

Update on
Economic
Nexus and
Marketplace
Facilitator
Collection
Laws

Uniformity Committee
Meeting
Boise, ID
August 6, 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)

Threshold \$100,000 and 200 transactions/yr:

Connecticut—eff. 7/1/19; \$250,000 and 200 transactions/yr eff. 12/1/18 thru 6/30/19

Threshold >\$100,000 sales/yr:

South Carolina—eff. 11/1/18

North Dakota (SST)—eff. 1/1/19

Washington (SST)—eff. 3/18/19

Colorado, Idaho—eff. 6/1/19

Iowa (SST), New Mexico, Pennsylvania—eff. 7/1/19

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

AR CA CO CT GA ID IL KS LA ME MI MN MO NC NV NY
OH PA RI TN VT WA

Various thresholds (most use \$10,000 or more in annual sales to customers in the state, \$100,000 in CT)

California: AB 147 enacted, implementing economic nexus eff. 4/1/19 for sales >\$500,000/yr.

Idaho: HB 259 enacted, implementing economic nexus eff. 6/1/19 for sales >\$100,000/yr.

Washington: SB 5581 enacted, repeals Washington's "click-thru nexus" provision

Ohio: HB 166 enacted, repeals Ohio's "click-thru nexus" provision

Cookie nexus

Massachusetts Reg 830 CMR 64 H.1.7 >\$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 >\$100,000 sales/yr. eff. 10/1/19

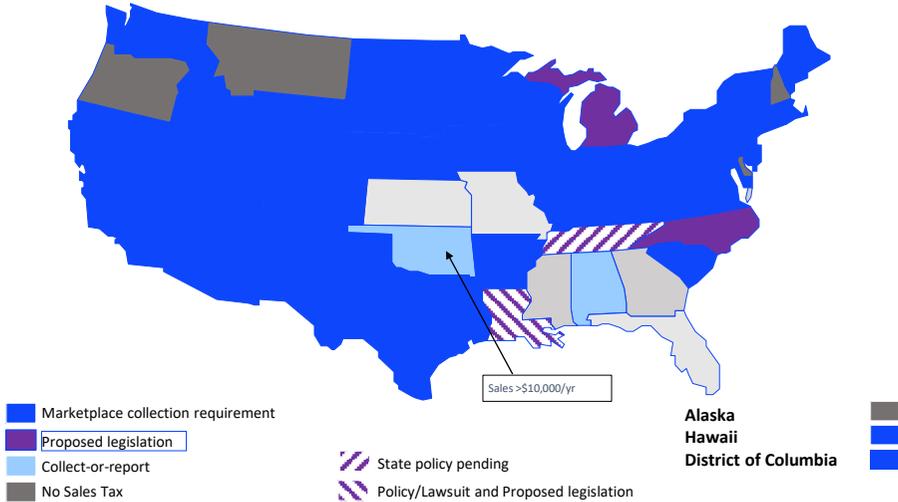
Ohio Rev. Code § 5741.01(l)(2)(i) >\$500,000 sales threshold; HB 166 repealed eff. 8/1/19

Iowa S. F. 2417 >\$100,000/yr. sales or 200 trans./yr. eff. 1/1/19; >\$100,000 sales/yr. eff. 7/1/19

Rhode Island H5175A collect or report if >\$100,000 sales/yr or 200 trans, eff. 8/17/17

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)

Marketplace facilitator as collector laws

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 litigation

Louisiana (*Normand v. Wal-Mart.com* litigation re obligation of marketplace facilitator to collect at parrish 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”

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