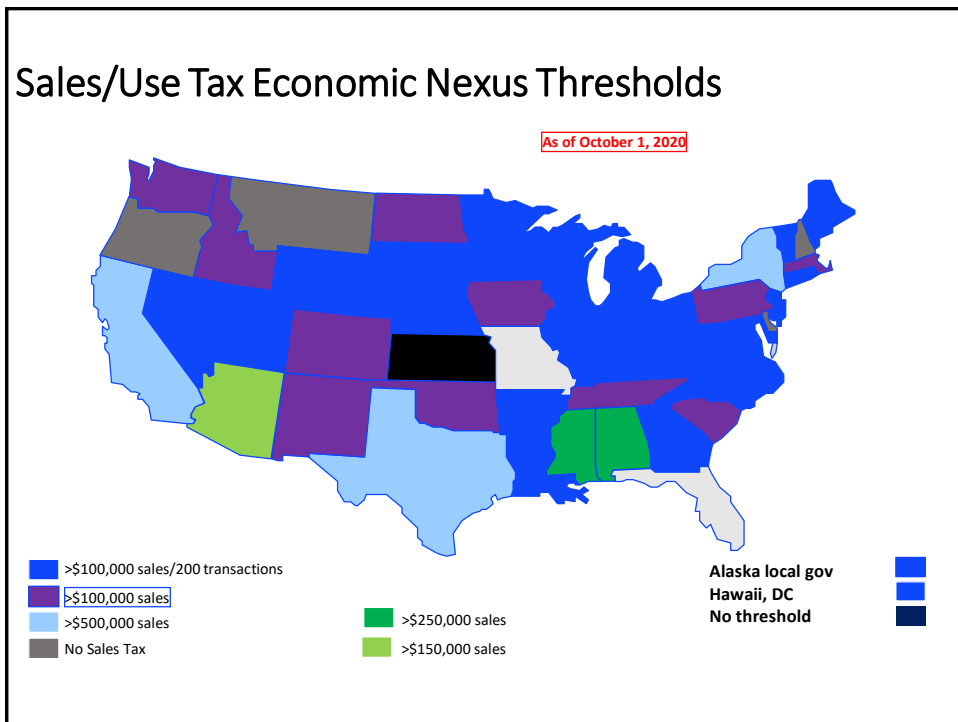


Sales/Use Tax Nexus Law Update since July 28, 2020

MTC Nexus Committee November 16, 2020

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Director, National Nexus Program
Multistate Tax Commission
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Economic nexus statutes 2020

Threshold >\$100,000 sales/yr.

Tennessee SB 2932 reduced economic nexus threshold from \$500,000 sales/prior 12 mos. (eff. 10/1/2019) to >\$100,000 sales/prior 12 mos. (eff. 10/1/2020)

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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. Pennsylvania and Illinois have implemented.

The SST Governing Board has amended the SSUTA to adopt policies to encourage non-SST states to use its centralized registration and simplified electronic return system.

Website: www.streamlinedsalestax.org

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Local Sales Tax Simplification

Alabama Simplified Sellers Use Tax—flat rate for remote sellers

Texas Comptroller—flat rate for remote sellers

Alaska Remote Seller Sales Tax Commission—centralized administration of some “home rule” local taxes

Colorado Department of Revenue—Sales and Use Tax System (SUTS), “one-stop” portal for remote sellers to file returns for state and participating “home rule” local jurisdictions

Louisiana Sales and Use Tax Commission for Remote Sellers—centralized administration of “home rule” local taxes

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Remote Seller Sales/Use Tax Economic Nexus Issues

State’s sales/use tax economic nexus law effective date? See state agency website or www.streamlinedsalestax.org

Threshold based on annual sales volume only?
Alternative annual transactions threshold? Both sales volume and transactions thresholds?

Does annual sales volume threshold include gross sales? Retail sales? Taxable sales?

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More Remote Seller Sales/Use Tax Economic Nexus Issues

How are “transactions” defined (invoice, leases, subscriptions)?

How soon must remote seller register and start collecting after hitting threshold?

What is the state’s measuring period for determining if the economic nexus threshold is exceeded?

Sourcing?

