



MULTISTATE TAX COMMISSION

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Nexus Program Director's Update on Significant Nexus Law Developments Since November 6, 2018

The following states have enacted economic nexus statutes similar to South Dakota's in *South Dakota v. Wayfair, Inc.*, 585 U.S. ___ (2018), and are currently enforcing them as of the dates shown:

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

Hawaii, Maine, Vermont—eff. 7/1/18

Illinois, Indiana, Kentucky, Wisconsin, North Dakota—eff. 10/1/18

New Jersey, South Dakota, North Carolina—eff. 11/1/18

DC, Iowa, Nebraska, Utah—eff. 1/1/19

Wyoming—eff. 2/1/19

Arkansas, Virginia, Rhode Island—eff. 7/1/19

Note: North Dakota eliminated its 200 transactions threshold in 2019 (SB 2191)

Threshold \$100,000:

Idaho—eff. 6/1/19

New Mexico—eff. 7/1/19

Threshold \$250,000 and 200 transactions/yr:

Connecticut—eff. 12/1/18

Threshold \$500,000 sales/yr:

California—eff. 4/1/19

The following states have enacted economic nexus statutes similar to South Dakota's, and have published future enforcement dates as shown:

Louisiana (TBD)

The following states view their current nexus statutes or regulations, with the *Wayfair* decision, as requiring remote sellers to collect their sales/use taxes, and have implemented enforcement as of the dates shown:

Alabama (regulation--\$250,000/yr. threshold; effective 10/1/18; Department of Revenue statement published 7/3/18)

Maryland Comptroller's Office (emergency reg 03.06.01.33 requires remote sellers w/> \$100,000 sales or 200 transactions/yr. to collect, eff. 10/1/18)(codified at SB 728)

Mississippi reg (>\$250,000 sales/yr, effective 9/1/18—guidance published 8/6/18)

Nevada reg (>\$100,000 sales/yr. or 200 transactions/yr., eff. 10/1/18; Legis. Commission approved on 9/27/18); AB 447 introduced

South Carolina Rev Ruling # 18-14 (>\$100,000 sales/yr. eff. 11/1/18)

Washington (notice posted 8/3/18 requires remote sellers w/> \$100,000 sales or 200 transactions to collect, eff. 10/1/18)(200 transactions threshold eliminated in 2019 by SB 5581)

The following states have issued notices implementing *Wayfair* under existing statutory authority:

Michigan (Bulletin 2018-16 requires remote sellers w/>\$100,000 sales or 200 transactions to collect, eff. 10/1/18)

Nebraska FAQ eff. 1/1/19 (SST); LB 284 enacted, eff. 4/1/19

North Carolina guidance eff. 11/1/18 (SST); SB 56 enacted 3/20/19

Minnesota (news release published 7/25/18 requires remote sellers w/>\$100,000 sales and 10 transactions, or 100 transactions to collect, eff. 10/1/18)

California (>\$100,000 sales/yr. or 200 transactions/yr.), notice eff. 4/1/19; AB 147 sent to governor, \$500,000/yr economic nexus threshold, eff. 4/1/19, including marketplace facilitator collection, eff. 10/1/19

Threshold >\$300,000 sales and 100 transactions/yr:

New York Notice N-19-1, published 1/15/19

Threshold >\$10,000 sales/yr:

Oklahoma FAQ published 8/31/18

The following states have issued regulations requiring remote seller collection requirements, not yet implemented:

Tennessee regulation (\$500,000/yr. threshold) (litigation pending) SB 82, HB 733 introduced to require remote sellers to collect when sales/yr. exceed \$100,000 or 200 transactions, allows flat 2.25% local rate on remote sales, eff. 1/1/20

Texas regulation (\$500,000/yr. threshold, eff. 10/1/19) reg 34 TAC Section 3.286 eff. 10/1/19; SB 70 introduced, HB 2153 passed House, allows flat local rate on remote sales

Colorado emer. reg (>\$100,000 sales/yr.) —enforcement extended to 6/1/19; HB 19-1240 introduced

