



TaxNewsFlash

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KPMG report: Follow-up actions of various states, “Wayfair” decision

States have continued to issue guidance or make statements about the implications of the U.S. Supreme Court’s decision in *South Dakota v. Wayfair, Inc.*

In *Wayfair*, the U.S. Supreme Court overruled the physical presence nexus standard of *Quill* and *National Bellas Hess* for state and local taxation of remote sales. Since the decision was issued in *Wayfair* on June 21, 2018, various states have released statements, guidance or proposed legislation in response. Read a summary of state actions or responses to *Wayfair* (as of July 23, 2018): [TaxNewsFlash](#)

The following provides brief discussions about more recent state actions or releases.

Indiana

The Indiana Department of Revenue posted an update on its webpage, but that update has since been removed. The now-deleted update stated that the Department would begin enforcing Indiana’s economic nexus laws on October 1, 2018. The Department is currently prohibited from enforcing the obligation of remote sellers to collect and remit sales tax until a pending declaratory judgment action is resolved. However, a “frequently asked questions” (FAQs) document indicates that the Department will not enforce the law retroactively.

Minnesota

The Minnesota Department of Revenue on July 25, 2018, announced it will require remote sellers that are not eligible for the state’s “small seller exception”—defined by reference to having 100 or more retail sales shipped to Minnesota customers or 10 or more retail sales shipped to Minnesota customers that total more than \$100,000—to register to collect and remit Minnesota sales and use tax no later than October 1, 2018. Marketplace providers are also required to register and begin collecting

Minnesota sales tax on behalf of remote sellers using their marketplace no later than October 1, 2018. Lastly, the Department posted a FAQs document on its webpage designed to provide information that would help remote sellers.

Nevada

The Nevada Tax Commission sent a proposed economic nexus regulation to the legislature for approval. Under the regulation, the criteria for determining if a retailer had sufficient nexus with Nevada would be based on whether in the immediately preceding or current calendar year, gross revenue from the retail sale of tangible personal property delivered into the state was greater than \$100,000, or the retailer made 200 or more retail sales of tangible personal property for delivery into the state.

New Hampshire

The New Hampshire legislature on July 25, 2018, convened for a special session to address *Wayfair*. The Senate unanimously voted to approve legislation that would have required states seeking to impose a sales and use tax collection obligation on New Hampshire remote sellers to seek permission from the New Hampshire attorney general. The New Hampshire House, however, amended the bill, and approved only a provision to establish a commission to study next steps in light of the Supreme Court's decision. The Senate then voted unanimously to not concur with the House's action. Now, some anticipate that the governor will call another special session.

Rhode Island

The Rhode Island Division of Taxation issued a "supplemental statement" in an effort to clarify certain common questions that taxpayers may have. In the statement, the Division confirmed that the obligations of non-collecting retailers, as defined under Rhode Island law, are not affected by the Supreme Court's decision in *Wayfair*. Specifically, the supplemental statement provides that under Rhode Island law (effective August 17, 2017), a non-collecting retailer must either register with the Division to collect and remit sales and use tax, or must comply with the state's use tax notice and reporting requirements.

Utah

The governor on July 21, 2018, signed into law Senate Bill 2001 that imposes, effective January 1, 2019, a sales and use tax collection and remittance obligation upon remote sellers receiving gross revenue of more than \$100,000 or making 200 or more separate transactions in the state from the sale of tangible personal property, any product transferred electronically, or services for storage, use, or consumption.

Federal response

The Judiciary Committee of the U.S. House of Representatives on July 24, 2018, held a hearing to discuss the effects of the *Wayfair* decision. Multiple witnesses testified both for and against congressional intervention.

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

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