

TaxNewsFlash

United States

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More states indicate responses to “Wayfair”

U.S. states continue to issue statements and guidance or otherwise respond to the U.S. Supreme Court’s decision in “South Dakota v. Wayfair, Inc.”

In *Wayfair*, the Supreme Court overruled the physical presence nexus standard of *Quill* and *National Bellas Hess* for state and local taxation of remote sales. As soon as the Supreme Court issued its decision in *Wayfair*, various states began issuing statements or guidance, or introducing bills in response to the decision in the *Wayfair* case. Read **TaxNewsFlash**

More states have continued to respond to the Court’s decision.

Hawaii

Hawaii’s Department of Taxation amended its earlier announcement to provide that it would **not** enforce the state’s economic nexus provisions retroactively to all tax years beginning after December 31, 2017, to avoid any constitutional concerns. Thus, taxpayers that lacked physical presence in Hawaii before July 1, 2018, but that met the \$100,000 or 200-transaction threshold in 2017 or 2018, will not be required to remit general excise tax for the period from January 1, 2018, to June 30, 2018. However, taxpayers that meet these standards will be subject to general excise tax beginning on July 1, 2018 (or on the first day of the tax year beginning on or after July 1, 2018 if the taxpayer is a fiscal year taxpayer) and must file their first periodic returns by the statutory deadline for that period.

Indiana

While currently prohibited from enforcing the obligation to collect sales tax from remote sellers until a pending declaratory judgment action in Indiana is resolved, the Indiana Department of Revenue stated that remote sellers are not obligated to register or collect Indiana sales tax until the declaratory judgment is resolved. The Indiana economic nexus law is substantially similar to South Dakota’s law. In a “frequently

“frequently asked questions” document, the Department stated it will not seek retroactive enforcement of its economic nexus statute and will provide a specific date for enforcement as soon as it is known.

Louisiana

Louisiana’s Department of Revenue targeted January 1, 2019, for an update to its processing systems that would allow the Louisiana Sales and Use Tax Commission for Remote Sellers (created under Louisiana House Bill 17) to serve as the single collector of state and local sales and use tax for remote sellers, according to Louisiana’s Secretary of Revenue. The Department will be issuing further guidance from the commission on next steps for remote dealers to comply with Louisiana law going forward. In addition, the Louisiana Sales and Use Tax Commission for Remote Sellers will be discussing how to become compliant with the Streamlined Sales and Use Tax Agreement without adopting the agreement and whether legislation is needed.

Montana

The Montana Department of Revenue issued a statement noting that following the *Wayfair* decision, Montana residents do not owe use tax on purchases delivered into Montana. However, Montana remote sellers making sales into other states may be required to collect and remit depending on the respective state’s laws.

New Hampshire

The New Hampshire Executive Council approved the governor’s request for a special legislation session to address the consequences for New Hampshire remote sellers from *Wayfair*. The New Hampshire legislature will convene on July 25 to consider legislation to “prevent other states from forcing [New Hampshire] businesses to collect sales and use taxes.” In earlier statements, the governor had called for placing strict requirements on other states seeking to audit New Hampshire sellers.

Rhode Island

Rhode Island’s Division of Taxation added a “frequently asked questions” (FAQs) document to its webpage for non-collecting retailers, referrers, and retail sales facilitators. The FAQs confirm that taxpayers still have the option to comply with the state’s use tax notice and reporting requirements instead of registering to collect and remit sales and use taxes following *Wayfair*.

South Carolina

In a letter to the general assembly, the South Carolina Department of Revenue explained that existing state law authorizes the Department to require remote sellers to collect and remit South Carolina sales and use tax without further legislative action following the *Wayfair* decision. The Department indicated it is drafting guidance, to be finalized in coming weeks, for remote sellers regarding registration, collection, filing, and remitting sales and use tax prospectively. The Department’s guidance will apply

the thresholds similar to the South Dakota law at issue in *Wayfair* (over \$100,000 of in-state sales or 200 or more separate transactions for delivery into the state).

Texas

The Texas Comptroller's office advised the state legislature of the desirability of updating certain statutes following *Wayfair*. In a memorandum, the Comptroller suggested the legislature consider amending the definition of "seller" and "retailer" to include marketplace platforms used by third-party sellers and to provide adequate liability protection for the marketplaces that collect and remit for those sellers.

The Comptroller's memo also suggests amending existing law, which currently only applies to a change in collection responsibilities based on the passage of federal legislation, as opposed to a court decision, to allow remote sellers to pay a fee based on a state-wide weighted average local sales and use tax rate in lieu of collecting actual local tax rates. Lastly, the Comptroller suggested amending existing law to ensure remote sellers are obligated to collect taxable services as well as just tangible personal property.

The Comptroller is reviewing agency rules that may need amending, for example, to explain the amount of economic nexus in sales and/or transactions required to create a safe harbor for small sellers, and intends to adopt these new rules by early 2019. The memo indicates that the Comptroller will not apply the new law retroactively, and will provide remote sellers with "ample time" to comply.

Wyoming

The Wyoming Department of Revenue stated that it is targeting October 1, 2018, as the enforcement date for remote sellers to be licensed to collect and remit sales and use tax.

Read a [July 2018 report](#) prepared by KPMG LLP

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