Pennsylvania Bulletin 2019-01 (>\$100,000 sales/yr._no separate transaction threshold), including marketplace facilitator collection, eff. 7/1/19

The following states have not yet published guidance on sales/use tax economic nexus:

Arizona: HB 2702 first reading, economic nexus (>\$100,000 sales volume/200 transactions/yr)

Florida: SB 1112 introduced, economic nexus (>\$100,000 sales/200 transactions/yr) eff. 7/1/19

Kansas: SB 22 vetoed by governor, proposed economic nexus (>\$100,000 sales/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) eff. 10/1/19

The following states have enacted provisions requiring the remote seller to either collect or comply with notice/reporting requirements:

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

The following states have pursued legislation in 2019 to eliminate notice/reporting and require remote seller collection:

Georgia: HB 182 sent to governor, requires remote sellers to collect if sales >\$100,000sales/200 trans/yr., eff. 1/1/20

Kentucky: HB 354 CCR enacted, repealing notice requirement

Oklahoma: SB 513 passed Senate, HB 2352 (sales>\$100,000/yr) passed House, HB 2201 passed House

Rhode Island: S. 251 Sub A, H. 5278 Sub A enacted, requires remote sellers with sales >\$100,000 sales/200 trans./yr. to collect

Washington: SB 5581 enacted, eff. 7/1/19

The following states are implementing “cookie nexus” provisions:

Massachusetts is enforcing its “cookie nexus” regulation 830 CMR 64H.1.7 (\$500,000/yr. threshold)(effective 10/1/17) (Massachusetts Department of Revenue Statement, 6/22/18); challenges pending in Virginia Circuit Court (*Crutchfield Corp. v. Harding*, No. CL 1700145-00) and Massachusetts Superior Court (*Blue Nile LLC, et al. v. Harding*, motion to dismiss filed 2/25/19)

Ohio (litigation resolved, \$500,000/yr. threshold plus “cookie nexus,” effective 1/1/18)

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

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

The following states have enacted “click-thru nexus” provisions:

**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)

The following states have enacted collection requirements to replace “click-thru” nexus:

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

Idaho: HB 259 sent to governor, would implement economic nexus eff. 6/1/19 for sales >\$100,000/yr.

Washington: SB 5581 enacted, repeals Washington’s “click-thru nexus” provision

The following states have enacted laws requiring marketplace facilitators to collect on facilitated sales:

Enacted in 2017:

Minnesota (HF 1 news release published 7/25/18--collect eff. 10/1/18 if place of business in MN)

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)

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)

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)

Iowa (SF 2417 collect/referrer report if sales/yr \$100,000/200 trans eff. 1/1/19)

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

New York (S. 1509, part G) eff. 6/1/19

Arkansas (SB 576) **Kentucky** (HB 354) **New Mexico** (HB 6) **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

California (AB 147) **North Dakota** (SB 2338) **Utah** (SB 168) eff. 10/1/19

Hawaii (SB 396/SD 1) eff. 1/1/20

The following states have litigation pending involving litigation over whether current law requires marketplace facilitators to collect:

Louisiana (*Normand v. Wal-Mart.com* litigation re obligation of marketplace facilitator to collect at parish level as “dealer;” Wal-Mart’s petition to review to Louisiana S. Ct. challenged as untimely)

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

The following states have issued agency opinions that marketplace facilitators are required to collect:

New York State Tax and Finance Dept. Adv. Op. TSB-1-19(1)S 3/7/19: software vendor operating online marketplace facilitating taxable sales by other software vendors considered co-vendor, required to collect.

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.”

Wisconsin Dept. of Rev. FAQ (eff. 10/1/18): A marketplace that is a remote seller but does not qualify for the small seller exception (>\$100,000 sales/200 transactions/yr) is required to register and collect Wisconsin sales or use tax on taxable sales made on behalf of third-party sellers.

