

TaxNewsFlash

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KPMG report: State responses to “Wayfair” (IN, MD, NJ, OK, SD)

State governments have continued to issue guidance or statements after the U.S. Supreme Court’s decision in “South Dakota v. Wayfair, Inc.” as to how the states will apply the decision.

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.

Indiana

The Commissioner of the Department of Revenue explained in a statement to the tax press that the declaratory judgment action that prevented the Department from enforcing Indiana’s economic nexus law has been resolved. Specifically, parties to the litigation (including an internet trade group) had settled their case with the Department and asked that the case be dismissed. Accordingly, the Department stated that it will begin enforcing its economic nexus standards against remote sellers on October 1, 2018. The Department will not enforce the law retroactively.

Maryland

A legislative joint committee—Joint Committee on Administrative, Executive, and Legislative Review (AELR)—in late August 2018 approved an emergency regulation that amends the definition of an “out-of-state vendor” to include a remote seller that has gross revenue exceeding \$100,000 or that 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 emergency regulation is effective October 1, 2018, and is effective until March 30, 2019. Presumably, at that time a permanent regulation would be promulgated.

New Jersey

The governor in late August 2018 “conditionally” vetoed a bill that would have amended the definition of “seller” to include a seller that receives gross revenue of more than \$100,000 or that has 200 or more separate transactions, from the sale of tangible personal property, specified digital products, or services into the state, within the calendar year or the prior calendar year. In the conditional veto, the governor suggested certain clarifying changes to the bill (primarily relating to obligations of marketplace operators), but noted that he agrees with the underlying law change. Both houses of the state legislature will reconsider the bill when the legislature is back in session.

Meanwhile the New Jersey Division of Taxation announced in August 2018 that effective October 1, 2018, remote sellers meeting South Dakota-style thresholds (over \$100,000 of gross revenue from the sale of tangible personal property, specified digital property, or services into New Jersey, or 200 or more separate transactions for delivery into New Jersey in the prior or current calendar year) must register, collect, and remit New Jersey sales tax.

Oklahoma

The Oklahoma Tax Commission issued a press release stating that under existing state law, remote sellers that sold at least \$10,000 worth of taxable merchandise in the state during the previous 12 months are required to collect and remit the tax or to comply with statutory notice and reporting requirements. Oklahoma law also required marketplace facilitators and referrers to file an election with the Oklahoma Tax Commission by July 1, 2018, to either collect and remit Oklahoma sales or comply with statutory notice and reporting requirements.

South Dakota

The governor submitted two bills for consideration in a special session starting September 12, 2018. One of the bills would revise South Dakota law to require all remote sellers exceeding the “small seller exception” (except the *Wayfair* litigants) to collect sales and use tax effective November 1, 2018. The other bill would require marketplace providers to collect and remit sales tax on sales made on behalf of marketplace sellers on the marketplace.

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

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