



TaxNewsFlash

United States

No. 2018-337
August 27, 2018

KPMG report: More states respond or update initial reactions to “Wayfair” decision (AR, CO, NV, SC, SD, TN, TX)

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

A legislative tax reform task force recommended to the legislature that remote sellers with more than \$100,000 in sales or at least 200 separate transactions in Arkansas be required to collect and remit Arkansas sales and use tax. It was not recommended that the requirement be retroactive.

Colorado

A spokesperson for the Colorado Department of Revenue, in a statement to the tax press, said “whatever we [Colorado DoR] do for *Wayfair* will have no impact on our noncollecting reporting requirements.” The spokesperson further noted, “If Colorado should do as most other states have done and require most remote sellers to collect and remit sales taxes,” the reporting law “will still be in effect for any vendors that choose not to collect sales taxes.”

Nevada

The Nevada Tax Commission will hold a public hearing on Thursday, September 13, 2018 to receive comments on the state's adoption of a regulation requiring remote sellers to collect and remit Nevada sales and use tax. The regulation proposes to adopt economic nexus for sales and use tax purposes with thresholds that mimic South Dakota's law (more than \$100,000 in sales or 200 or more separate transactions for delivery into the state). Under the [proposed regulation](#) [PDF 145 KB], the retailer must register with the Department of Taxation no later than the first day of the first calendar month that begins 30 calendar days after the retailer meets the economic nexus threshold.

South Carolina

The South Carolina Department of Revenue issued a draft revenue ruling that addresses nexus with localities. The Department of Revenue explained, effective October 1, 2018:

It is the Department's position that once a retailer has established nexus with South Carolina for sales and use tax purposes, the retailer has nexus for sales and use tax purposes with every local jurisdiction in the state for which the Department administers and collects a local sales and use tax. As such, the retailer must remit local sales and use taxes for any local jurisdiction into which deliveries are made by, or on behalf of, the retailer.

The Department of Revenue created an extensive question and answer (Q&A) list to assist remote sellers. Public comments are due September 4, 2018.

South Dakota

The South Dakota governor has been meeting with legislators and state revenue officials to discuss legislation to be considered at a special legislative session the governor has called. According to the governor's spokesperson, the proposed legislation is expected to be made available to the public next week.

Two proposals are likely to: (1) remove the injunction put in place by the state circuit court in *Wayfair* and (2) require marketplaces to collect and remit sales and use tax on sales made by marketplace sellers.

Tennessee

The Tennessee Department of Revenue issued a notice that reiterates that it is currently prohibited from enforcing the state's economic nexus rule (Rule 129(2)). The Department of Revenue makes clear that dealers (remote sellers) with no physical presence in Tennessee are not currently required to collect and remit Tennessee sales and use tax until the Department of Revenue issues a public notice specifying an enforcement date and under which circumstances dealers must collect and remit the tax. Rule 129(2) will not be applied retroactively.

Texas

The Texas Comptroller's Office met with its business advisory group and tax advisory group to discuss the state's approach in requiring remote sellers to collect and remit Texas sales and use tax. The Comptroller is considering amending the definition of "engaged in business" in Rule § 3.286(a)(4) and to adopt a safe harbor (e.g., a small seller exception). It is not yet known whether the safe harbor would contain both a dollar and transaction threshold.

The current planned schedule for adopting and implementing the amended rule calls for distribution of a draft rule in September 2018 and submission of a final proposed rule in October. The current plan calls for the rule to become effective on January 1, 2019 with enforcement to begin in either July or October of 2019.

During the meeting, it was clarified that legislation is needed to require marketplace providers to collect and remit sales and use tax. There was also discussion of the possibility of amending current law (Tex. Tax Code § 151.059) so as to allow remote sellers to collect a fee equal to the weighted average local tax rate in lieu of the actual local tax due on each sale.

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

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