The following states have legislation pending proposing marketplace facilitator collection requirements:

Arizona: HB 2702 first reading

Florida: SB 1112 introduced 2/15/19, eff. 7/1/19

Georgia: HB 276, SB 128 passed differing versions, no agreement, session ended

Indiana: HB 1352 introduced, SB 322 amended and passed House, eff. 7/1/19; Senate passed SB 322 on 2/20/19

Kansas: SB 22 vetoed by governor, proposed marketplace collection

Louisiana: HB 524, HB 547 pre-filed 3/20/19

Maine: HB 1452 introduced 4/2/19

Maryland: SB 728 sent to governor, eff. 10/1/19

Massachusetts: Governor's FY 19 Budget Message; H. 1, S. 1637, S. 7762 introduced

Missouri: SB 46, 50 passed Sen. W & M Com. 2/12/19, eff. 1/1/20

Nevada: AB 445 introduced 3/25/19

North Carolina: SB 622 introduced

Oklahoma: SB 513 passed Senate, HB 2352 and HB 2201 passed House (option to collect or report)

South Carolina: SB 214 passed Senate 3/13/19

Texas: SB 890 introduced, HB 1525 passed House, eff. 10/1/19

Vermont: H 117 introduced

Wisconsin Governor proposed marketplace facilitator collection requirements in FY 2019-21 Biennial Budget Proposal 2/28/19

Other State Legislation

Hawaii

Hawaii Legislature approved S.B. 495 establishing that a business making \$100,000 worth of annual sales into the state, or over 200 transactions, is presumed to have economic nexus for corporate income tax.

Massachusetts

H. 4841 will take effect July 1 and requires short-term rentals to be registered with the state and have insurance. The new law also expands the state's 5.7 percent occupancy excise tax to short-term rentals.

Nebraska

In LB 57, the Nebraska Tax Commissioner is authorized to enter an agreement with an online hosting platform to allow the platform to collect state and local sales tax and lodging tax on behalf of the sellers and hotel operators.

New Hampshire

H.B. 265 and H.B. 698 were introduced to propose obstacles for blocking out-of-state tax authorities from imposing sales tax collection obligations on remote sellers in the state.

Utah

In SB 28, Utah has expended its definition of “doing business” in the state for corporate income tax nexus purposes to include: selling or performing a service in the state; and earning income from the use of intangible property in the state.

Other Rulings or Administrative Actions

Arkansas

The Department issued Op. No. 20180926 (3/26/19), determining that a food Delivery Service for a Restaurant is operating as a courier of the food rather than a reseller of the food ordered from the Restaurant, so is not required to collect sales/use tax, which remains the obligation of the Restaurant. The customer places an order through the Delivery Service's app or website and pays the Delivery Service for the retail price of the food, the applicable taxes, and a delivery charge or booking fee. The Restaurant advises the Delivery Service of the retail price of the food and the applicable taxes to be charged. The Delivery Service remits the price of the food and the taxes to the Restaurant. Under the Restaurant's contractual agreement with the Delivery Service, the Restaurant is responsible for remitting the tax to the taxing authorities.

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Philadelphia

The City of Philadelphia amended its Business Income and Receipts Tax regulation on 1/24/19, section 103, to provide that commencing with tax years beginning January 1, 2019 and after, economic nexus will be established when the out-of-state business has Philadelphia sales within the prior year of more than \$100,000—unless protected by P.L. 86-272.

Utah

In PLR 17-005, the Department determined that an out-of-state internet seller of nutritional supplements and health foods, with an in-state research and development employee residing in and telecommuting from Utah, had nexus and was required to collect and remit sales/use tax on sales to Utah customers. However, the ruling provided for prospective application.

Other Cases

Minnesota

In *Baurley v. Fielding, Trustee*, the Minnesota Department of Revenue has petitioned for certiorari concerning the Minnesota Supreme Court's decision at 916 N.W. 2d 323 (Minn. 2018) determining that Minnesota's taxation of capital gain income from the sale of S corporation stock by a trust violated due process, based on lack of "minimum contacts" between the trust and the state. The S corporation had operations in Minnesota, the grantor was a Minnesota resident, and one of the beneficiaries was a Minnesota resident. However, during the tax year at issue, the trustee was a non-resident, the other beneficiaries were non-residents, and the trust was administered outside the state.

