Update on Economic Nexus and Marketplace Facilitator Collection Laws

Nexus Committee Meeting
Boise, ID
August 5, 2019

Richard Cram
Director, National Nexus Program
Multistate Tax Commission

Economic nexus statutes

Threshold >$100,000 in sales/yr or 200 transactions/yr:

- **Hawaii, Maine, Vermont (SST)**—eff. 7/1/18
- **Illinois, Indiana (SST), Kentucky (SST), Maryland, Wisconsin (SST)—eff. 10/1/18**
- **New Jersey (SST), North Carolina (SST), South Dakota (SST)—eff. 11/1/18**
- **DC, Nebraska (SST), Utah (SST), West Virginia (SST)—eff. 1/1/19**
- **Wyoming (SST)—eff. 2/1/19**
- **Arkansas (SST), Virginia, Rhode Island (SST)—eff. 7/1/19**
- **Ohio (SST)—eff. 8/1/19**
- **Minnesota (SST)—eff. 10/1/19**
- **Georgia (SST)—eff. 1/1/20 (>250,000 sales/200 transactions threshold from 4/28/19 thru 12/31/19)**
- **Louisiana HB 547—eff. NLT 7/1/20**
Economic nexus statutes (continued)

Threshold >$500,000 sales/yr:
- New York—eff. 6/21/18 (in prior 4 quarters and 100 transactions)
- California—eff. 4/1/19
- Texas—eff. 10/1/19

Threshold >$200,000 sales/yr:
- Arizona—eff. 10/1/19 ($150,000 for 2020, $100,000 for 2021)
- Connecticut—eff. 7/1/19; $250,000 and 200 transactions/yr eff. 12/1/18 thru 6/30/19

Threshold >$100,000 sales/yr:
- Arizona—eff. 10/1/19 ($150,000 for 2020, $100,000 for 2021)
- Connecticut—eff. 7/1/19; $250,000 and 200 transactions/yr eff. 12/1/18 thru 6/30/19

Threshold >$100,000 sales/yr:
- Connecticut—eff. 7/1/19; $250,000 and 200 transactions/yr eff. 12/1/18 thru 6/30/19
- Massachusetts—eff. 10/1/19
- Oklahoma (SST)—eff. 11/1/19

Economic nexus by regulation/ruling and notice

Threshold $500,000 sales/yr:
- **Tennessee** reg (Assoc. M.-SST); HB 667 enacted, legislative approval of reg, eff. 7/1/19; Tennessee DOR Notice 19-04 requires collection eff. 10/1/19

Threshold >$250,000 sales/yr:
- **Alabama** reg eff. 10/1/18
- **Mississippi** reg eff. 9/1/18

Threshold >$100,000 sales or 200 transactions/yr:
- **Michigan** Bulletin 2018-16 eff. 10/1/18 (SST)

Other
- **Kansas** eff. 10/1/19 (SST) (no threshold stated in Notice 19-04)
Sales tax states not yet providing *Wayfair* guidance

**Florida**: SB 1112 introduced, economic nexus (>100,000 sales/200 transactions/yr)

**Missouri**: HB 548 (simplified sales tax remittance program), HB 648 (require payment processors to collect), HB 724 (join SSUTA), SB 50 (simplified sales tax remittance program), SB 46 (join SSUTA, implement *Wayfair*) introduced. SB 46, 50 passed S. W & M Com. 2/12/19, SB 189 passed S. Com. 3/13/19 (economic nexus >100,000 sales/200 transactions/yr)

