



TaxNewsFlash

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State responses to “Wayfair” decision

States have continued to issue guidance or statements since the recent U.S. Supreme Court decision in *South Dakota v. Wayfair, Inc.*

In *Wayfair*, the Supreme Court overruled the physical presence nexus standard of *Quill* and *National Bellas Hess* with respect to state and local taxation of remote sales. Soon after the Supreme Court issued its decision in *Wayfair*, various states issued guidance, press releases or introduced bills in response to the decision in the *Wayfair* case. More states have now responded to the Court’s decision.

Maryland

The Comptroller issued a tax alert explaining that taxpayers need to review the Supreme Court’s decision in *Wayfair* to identify how it affects them. The Comptroller, while indicating additional guidance will be provided, explained Maryland imposes a sales tax collection requirement as broadly as is permitted under the U.S. Constitution.

Minnesota

The Department of Revenue issued a release indicating it plans on July 25, 2018, to announce the date by which it will require remote sellers and marketplace providers to collect and remit applicable sales or use tax on sales delivered into the state. In 2017, Minnesota passed legislation requiring remote sellers and marketplaces meeting certain thresholds to collect tax on sales into the state, with the statute becoming effective the earlier of an overturn of *Quill* by the U.S. Supreme Court or January 1, 2019.

New Hampshire

Legislators have assembled [draft legislation](#) to be introduced in a July 25, 2018 special session. If the legislation were to be enacted, it would impede other states from imposing a sales and use tax collection obligation on New Hampshire remote sellers.

The legislation would prohibit foreign taxing jurisdictions, as defined, from requesting information from, conducting examinations of, or imposing sales and use tax collection obligations on sellers in New Hampshire, unless the foreign taxing jurisdiction registers and provides notice to the New Hampshire attorney general. Before allowing such an examination to go forward, the attorney general of New Hampshire would be required to determine that the laws of the foreign jurisdiction meet the requirements of the U.S. and New Hampshire constitutions—including a safe harbor for small sellers; a prohibition against retroactive application of any collection requirement; and membership in Streamlined Sales and Use Tax Agreement (SSUTA) or substantial compliance with the individual provisions of the SSUTA. The legislation would also prohibit sellers in New Hampshire from providing private customer information to any foreign taxing authority for purposes of determining liability for collection of certain sales or use taxes unless the seller has provided a written notice of the request for such information to the attorney general. The legislation would, however, allow sellers to comply with any directive of a foreign taxing authority, while preserving the seller's rights under the statute, if the seller determines that such compliance is in the seller's best interest.

Utah

Senate Bill 2001 was approved by lawmakers in a second special session. Once enacted, this bill would impose a sales and use tax collection and remittance obligation on remote sellers (1) receiving gross revenue of more than \$100,000 from the sale of tangible personal property, any product transferred electronically, or services for storage, use, or consumption in Utah; or (2) has 200 or more separate transactions from such sales. The provision establishing the new thresholds for a collection and remittance obligation would be effective January 1, 2019.

Part of the expected revenue from the change will be used to expand the scope of certain aspects of the state's manufacturing machinery and equipment exemption.

Federal legislative response

Rep. Bob Goodlatte (R-VA) confirmed in a statement to the press that the U.S. House Judiciary Committee will hold a hearing (possibly the week of July 23) to discuss sales and use tax collection obligations imposed on remote sellers, including whether the Judiciary Committee would support legislation limiting states' ability to impose a sales and use tax collection requirement on remote sellers. It is not clear whether the committee would discuss specific legislation such as Stop Taxing Our Potential (STOP) Act or No Regulation Without Representation Act of 2017 (NRRA).

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

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