North Carolina

In *North Carolina v. Kimberly Rice Kaestner 1992 Family Trust*, No. 18-457, the U.S. Supreme Court granted North Carolina Department of Revenue's petition for certiorari of the North Carolina Supreme Court's decision determining that North Carolina's taxation of undistributed trust income of a non-resident trust, based on the beneficiary being a North Carolina resident, violated due process and lacked "minimum contacts." The trustee was a non-resident, the trust was administered outside the state, and the trust assets (intangibles) were located outside the state. Oral argument was held on April 16, 2019.

New York

In *In re Goldman Sachs Petershill Fund Offshore Holdings Corp.*, No TAT (H) 16-9 (GC), Goldman Sachs Offshore, a foreign corporation and an investment management company with no direct business activities in the New York City, received capital gain income from the sale of its ownership interest in Claren, a limited liability company operating as an alternative investment management company engaged in business activities in City. Goldman Sachs Offshore claimed only a passive interest in the limited liability company Claren and did not participate in its management. Goldman Sachs Offshore sold its interest in Claren, which generated a large capital gain.

Goldman Sachs Offshore did not own any real or tangible personal property in the City; had no employees in the City; and conducted no business activities in the City (apart from activities related to its investment in Claren). Claren and Goldman Sachs Offshore were not part of any unitary business. The New York City Tax Appeals Tribunal held that the City's power to tax does need not be based on the taxpayer's own activities in the City, but instead can exist on the privileges and opportunities that the City has afforded to a taxpayer's business entity operating in the City. A jurisdiction's ability to tax turns on whether nexus exists between that jurisdiction and the taxpayer's business being sold, and does not require consideration of other factors, such as unitary business between the owner entity and the sold business, for taxation to be constitutional. Nexus is sufficient. Through its nexus with the City, Claren appreciated in value and enjoyed the protection, opportunities and benefits that the City conferred to it, creating the City's right to "receive something in return." The benefits that the City provided to Claren had a rational relationship to the gain that Goldman Sachs Offshore realized on its sale of Claren, the gain was mainly attributable to the benefits provided by the City. Goldman Sachs Offshore's capital gain was subject to the City's corporate income tax.

Ohio

In *Greenscapes Home and Garden Products, Inc. v. Testa*, Ohio Ct. App., Dkt. No. 17AP-593, 02/07/2019, the Ohio Court of Appeals, Tenth District, affirmed the commercial activity tax (CAT) assessment against the taxpayer on revenue the taxpayer received from the sale of lawn and garden products that were shipped to Ohio. The taxpayer, a Georgia corporation with no Ohio locations or employees, had customers that are "big-box" national retailers such as Walmart, Home Depot, and Lowe's with distribution centers located in Ohio. The taxpayer prepared a bill of lading with the delivery address and the retailer arranges for a carrier to pick up the product at the taxpayer's facility (outside of Ohio). Once the product is loaded onto the carrier's truck, it becomes the retailer's property. The case concerned the situsing of the total gross receipts that the taxpayer receives when it sells products that are shipped by the retailer into Ohio. The taxpayer argued that the application of the CAT violated the Commerce Clause, because the transactions were insufficient to create substantial nexus with Ohio. The court ruled that under the CAT situsing statute, the gross receipts were sitused to the state, since the tangible personal property involved was ultimately received in Ohio. The taxpayer had substantial nexus with Ohio by satisfying the \$500,000 sales-receipts threshold. The court also rejected the taxpayer's Due Process argument. The taxpayer argued that even though it marketed its products to retailers who distributed the products to Ohio, it did not

purposefully direct sales to Ohio. The court held that based on the systemic sale of tangible personal property that is delivered to Ohio, there was a definite link between Ohio and the taxpayer. The taxpayer had purposefully taken advantage of the distribution ability of national retailers and knew that its products were shipped to Ohio.

Oregon

In *Santa Fe Natural Tobacco Co. v. Department of Revenue*, Oregon Tax Court, No. TC-MD 170251G, February 26, 2019, the Oregon Tax Court held that an out-of-state cigarette manufacturer had corporate excise tax nexus with Oregon and lost protection under P.L. 86-272 as a result of activities of independent contractor cigarette wholesalers in Oregon. The taxpayer had an incentive arrangement with its wholesalers, providing them cash payments for accepting cigarette carton returns from cigarette retailers. These cigarette wholesalers were considered state-law independent contractors of the taxpayer. This activity encouraged increased cigarette sales but was considered beyond solicitation.