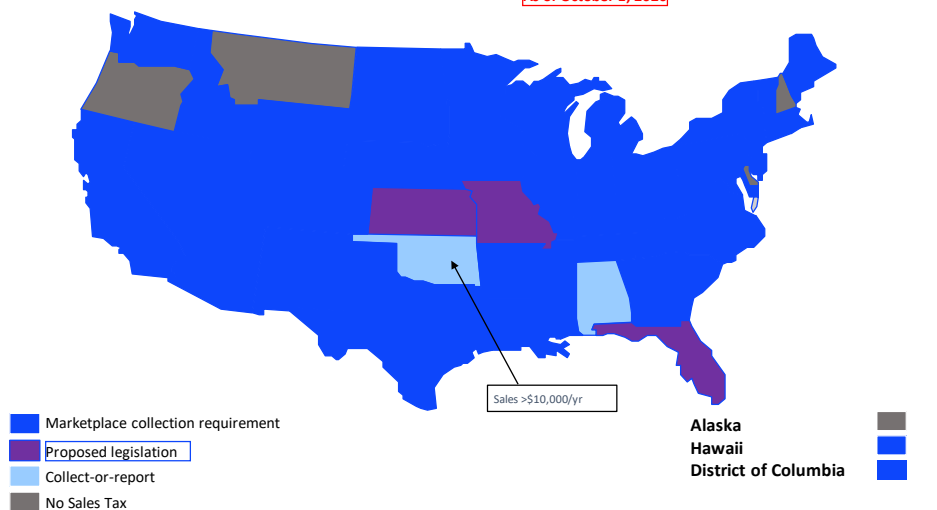
How long does “trailing nexus” last?

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Marketplace Collection Requirements... So far

As of October 1, 2020



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Marketplace Facilitator Collection Laws Enacted in 2020

- Georgia HB 276 eff. 4/1/2020
- Tennessee SB 2182 eff. 10/1/2020
- Louisiana SB 138 eff. 7/1/2020
- Mississippi HB 379 eff. 7/1/2020

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Laws enacted in 2020 extending marketplace facilitator collection to other taxes

Georgia HB 105--excise tax on for-hire and shared ground transportation trips

North Carolina HB 1080--local meals taxes

Utah SB 114 exempts food delivery services from the marketplace facilitator definition, eff. 7/1/2020

Vermont H 954--universal service charge on wireless telecommunications and prepaid wireless card sales, eff. 7/1/2021

Virginia SB 735 requires car-sharing platforms to collect excise tax on peer-to-peer car sharing transactions

West Virginia SB 163--local occupancy taxes

Tennessee SB 1778--local occupancy taxes, eff. 1/1/2021

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MTC “White Paper” on Marketplace Facilitator Laws

Updated version dated July 6, 2020 to include most recent marketplace facilitator tax collection legislation enacted by Louisiana and Mississippi, replacing prior version dated April 10, 2020.

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NCSL Model Marketplace Facilitator Collection Legislation

- Approved by NCSL Executive Committee in January 2020
- Provisions included as appendix to MTC White Paper
- Influential on marketplace facilitator collection legislation enacted in 2020 (GA TN LA MS)

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Marketplace Facilitator Issues

How is the term “marketplace facilitator” defined: narrowly or broadly?

Exclusions from the marketplace facilitator definition?

What portion of the state’s sales/use tax base does the marketplace facilitator’s tax collection obligation apply to?

Can the marketplace facilitator and seller negotiate which party has the sales/use tax collection obligation?

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More Marketplace Facilitator Issues

Can the state tax agency waive the marketplace facilitator collection obligation?

Marketplace facilitator returns

Certification requirement

Is the marketplace facilitator the “retailer” under the sales/use tax law?

Is the marketplace facilitator protected from class action lawsuits for over or under-collected sales/use tax?

Is the marketplace facilitator required to collect other applicable excise taxes?

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Marketplace Seller Issues

Does marketplace seller sales/use tax economic nexus threshold include both direct sales and facilitated sales, or only direct sales?

Does marketplace seller have to register if only facilitated sales are made through a marketplace facilitator collecting on those sales?

Does marketplace seller need to report facilitated sales on its return?

When is the marketplace seller responsible for uncollected sales/use tax?

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