Colorado-style notice and reporting laws

CO, GA, KY-(notice only), LA, MN, OK, PA, RI, TN-(notice only), VT, WA

2019 Legislation to eliminate notice/reporting option and require remote seller collection:

- **Georgia**: HB 182 enacted, collect if sales >$100,000 sales/200 trans/yr eff. 1/1/20
- **Kentucky**: HB 354 CCR enacted, collect if sales>$100,000 sales/200 trans/yr eff. 11/1/19
- **Oklahoma**: SB 513 enacted, collect if sales>$100,000/yr
- **Pennsylvania**: HB 262 enacted, collect if sales>$100,000/yr
- **Rhode Island**: S. 251 Sub A, H. 5278 Sub A enacted, collect if sales >$100,000/200 trans./yr
- **Washington**: SB 5581 enacted, collect if sales>$100,000/yr
Home Rule Local Sales Taxes

Colorado SB 19-006 enacted, providing for centralized electronic filing system for local sales/use taxes, creating Sales and Use Tax Simplification Task Force; HB19-1240 enacted, includes destination sourcing with small seller exception; only voluntary compliance in “home rule” jurisdictions so far

Louisiana SB 57 introduced, proposing constitutional amendment authorizing centralized collection of local sales taxes; HB 547 enacted, authorizing Sales and Use Tax Commission enf. date for remote seller collection NLT 7/1/20

Alabama Simplified Sellers Use Tax System—centralized filing and flat combined 8% rate for remote sellers

Texas HB 2153—remote seller can opt to use 1.75% local rate (adjusted annually)

Streamlined Sales Tax

Although no additional states have joined the Streamlined Sales and Use Tax Agreement since Wayfair, Connecticut, Illinois, New Mexico and Pennsylvania have recently authorized use of Certified Service Providers.

The SST Governing Board is working to adopt policies to encourage non-SST states to use its centralized registration and simplified electronic return system.
### Click-through nexus states

<table>
<thead>
<tr>
<th>State</th>
<th>Status</th>
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<tbody>
<tr>
<td>AR, CA, CO, CT, GA, ID, IL, KS, LA, ME, MI, MN, MO, NC, NV, NY, OH, PA, RI, TN, VT, WA</td>
<td>Various thresholds (most use $10,000 or more in annual sales to customers in the state, $100,000 in CT)</td>
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<tr>
<td><strong>California</strong></td>
<td>AB 147 enacted, implementing economic nexus eff. 4/1/19 for sales &gt;$500,000/yr.</td>
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<tr>
<td><strong>Idaho</strong></td>
<td>HB 259 enacted, implementing economic nexus eff. 6/1/19 for sales &gt;$100,000/yr.</td>
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<tr>
<td><strong>Washington</strong></td>
<td>SB 5581 enacted, repeals Washington’s “click-thru nexus” provision</td>
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<tr>
<td><strong>Ohio</strong></td>
<td>HB 166 enacted, repeals Ohio’s “click-thru nexus” provision</td>
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### Cookie nexus

<table>
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<tr>
<td><strong>Massachusetts</strong></td>
<td>Reg 830 CMR 64 H.1.7 &gt;$500,000 sales and 100 transactions/yr. threshold eff. 10/1/17; challenge pending in Virginia Circuit Court (Crutchfield Corp. v. Harding, No. CL 1700145-00); H. 4000 replaced with statutory economic nexus &gt;$100,000 sales/yr. eff. 10/1/19</td>
</tr>
<tr>
<td><strong>Ohio</strong></td>
<td>Rev. Code § 5741.01(I)(2)(i) &gt;$500,000 sales threshold; HB 166 repealed eff. 8/1/19</td>
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<tr>
<td><strong>Iowa</strong></td>
<td>S. F. 2417 &gt;$100,000/yr. sales or 200 trans./yr. eff. 1/1/19; &gt;$100,000 sales/yr. eff. 7/1/19</td>
</tr>
<tr>
<td><strong>Rhode Island</strong></td>
<td>H5175A collect or report if &gt;$100,000 sales/yr or 200 trans, eff. 8/17/17</td>
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Marketplace Collection Requirements... So far

As of July 23, 2019

Marketplace facilitator as collector/reporter laws

Enacted in 2017:

- **Minnesota** (HF 1 news release published 7/25/18--collect eff. 10/1/18 if place of business in MN; HF 5 enacted mandating collection sales>$100,000/200 trans/yr. eff. 10/1/19)

- **Pennsylvania** (HB 542 collect or report if sales >$10,000/yr; Bulletin 2019-01, mandatory collection for sales >$100,000/yr. eff. 7/1/19; 2019 HB 262 codified)

- **Rhode Island** (H5175A collect or report if sales/yr >$100,000/200 trans eff. 8/17/17; 2019 H. 5278 Sub A and S. 251 Sub A enacted, removing reporting requirements and requiring collection)

- **Washington** (HB 2163 collect eff. 1/1/18; 2019 HB 5581 enacted, repealing notice/reporting eff. 7/1/19)
Marketplace facilitator as collector/reporter laws

Enacted in 2018 pre-Wayfair:

- **Alabama** (HB 470 collect if sales/yr >$250,000 or report eff. 1/1/19)
- **Connecticut** (SB 417 collect/referrer report if sales/yr >$250,000 + 200 trans eff. 12/1/18; HB 7424 $100,000 + 200 trans eff. 7/1/19)
- **Iowa** (SF 2417 collect/referrer report if sales/yr >$100,000/200 trans eff. 1/1/19; >$100,000 eff. 7/1/19)
- **Oklahoma** (HB 1019XX collect if sales/yr >$10,000 or report eff. 7/1/18)

Enacted in 2018 post-Wayfair:

- **South Dakota** (SB 2 collect if sales/yr >$100,000/200 trans eff. 3/1/19)
- **New Jersey** (A. 4496 collect if sales/yr >$100,000/200 trans eff. 11/1/18)
- DC (B22-1070 collect eff. 4/1/19)

Enacted in 2019:

- **Nebraska** (LB 284) eff. 4/1/19
- **South Carolina** (SB 214) eff. 4/26/19
- **Idaho** (HB 259) **New York** (S. 1509, part G) **Vermont** (HB 536) eff. 6/1/19
- **Arkansas** (SB 576, including OTC collection) **Indiana** (HB 1001) **Kentucky** (HB 354) **New Mexico** (HB 6) **Pennsylvania** (HB 262) **Rhode Island** (H. 5278 Sub A, S. 251 Sub A) **Virginia** (HB 1722, SB 1083) **West Virginia** (HB 2813) **Wyoming** (HB 69) eff. 7/1/19
- **Ohio** (HB 166) eff. 8/1/19
- **Arizona** (HB 2757) **California** (AB 147) **Colorado** (HB 19-1240) **Maine** (LD 1452/ HP 1064) **Maryland** (HB 1301) **Massachusetts** (H 4000) **Nevada** (AB 445) **North Dakota** (SB 2338) **Texas** (HB 1525) **Utah** (SB 168) **Wisconsin** (AB 251) eff. 10/1/19
- **Hawaii** (SB 396/SD 1) **Illinois** (SB 689) eff. 1/1/20

Marketplace facilitator as collector laws
Marketplace facilitator as collector litigation

**Louisiana** *(Normand v. Wal-Mart.com)* litigation re obligation of marketplace facilitator to collect at parish level as “dealer;” Wal-Mart’s petition for review to Louisiana S. Ct. granted; oral argument 9/4/19

**South Carolina** (Amazon litigation pending—trial held Feb. 4-8, 2019; SC DOR considers marketplace to be the retailer; ruling #18-14 requiring collection if sales/yr >$100,000 effective 11/1/18; SB 214 enacted)

**State Agency Opinions/Policies:**

**Tennessee** A. G. Op. No. 19-03 (3/12/19): department authorized to promulgate regs to require in-state marketplace facilitators to collect as “dealers”

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2019 pending marketplace facilitator as collector bills

**Michigan:** HB 4540, 4541, 4542, 4543 referred to House W&M comm. 6/19/19

**North Carolina:** budget compromise HB 966 vetoed by governor, new compromise pending