Amnesty

Connecticut

Connecticut has enacted a “Fresh Start” program that will allow taxpayers to pay back taxes owed with no penalties, 50% interest, and limited lookback period. The program ended 11/30/18. Aaron Nicodemus, “Connecticut Lawmakers ‘Fresh Start’ Compliance Initiative,” Bloomberg BNA Daily Tax Report (12/18/17).

Indiana

Indiana offered a one-time initiative that expired on 12/31/18 for online marketplace sellers with inventory in the state to come forward, register, and receive waiver of sales/use and income/franchise back taxes, interest and penalties, except for a one-year lookback period. CCH State Tax Day (5/3/18).

New Jersey

The New Jersey Legislature enacted A. 3438 requiring that a 90-day amnesty period be established, which ended on 1/15/19, allowing payment of back taxes plus one-half of the interest due and waiver of penalties for certain taxes. Bloomberg BNA Daily Tax Report (7/4/18).

Congress and Other Federal Activities

Senators Tester (MT), Merkley (OR), Hassan (NH), and Shaheen (NH) introduced in the U.S. Senate on June 28, 2018 S. 3180 (**re-introduced 1/16/19**), the “Stop Taxing Our Potential Act of 2018,” which would essentially codify *Quill*. The senators represent states that do not impose sales tax.

Representatives Gibbs (OH) and Wilson (SC) introduced the Protecting Businesses from Burdensome Compliance Cost Act of 2018 (H.R. 6724) on September 6, 2018 (**re-introduced as H.R. 379 1/9/19**), which imposes a moratorium on enforcement of *Wayfair* until January 1, 2020, and prohibits local jurisdictions from requiring collection or reporting by remote sellers. It also imposes certain restrictions on local rates.

Representatives Sensenbrenner (WI), Eshoo (CA), Duncan (SC) and Lofgren (CA) introduced the Online Sales Simplicity and Small Business Relief Act of 2018 (H.R. 6824) on September 13, 2018 (**re-introduced in March 2019**). The bill prohibits retroactive enforcement of *Wayfair*, imposes a small business remote seller exemption of \$10 million or less in annual gross national sales, and prohibits states from enforcing *Wayfair* until they have entered into a compact approved by Congress providing for certain simplification measures for sales tax administration.

Representatives Chabot (OH) and Scott (VA) have introduced the Business Activities Tax Simplification Act of 2018 (BATSA), H.R. 6978, on September 28, 2018. The bill is similar to prior versions of the BATSA, restricting states' ability to tax multistate businesses and significantly expanding the Congressional pre-emption of state taxing power contained in P.L. 86-272 (15 U.S.C. Section 381 et. Seq.).

New House Judiciary Chair Rep. Jerry Nadler (D-NY) and ranking member Rep. Doug Collins (R-GA) have stated they have no interest in Congress getting involved in this issue post-*Wayfair*. See Ryan Prete, “2019 Outlook: New House Judiciary Leader is Hands Off on Online Sales Tax,” Daily Tax Report State (12/27/2018), *Bloomberg Tax*.

Sales Tax Nexus Update



MULTISTATE TAX COMMISSION

Richard Cram
Director, National Nexus Program
Multistate Tax Commission

Nexus Committee
April 24, 2019

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South Dakota-style 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), **Wisconsin** (SST), **North Dakota** (SST)—eff. 10/1/18

New Jersey (SST), **South Dakota** (SST), **North Carolina** (SST)—eff. 11/1/18

DC, Iowa (SST), **Nebraska** (SST), **Utah** (SST)—eff. 1/1/19

Wyoming (SST)—eff. 2/1/19

Louisiana (eff. date TBD—Dept. Bulletin 18-002)

Arkansas (SST), **Virginia, West Virginia** (SST), **Rhode Island** (SST)—eff. 7/1/19

