



# TaxNewsFlash

## United States

No. 2018-315  
August 13, 2018

### **KPMG report: More states respond or update initial reactions to “Wayfair” decision (AR, CA, LA, ME, MD, MS, NC, SD, WY)**

State governments have continued to issue guidance or statements since the June 2018 decision by the U.S. Supreme Court 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* with respect to state and local taxation of remote sales. Soon after the Supreme Court issued its decision in *Wayfair*, various states began issuing guidance or statements or began steps to introduce legislation in response to the decision in the *Wayfair* case. Read [TaxNewsFlash](#)

More states have responded to the Court’s decision or have updated their initial response to the decision.

#### **Arkansas**

The Little Rock Board of Directors on August 7, 2018, passed a resolution asking the governor of Arkansas to call a special session of the legislature to consider remote sales tax legislation “as quickly as possible.” However, the governor’s office has indicated that there are no plans to hold a special session to consider **any** legislation.

A legislative tax reform task force has recommended consideration of a measure to establish an economic nexus threshold of \$100,000 in receipts or 200 transactions.

#### **California**

Draft legislation that would implement the *Wayfair* holding in California law is being circulated. Under the draft, the definition of “retailer engaged in business” would be amended to include “any retailer that, in the preceding calendar year or the current calendar year, has a cumulative sales price from the sale of tangible personal property

for delivery in this state that exceeds [\$500,000].” A “retailer” would include online marketplaces. As defined, those marketplaces meeting the threshold would be required to collect and remit on behalf of marketplace sellers not registered with the California Department of Tax and Fee Administration.

## **Louisiana**

The Secretary of the Louisiana Department of Revenue, in her role as Chair of the Louisiana Sales and Use Tax Commission for Remote Sellers, issued [Remote Sellers Bulletin 18-001](#) [PDF 547 KB] as guidance for implementing the holding in *Wayfair*.

The bulletin indicates that:

- The Supreme Court’s determination in *Wayfair* is sufficient to effectuate the economic nexus statute (with thresholds of \$100,000 in receipts or 200 transactions) as passed in a 2018 special session of the legislature.
- The Commission for Remote Sellers will serve as the sole point of collection for remote sellers and will not enforce the collection obligation for any periods prior to January 1, 2019.
- A law passed in 2016 requiring remote sellers to collect tax or file various use tax reports would remain in effect for those sellers that do not voluntarily register with the Commission and for those sellers that do not meet the economic nexus thresholds.

## **Maine**

The Maine Revenue Services on August 8, 2018, issued a “tax alert” explaining, for sales made on or after July 1, 2018, the agency will enforce the state’s economic nexus statute that has been effective since October 1, 2017.

The Maine Revenue Services explained that remote sellers will be subject to assessment on sales made on or after July 1, 2018, for which the seller did not collect or remit applicable sales and use taxes, and that a webpage is available with information directing remote sellers to registration forms, the state’s voluntary disclosure program, and other guidance documents.

## **Maryland**

The Maryland Comptroller’s office on August 6, 2018, provided for review a draft regulation that would amend the definition of “out-of-state vendor” to include a remote seller whose gross revenue exceeds \$100,000 or has 200 or more separate transactions in the previous or current calendar year, from the sale of tangible personal property or taxable services to in-state customers. The regulation proposes that the new definition would be effective October 1, 2018.

## **Mississippi**

The Mississippi Department of Revenue on August 6, 2018, issued guidance stating that beginning September 1, 2018, the state will enforce the economic nexus statute for remote sellers exceeding the state's small seller exception (annual sales in excess of \$250,000). Remote sellers will need to register with the Department by August 31, 2018, and then will need to begin collecting Mississippi use tax for sales made on or after September 1, 2018.

## **North Carolina**

The North Carolina Department of Revenue on August 7, 2018, published Directive SD-18-6 requiring all remote sellers with over \$100,000 of gross sales sourced to North Carolina or 200 or more separate transactions sourced to North Carolina in the current or previous calendar year to collect and remit sales and use tax. The requirement is effective November 1, 2018, or 60 days after a remote seller meets the threshold, whichever is later. This rule will not be applied retroactively.

## **South Dakota**

The South Dakota Department of Revenue is currently enjoined from enforcing the state's economic nexus law until the state-level *Wayfair* litigation is resolved. Nevertheless the state appears to be taking steps to be able to enforce its law sooner.

The governor has stated he will call a special session on September 12, 2018, to "fight for tax fairness" and that he supports an enforcement date of October 1, 2018.

The South Dakota Supreme Court on August 9, 2018, remanded *Wayfair* to a state circuit court. This means that the circuit court may now conduct further proceedings and/or dissolve the injunction.

## **Wyoming**

The Wyoming Department of Revenue on August 7, 2018, issued a release explaining that, due to ongoing litigation, it is currently not requiring remote sellers that satisfy the state's economic nexus thresholds (over \$100,000 of Wyoming sales or 200 separate transactions for delivery into Wyoming) to register for collection and remittance of sales and use tax. Once an enforcement date is established, this information will be announced and posted on the Department's website.

Read an [August 2018 report](#) prepared by KPMG LLP

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