is currently prohibited from enforcing the obligation to collect sales tax from remote sellers until a declaratory judgment action currently pending is resolved, but also reminds remote sellers that voluntary registration and remittance are available.

Iowa
<i>Economic Nexus?</i>
<ul style="list-style-type: none">• There is an economic nexus provision in place; 200 transactions or \$250,000 in sales; marketplaces must collect on behalf of sellers using the marketplace<ul style="list-style-type: none">◦ Effective January 1, 2019◦ Applies prospectively
<i>Official Guidance</i>
<ul style="list-style-type: none">• Official guidance encourages remote sellers who have not been collecting to use Iowa’s voluntary disclosure program and if taxes are owed in multiple states, to use the MTC’s multistate voluntary disclosure program.³• Retailers must register using the SSTRS or directly with the Iowa DOR• Iowa has a tax reform website to inform the public of changes as information becomes available.

Kansas
<i>Economic Nexus?</i>
<ul style="list-style-type: none"> • There is no economic nexus provision in place. • Internet sales are treated like catalog sales and a use tax is due, but there is nothing in place to require remote sellers to collect and remit taxes.⁴ • Currently has an “Amazon” law in place⁵ based on click through nexus; \$10,000 in sales threshold
<i>Official Guidance</i>
<ul style="list-style-type: none"> • No official guidance has been issued. But Kansas Department of Revenue did make a statement that it is analyzing Wayfair in the context of how it fits with current state law and other regulations.

Kentucky
<i>Economic Nexus?</i>
<ul style="list-style-type: none"> • There is an economic nexus provision in place; 200 transactions or \$100,000 in sales <ul style="list-style-type: none"> ○ Effective 7/1/18 ○ Does NOT require marketplace facilitators or referrers to collect and remit sales taxes. ○ However, if there is inventory stored in the state, nexus has been created. • Remote sellers who are not required to collect and remit use tax, must provide notification to purchasers reminding them of the requirement to pay and submit use tax • There is an exemption available if the retailer’s sales are not \$100,000 in aggregate
<i>Official Guidance</i>
<ul style="list-style-type: none"> • Kentucky’s DOR has stated their recently passed economic nexus law is the same as South Dakota’s law and now Kentucky is positioned to move forward with implementation of the changes.⁶

Michigan
<i>Economic Nexus?</i>
<ul style="list-style-type: none"> • No economic nexus law in place
<i>Official Guidance</i>
<ul style="list-style-type: none"> • No official guidance has been issued.

Minnesota
<i>Economic Nexus?</i>
<ul style="list-style-type: none"> • There is an economic nexus provision in place but no threshold set <ul style="list-style-type: none"> ○ Effective earlier of Wayfair decision or July 1, 2019 ○ States that an affiliate of a retailer, with no physical presence in Minnesota can be required to collect and remit sales taxes if the entity delivers TPP into the state, among several other reasons.⁷
<i>Official Guidance</i>
<ul style="list-style-type: none"> • Most recent official guidance simply stated additional guidance would be issued within 30 days of June 30, 2018 <ul style="list-style-type: none"> ○ Minnesota is in the process of analyzing the decision, to identify the effect on Minnesota retailers, remote sellers and marketplace providers. ○ Encourages those who want to voluntarily remit to use the SSTRS.

Nebraska
<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. However, Governor Pete Ricketts has stated that if the legislature chooses to take advantage of the Wayfair decision, he thinks the revenues should allow for property tax relief.⁸

Nevada

Economic Nexus?

- There is no economic nexus provision in place
- Currently has an “Amazon Law” that presumes retailer is to collect and remit sales and use taxes if:
 - Retailers enters into agreement with Nevada resident giving consideration for referrals; and
 - gross receipts from sales from referrals exceed a certain amount during the proceeding four quarterly periods

Official Guidance

- Nevada’s executive director has been quoted as stating officials are “actively assessing the potential impacts on taxable sales activity in Nevada, as well as any policy changes that might be necessary for implementation.”⁹

New Jersey

Economic Nexus?

- There is currently no economic nexus provision in place, but there is reportedly a rush to create one like the South Dakota law.
 - Legislators rushed to introduce S.B. 2794 and A.B. 4261 on June 21, the day of the Wayfair decision
 - S.B. 2794 passed the Senate on July 1, 2018

Official Guidance

- No official guidance has been issued.

North Carolina

Economic Nexus?

- There is no economic nexus provision in place.

Official Guidance

- No official guidance has been issued. However, the North Carolina Department of Revenue noted that it "signed onto an amicus brief supporting the overturning of Quill" and indicated that is reviewing the Supreme Court's decision and "will be publishing additional information regarding the decision in the near future."