Note: North Dakota enacted SB 2191, eliminating the “200 transactions” threshold, eff. 1/1/19

Threshold \$250,000 and 200 transactions/yr:

Connecticut—eff. 12/1/18; HB 6720 introduced to require joining SSUTA

Threshold \$100,000 sales/yr:

Idaho—eff. 6/1/19

New Mexico—eff. 7/1/19

Threshold \$500,000 sales/yr:

California—eff. 4/1/19

Economic nexus implemented by regulation/ruling

Threshold \$250,000 sales/yr:

- **Alabama** reg eff. 10/1/18
- **Mississippi** reg eff. 9/1/18

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

- **Maryland** emer. reg eff. 10/1/18 (SB 728 sent to governor)
- **Nevada** emer. reg eff. 10/1/18 (SST); AB 447 introduced
- **Washington** emer. reg eff. 10/1/18 (SST) (2019 SB 5581 enacted, eliminating “200 transactions” threshold 3/18/19, establishing \$100,000 threshold for B&O tax eff. 1/1/20)
- **Wisconsin** emer. reg eff. 10/1/18 (SST)

Threshold >\$100,000 sales/yr:

- **South Carolina** Rev Ruling # 18-14 eff. 11/1/18

Economic nexus implemented by notice

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

- **Michigan** Bulletin 2018-16 eff. 10/1/18 (SST)
- **Nebraska** FAQ eff. 1/1/19 (SST); LB 284 enacted, eff. 4/1/19
- **North Carolina** guidance eff. 11/1/18 (SST); SB 56 enacted 3/20/19
- **West Virginia** notice eff. 1/1/19 (SST); HB 2813 enacted
- **California** notice eff. 4/1/19; AB 147 sent to governor, \$500,000/yr economic nexus threshold, eff. 4/1/19, including marketplace facilitator collection, eff. 10/1/19

Threshold >\$100,000 sales and 10 transactions, or 100 transactions/yr:

- **Minnesota** notice eff. 10/1/18 (SST)

Threshold >\$300,000 sales and 100 transactions/yr:

- **New York** Notice N-19-1, published 1/15/19

Threshold >\$10,000 sales/yr:

- **Oklahoma** FAQ, published 8/31/18

Economic nexus regulations/notices not yet implemented

Threshold \$500,000 sales/yr:

- **Tennessee** reg (litigation pending)(Assoc. M.-SST); SB 82, HB 733 introduced to require remote sellers to collect when sales/yr. exceed \$100,000 or 200 transactions, allows flat 2.25% local rate on remote sales, eff. 1/1/20
- **Texas** reg 34 TAC Section 3.286 eff. 10/1/19; HB 2153 passed House, SB 70 introduced, allow flat local rate on remote sales

Threshold >\$100,000 sales/yr:

- **Colorado** emer. reg—200 transactions/yr. dropped 4/11/19, enforcement extended to 6/1/19; HB19-1240 introduced 3/12/19 proposing economic nexus (retail sales >\$100,000/yr), marketplace facilitator collection requirements, and destination sourcing with small seller exception, eff. 6/1/19
- **Pennsylvania** Bulletin 2019-01, including marketplace facilitator collection, eff. 7/1/19

Sales tax states not yet providing *Wayfair* guidance

Arizona: HB 2702 first reading, economic nexus (>\$100,000 sales volume/200 transactions/yr)

Florida: SB 1112 introduced, economic nexus (>\$100,000 sales/200 transactions/yr) eff. 7/1/19

Kansas: SB 22 vetoed by governor, proposed economic nexus (>\$100,000 sales/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) eff. 10/1/19

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 and require remote seller collection:

- **Georgia:** HB 182 sent to governor, requires remote sellers to collect if sales >\$100,000sales/200 trans/yr., eff. 1/1/20
- **Kentucky:** HB 354 CCR enacted, repealing notice requirement
- **Oklahoma:** SB 513 passed Senate, HB 2352 (sales>\$100,000/yr) passed House, HB 2201 passed House
- **Rhode Island:** S. 251 Sub A, H. 5278 Sub A enacted, requires remote sellers with sales >\$100,000 sales/200 trans./yr. to collect
- **Washington:** SB 5581 enacted, eff. 7/1/19

