

# TaxNewsFlash

## United States

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### **KPMG report: Update on state actions responding to “Wayfair” decision (CA, GA, NV, NJ, WV)**

U.S. state governments continue to issue guidance or statements in response to the U.S. Supreme Court’s decision in “South Dakota v. Wayfair, Inc.” as to how they 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](#)

#### **California**

The tax committees in the California legislature announced that on October 15, 2018, it will hold an informational hearing on the *Wayfair* decision. The title of the hearing is: *Is there a fair way forward after Wayfair? Assessing the effect in California of the United States Supreme Court’s recent decision.*

#### **Georgia**

The Department of Revenue on October 1, 2018, released a policy bulletin providing guidance for remote sellers on their Georgia sales tax obligations beginning January 1, 2019.

The bulletin reminds remote sellers that meet certain thresholds in the previous or current calendar year that they must either remit Georgia sales tax on their taxable sales delivered into Georgia or comply with certain notice and reporting requirements. The “collect or report” law—approved by the Georgia legislature in May 2018—applies to remote sellers that conduct 200 or more separate retail sales of tangible personal property delivered electronically or physically into Georgia, or that obtain gross

revenue in an amount exceeding \$250,000 from retail sales of tangible personal property delivered electronically or physically into the state.

A remote seller meeting the threshold that chooses not to collect and remit sales tax must provide a transactional notice to each potential purchaser, prior to the completion of the transaction, providing that sales or use tax may be due to the state on the purchase. In addition, on or before January 31, 2020 (and each subsequent year), the seller must send an annual statement to the Department of Revenue and to each purchaser with \$500 or more in aggregate purchases during the prior calendar year. The statement must contain the following information: (1) the purchaser's total amount of purchases; (2) the date, amount, and category of each purchase; and (3) a reminder that taxes may be due to the state from the purchaser.

Finally, the bulletin identifies the penalties (varying from \$5 to \$10 for each failure) that may be owed by the seller for failure to comply with the notice and reporting requirements.

## **Nevada**

The legislative commission on September 27, 2018, gave final approval to regulations adopted by the Nevada Tax Commission to establish requirements for remote sellers to collect and remit sales tax on sales made into the state. The regulations provide that remote sellers with 200 or more retail sales of tangible personal property delivered into the state or more than \$100,000 in gross revenue from the retail sale of tangible personal property delivered into the state during the current calendar year or immediately preceding calendar year must register with the Department of Taxation to collect and remit sales tax. The remote seller must register and begin collecting on the first day of the first calendar month that begins at least 30 calendar days after one of the sales thresholds has been met.

The regulations went into effect on October 1, 2018, meaning that a retailer that had met the threshold as of October 1 would be required to register and begin collecting on November 1. A retailer that meets the threshold on October 2 would be required to register and start collecting by December 1, 2018.

## **New Jersey**

The governor on October 4, 2018, signed into law [Assembly Bill 4496 \(P.L. 2018, ch. 132\)](#) that establishes an economic nexus threshold for remote sellers and imposes a requirement on certain electronic and physical marketplaces to collect sales tax on sales that they facilitate. The law's effective date is November 1, 2018.

The legislation also authorizes the Director of Taxation to take such anticipatory steps as are necessary for timely implementation of the bill and allows the Director to promulgate emergency rules (to be effective for 360 days) without adherence to the state's Administrative Procedures Act.

The legislation provides that sellers not otherwise required to collect and remit New Jersey sales tax will be required to do so if the seller engages in 200 or more separate transactions involving the sale of tangible personal property, specified digital goods, or taxable services for delivery into the state in the current or preceding calendar year or had gross revenue in excess of \$100,000 from such sales during the same period. The requirement to collect begins with the effective date of the bill.

In addition, the legislation imposes a requirement on electronic and physical marketplaces (defined expansively in the statutory text) to collect sales tax on taxable sales that they facilitate to purchasers in New Jersey, regardless of whether the seller involved has an obligation to collect tax or not. The requirement applies to transactions occurring after the effective date, but the Director of Taxation is authorized, upon written application and for good cause shown, to suspend the collection obligation of a marketplace facilitator for up to 180 days.

Finally, the legislation provides that nothing in the new law is to interfere with the ability of a facilitator and a seller to enter into an agreement with each other regarding the collection of tax, and it further provides that if a marketplace is audited with respect to a transaction, the seller in that transaction may not also be audited with respect to the transaction.

### **KPMG observation**

In August 2018, the New Jersey legislature passed Assembly Bill 4261 containing substantially similar economic nexus thresholds with an October 1, 2018 effective date, and the Division of Taxation had issued a notice indicating that collection would begin on that date. However, AB 4261 was conditionally vetoed by the governor and then passed with amendments as AB 4496. The Division of Taxation website now indicates that the economic nexus thresholds are effective November 1, 2018.

### **West Virginia**

The West Virginia Tax Commissioner released [Administrative Notice 2018-18](#) (October 1, 2018) that establishes new sales and use tax collection requirements for remote sellers.

The notice provides that remote sellers that deliver more than \$100,000 of goods or services into West Virginia, or engage in 200 or more separate transactions for the delivery of goods and services into West Virginia during calendar year 2018 will be required to collect and remit state and municipal sales and use taxes on all sales made on and after January 1, 2019, that are delivered into West Virginia. The responsibility of a remote seller to collect and remit taxes will be determined annually for each subsequent year based on the remote seller's sales in the immediately preceding calendar year.

The notice also provides other information about West Virginia sales and use taxes, including a reminder to taxpayers that West Virginia is a member of the Streamlined

Sales and Use Tax Governing Board; that the state has adopted destination sourcing; and that the State Tax Commissioner administers, collects, and enforces state and municipal sales and use taxes.

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

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