North Dakota

Economic Nexus?

- There is an economic nexus provision in place that mimics South Dakota’s law.

Official Guidance

- The Tax Commission has a Remote Seller Sales Tax page to provide information
- Commissioner Ryan Rauschenberger stated
 “I was pleased to hear that the Supreme Court overturned Quill vs. North Dakota.” Rauschenberger said. “This will go a long way to ensure local businesses are on a level playing field with online retailers. I’m glad the Supreme Court was able to recognize the unfair advantage online retailers have. The North Dakota Legislature passed a law during the 2017 session to address remote seller sales tax. Remote sellers will be required to collect and remit sales tax to North Dakota only if they make a minimum of either 200 sales or \$100,000 in sales per year in North Dakota, even if they don’t have a physical presence here. Over the next few weeks, our office will be working to implement this new law change.”¹⁰

Ohio
<i>Economic Nexus?</i>
<ul style="list-style-type: none"> • There is an economic nexus provision in place based on at least \$500,000 in sales if in-state software is used to sell goods in Ohio or if there is a content distribution network agreement to promote sales.
<i>Official Guidance</i>
<ul style="list-style-type: none"> • The communications director of the Ohio Department of Taxation has stated he anticipates no direct impact on Ohio, but will expect to see more voluntary collection and remittance of sales taxes.¹¹

Oklahoma
<i>Economic Nexus?</i>
<ul style="list-style-type: none"> • There is an economic nexus provision in place; Remote sellers, marketplace facilitators or referrers who had aggregate sales of at least \$10,000 must collect and remit sales and use taxes or comply with specified notice and reporting requirements.¹² <ul style="list-style-type: none"> ◦ Effective July 1, 2018
<i>Official Guidance</i>
<ul style="list-style-type: none"> • No official guidance has been issued. However, the Oklahoma Tax Commission issued a statement noting that Oklahoma law “offers out-of-state retailers the option of collecting and remitting sales tax in Oklahoma or providing the state with a list of its Oklahoma customers’ names and sales totals.

Rhode Island
<i>Economic Nexus?</i>
<ul style="list-style-type: none"> • There is an economic nexus provision in place; refers to remote sellers as “non-collecting retailers” whose nexus may stem essentially from internet sales; \$100,000 in sales or 200 transactions <ul style="list-style-type: none"> ◦ Non collecting retailers must collect and remit tax or comply with Rhode Island notification requirements. ◦ Effective August 17, 2017
<i>Official Guidance</i>
<ul style="list-style-type: none"> • Recent guidance encourages remote sellers to either directly register with the Rhode Island Division of Taxation or use the SSTR.¹³ • The Rhode Island Division of Taxation noted that "a number of online retailers have registered with the Division of Taxation and have begun to collect and remit Rhode Island sales tax" under its existing scheme. The Division "has assembled an internal working group to focus on the legal, tax, and operational impacts of the decision."

South Dakota
<i>Economic Nexus?</i>
<ul style="list-style-type: none"> • There is an economic nexus provision in place. • South Dakota cannot currently enforce its remote seller law due to the State Circuit Court’s injunction that is still in place. <ul style="list-style-type: none"> ◦ The case will return to the South Dakota court system for further legal proceedings, since the South Dakota Supreme Court’s decision was set aside.
<i>Official Guidance</i>
<ul style="list-style-type: none"> • The South Dakota Department of Revenue noted that it "is currently unable to enforce 2016's remote seller taxation law due to the State Circuit Court's injunction that is still in place," but said it expects the "injunction will soon be lifted, requiring sellers meeting certain thresholds of sales or transactions into South Dakota to get a sales tax license."

Utah
<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 Utah State Tax Commission issued a statement observing that "Utah law requires the tax commission to notify the Legislature in the event of a Supreme Court decision authorizing states to collect sales tax from remote sellers." The Commission "immediately notified the Legislature when the Wayfair decision was issued and are waiting for their direction." The Commission notes that over the past few years it has "diligently made voluntary compliance agreements with out-of-state companies that do not have a physical presence in Utah."

Vermont
<i>Economic Nexus?</i>
<ul style="list-style-type: none"> • There is an economic provision in place that mimics South Dakota's law. <ul style="list-style-type: none"> ◦ Due to the Wayfair decision, out-of-state vendor provisions of Act 134 of 2016 are effective and collection should start July 1, 2018
<i>Official Guidance</i>
<ul style="list-style-type: none"> • The Vermont Department of Taxes indicated that the Supreme Court's decision allowed the state's contingent economic nexus law to take effect and that "out-of-state vendors are now required to register with the State of Vermont and collect and remit sales tax beginning July 1, 2018," if they meet the statutory thresholds.

