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KPMG report: State actions concerning “Wayfair” decision (AL, CO, DC)

U.S. state governments have issued guidance or statements in response to 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* 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](#)

Alabama

The Department of Revenue proposed a rule for implementing House Bill 470 (as enacted in 2018). House Bill 470 provides certain “marketplace facilitators” must either:

- Register to collect and remit simplified sellers use tax (SSUT) on sales facilitated by the marketplace and delivered in Alabama, or
- Comply with unspecified notice and reporting requirements, effective January 1, 2019

The proposed rule would require a marketplace that elects not to collect tax to inform customers of their use tax obligations at the time of the purchase, to send customers an annual summary of their purchases and to file an annual report on each customer’s purchases with the Department.

In addition, the proposed rule provides that if a marketplace facilitator elects to collect and remit tax and demonstrates to the Department that it is “impractical” to do so by the statutory deadline, a deferral may be granted under certain circumstances. A

deferral would be granted on a case-by-case basis and only if the facilitator has, prior to January 1, 2019, registered to participate in SSUT and has requested in writing, and been granted, a deferral “to a reasonable date.”

The Department has also proposed revisions to its remote seller rule. The revised rule would generally apply beginning October 1, 2018, but would not apply to any transactions made through a marketplace facilitator prior to January 1, 2019, or if the marketplace facilitator received a deferral, to any transactions made through the marketplace until after the deferral ends.

In other words, a remote seller would be required to collect SSUT on its direct sales effective October 1, 2018, but would not be liable for collection on its marketplace sales at that time, provided the marketplace facilitator has applied for and been granted a deferral of its collection obligation by the Department prior to January 1, 2019.

Colorado

The Sales and Use Tax Simplification Task Force (a body that was created pursuant to 2017 legislation) approved a draft bill that would require the Department of Revenue to begin developing an electronic sales and use tax simplification system. At a minimum, the software system would include:

- A single application process for state and local sales tax licenses
- A uniform sales and use tax remittance form for all state and local jurisdictions
- A taxability or exemption matrix
- Access to taxpayer data for purposes of audits or reconciliations
- The ability to interface with existing accounting systems

The draft bill explains that the legislative intent is that at least three local home-rule jurisdictions would voluntarily use the system when it first goes online, and that after three years, all home-rule jurisdictions would voluntarily use the system.

The state legislature will be back in session in early 2019 to consider the draft bill.

District of Columbia

The Council of the District of Columbia introduced a bill, [B22-0914](#), to require a seller that does not have physical presence in the District to collect and remit District sales tax if the seller has, during the previous or current calendar year, gross revenue exceeding \$100,000 from the sale of tangible personal property, any product transferred electronically, or services delivered into the District, or 200 or more separate transactions from such sales in a 12-month period. The bill would take effect upon approval by the Mayor, a 30-day congressional review period, and publication in

the D.C. register. The District of Columbia Office of Tax and Revenue (OTR) has indicated (through comments) that certain items in the bill should be clarified. OTR has also suggested that the Council consider extending the collection requirement to marketplace facilitators and extending the sales tax to certain digital products and streaming services.

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

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