Home Rule Local Sales Taxes

- Colorado SB 19-006 enacted, providing for centralized electronic filing system for local sales/use taxes; HB19-1240 introduced 3/12/19 includes destination sourcing with small seller exception
- Louisiana SB 57 introduced, proposing constitutional amendment authorizing centralized collection of local sales taxes

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)
- **California:** AB 147 to governor, 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
- Click-through nexus now irrelevant? See Robert D. Plattner, "After *Wayfair*: Saying Goodbye to Click-Through Nexus," *Tax Analysts State Tax Notes* (10/1/18)

Cookie nexus

- Massachusetts** Reg 830 CMR 64 H.1.7 \$500,000 sales and 100 transactions/yr. threshold eff. 10/1/17; challenges pending in Virginia Circuit Court (*Crutchfield Corp. v. Harding*, No. CL 1700145-00) and Massachusetts Superior Court (*Blue Nile LLC, et al. v. Harding*, motion to dismiss filed 2/25/19)
- Ohio** Rev. Code § 5741.01(I)(2)(i) \$500,000 sales threshold; challenge in *American Catalog Merchants Association v. Testa*, Ohio district court, voluntarily dismissed 12/18/18
- Iowa** S. F. 2417 \$100,000/yr. sales or 200 trans./yr. eff. 1/1/19
- Rhode Island** H5175A collect or report if \$100,000sales/yr or 200 trans, eff. 8/17/17

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)
- **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)
- **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)
- **Iowa** (SF 2417 collect/referrer report if sales/yr \$100,000/200 trans eff. 1/1/19)
- **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

Idaho (HB 259) **New York** (S. 1509, part G) eff. 6/1/19

Arkansas (SB 576, including OTC collection) **Kentucky** (HB 354) **New Mexico** (HB 6) **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

California (AB 147) **North Dakota** (SB 2338) **Utah** (SB 168) eff. 10/1/19

Hawaii (SB 396/SD 1) eff. 1/1/20

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 to review to Louisiana S. Ct. challenged as untimely)

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

State Agency Opinions/Policies:

New York State Tax and Finance Dept. Adv. Op. TSB-1-19(1)S 3/7/19: software vendor operating online marketplace facilitating taxable sales by other software vendors considered co-vendor, required to collect

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”

Wisconsin Dept. of Rev. FAQ (eff. 10/1/18): A marketplace that is a remote seller but does not qualify for the small seller exception (>\$100,000 sales/200 transactions/yr) is required to register and collect Wisconsin sales or use tax on taxable sales made on behalf of third-party sellers.

2019 marketplace facilitator as collector bills

Arizona: HB 2702 first reading

Florida: SB 1112 introduced 2/15/19, eff. 7/1/19

Georgia: HB 276, SB 128 passed differing versions, no agreement, session ended

Indiana: SB 322 amended and passed House, Senate passed SB 322 on 2/20/19, eff. 7/1/19

Kansas: SB 22 vetoed by governor, proposed marketplace collection

Louisiana: HB 524, HB 547 pre-filed 3/20/19

Maine: HB 1452 introduced 4/2/19

Maryland: SB 728 sent to governor, eff. 10/1/19

Massachusetts: Governor's FY 19 Budget Message; H. 1, S. 1637, S. 7762 introduced

Missouri: SB 46, 50 passed Sen. W & M Com. 2/12/19, eff. 1/1/20

2019 marketplace facilitator collection bills cont.

Nevada: AB 445 introduced 3/25/19

North Carolina: SB 622 introduced 4/3/19

Oklahoma: SB 513 passed Senate, HB 2352 and HB 2201 passed House (option to collect or report)

South Carolina: SB 214 passed Senate 3/13/19

Texas: SB 890 introduced, HB 1525 passed House, eff. 10/1/19

Vermont: H 117 introduced

Wisconsin: Governor proposed marketplace facilitator collection requirements in FY 2019-21 Biennial Budget Proposal 2/28/19

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