Washington
<i>Economic Nexus?</i>
<ul style="list-style-type: none"> • There is an economic nexus provision in place. Remote sellers, marketplace facilitators and referrers making \$10,000 or more in retail sales to Washington purchasers must collect and remit sales and use tax or comply with notice and reporting. <ul style="list-style-type: none"> ◦ Effective January 1, 2018.
<i>Official Guidance</i>
<ul style="list-style-type: none"> • DOR website states "We are aware of the Supreme Court announcement regarding the S. Dakota v. Wayfair, Inc., et al case and their decision to overturn the ruling made in Quill Corp v. N. Dakota. We are examining the decision and its implications for businesses and taxpayers, and we are working with other states to make the transition as smooth as possible for businesses. We will continue to post more information as it is available."¹⁴ • The Washington Department of Revenue indicated that it is reviewing the Supreme Court's ruling and "its impact on our current marketplace fairness laws. We do not believe that legislative action is needed based on RCW 82.32.733 and RCW 82.08.0254, but are still determining our options. As soon as a decision is made on any changes, we will post information about those changes on our Marketplace Fairness web pages."

West Virginia
<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"> • West Virginia's governor has issued a statement that he currently does not support "adding additional taxes on our people in this manner." He added that "This is an issue for the Legislature, and legislation would have to be passed to authorize the state to enforce the collection of out-of-state sales taxes."

Wisconsin
<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 Wisconsin Department of Revenue issued a statement that Beginning October 1, 2018, remote sellers will be required to collect and remit sales or use tax on sales of taxable products and services in Wisconsin. New standards will be developed by rule that will be consistent with the Wayfair small seller exception of \$100,000 in annual sales or 200 or more separate transactions in the state.

Wyoming
<i>Economic Nexus?</i>
<ul style="list-style-type: none"> • There is an economic nexus provision in place that is identical to South Dakota’s provision.
<i>Official Guidance</i>
<ul style="list-style-type: none"> • Guidance states: “The Department of Revenue is currently reviewing the Supreme Court’s decision to determine how this will apply to our Statutes and our ability to require collection... Once the Department has had the opportunity to review the decision’s impacts we will establish a date certain for licensing deadline. The Department will only enforce collection requirements on a prospective basis. We will attempt to contact remote sellers that we believe meet the thresholds for collection under our laws.... Remote sellers who wish to begin collection of the tax now will be licensed as expeditiously as possible.”¹⁵

¹ Ga. Code Ann. §48-8-30(c.2)(1)(A).

² Ga. Code Ann. §48-8-30(c.2)(1)(B).

³“South Dakota v. Wayfair, Inc.,” 2018, <https://tax.iowa.gov/south-dakota-v-wayfair> (accessed July 3, 2018).

⁴ Kan. Stat. Ann. §17-7303.

⁵ Sec. 79-3702(h)(2)(C); An “Amazon Law” refers to when a state has chosen to attempt to capture sales tax revenue using either “click-through nexus” which requires a retailer to collect sales and use tax if they have entered into an agreement with a state resident to refer customers to the retailer or requires the retailer to provide the purchaser with use tax notification.

⁶ Release, Kentucky Department of Revenue, June 27, 2018, ¶203-194.

⁷ Minn. Stat. §297A.66, Subd. 4(a).

⁸ “Governor Says Online Sales Tax Collections Should Go to Property Tax,” June, 2018, <http://wnax.com/news/180081-governor-says-online-sales-tax-collections-should-go-to-property-tax/>, (accessed July 3, 2018).

⁹ Ryan Prete, “After ‘Wayfair’, Which States Are Ready to Tax Online Purchases?” June 27, 2018, <https://www.bna.com/wayfair-states-ready-n73014476940/> (accessed July 3, 2018).

¹⁰ “Remote Seller Sales Tax,” <https://www.nd.gov/tax/remoteseller/> (accessed July 3, 2018).

¹¹Ryan Prete, “Online Sales Tax Lawsuits in Limbo After High Court Ruling,” June 26, 2018, <https://www.bna.com/online-sales-tax-n73014476890/> (accessed July 3, 2018).

¹² Okla. Stat. 68 §1392.

¹³Press Release, Rhode Island Department of Revenue Division of Taxation, June 27, 2018.

¹⁴“Marketplace Fairness- leveling the playing field,” <https://dor.wa.gov/find-taxes-rates/retail-sales-tax/marketplace-fairness-leveling-playing-field> (accessed July 3, 2018).

¹⁵Press Release, Wyoming Department of Revenue, <https://sites.google.com/a/wyo.gov/wy-dor/Noticeofcollectionauthority.pdf?attredirects=0> (accessed July 3, 2018).