

More states respond to *South Dakota v. Wayfair*



David M. Kall | Thursday, August 30, 2018

The legal environment of business is continuing to change following the U.S. Supreme Court's landmark decision in *South Dakota v. Wayfair*. [As we have reported](#), the case fundamentally alters sales and use tax obligations for many online and remote merchants. States are now free to require online and remote sellers to collect sales tax from their customers based solely upon in-state economic activity, even if they do not have a physical presence in the taxing state.

Since the *Wayfair* decision was handed down, business owners and tax experts have been watching closely for the states or Congress to respond with legislation. Last month a Congressional hearing before the U.S. House Judiciary Committee put several diverse interests on display. But [the general consensus](#) following the hearing was that federal legislation on *Wayfair* is not expected any time soon. Legal experts also have concerns regarding limitations on how far Congress may intrude on state sales taxation due to their status as separate sovereigns.

STATE ECONOMIC NEXUS LAWS

As expected, many states are moving to adopt economic nexus standards in the aftermath of the *Wayfair* case. In July [we posted](#) a list of states that have adopted economic nexus standards together with their effective dates. Since then, more states have either proposed legislation or issued administrative guidance regarding sales and use tax obligations created through economic nexus with the taxing state. Our updated list, with updates in red text, is shown below.

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- Alabama (Jan. 1, 2016), \$250,000 in in-state sales
- **California: proposed legislation would establish nexus if \$500,000 in in-state sales**
- Connecticut (July 1, 2018), 200 transactions and \$250,000 in in-state sales
- Georgia (Jan. 1, 2019), 200 transactions or \$250,000 in in-state sales
- Hawaii (July 1, 2018) 200 transactions or \$100,000 in in-state sales
- Illinois (Oct. 1, 2018) 200 transactions or \$100,000 in in-state sales
- Indiana (July 1, 2017) 200 transactions or \$100,000 in in-state sales
- Iowa (Jan. 1, 2019) 200 transactions or \$100,000 in in-state sales
- Kentucky (July 1, 2018) 200 transactions or \$100,000 in in-state sales
- Louisiana (**January 1, 2019**) 200 transactions or \$100,000 in in-state sales
- Maine (**Oct. 1, 2017**) 200 transactions or \$100,000 in in-state sales
- **Maryland (Oct. 1, 2018) proposed regulations would establish nexus if 200 transactions or \$100,000 in in-state sales**
- **Michigan (Oct. 1, 2018) administrative guidance establishes nexus if 200 transactions or \$100,000 in in-state sales**
- Minnesota (**Oct. 1, 2018**) 100 transactions or \$100,000 in in-state sales in at least 10 transactions
- Mississippi (Dec. 1, 2017) \$250,000 in in-state sales
- **Nebraska (Jan. 1, 2019) administrative guidance establishes nexus if 200 transactions or \$100,000 in in-state sales**
- **North Carolina (Nov. 1, 2018) administrative guidance establishes nexus if 200 transactions or \$100,000 in in-state sales**
- North Dakota (contingent on Wayfair ruling) 200 transactions or \$100,000 in in-state sales
- Oklahoma (July 1, 2018) \$10,000 in in-state sales
- Pennsylvania (March 1, 2018) \$10,000 in in-state sales
- Rhode Island (Aug. 17, 2017) 200 transactions or \$100,000 in in-state sales
- South Dakota (pending state Supreme Court approval) 200 transactions or \$100,000 in in-state sales
- Tennessee \$500,000 in in-state sales
- Vermont (July 1, 2017) 200 transactions or \$100,000 in in-state sales
- Washington (**Oct. 1, 2018**) \$10,000 in in-state sales
- Wyoming (July 1, 2017) 200 transactions or \$100,000 in in-state sales

NEW HAMPSHIRE RESISTS

Not all states are rushing to adopt economic nexus standards. Five states do not have a sales tax at all and view their friendly tax environment as an important economic advantage that entices companies to do business there. These states are Alaska, Delaware, Montana, New Hampshire, and Oregon.

New Hampshire, for one, is putting up a fight against states that are requiring their in-state businesses to collect sales tax from their out-of-state customers. In July 2018, the New Hampshire state Senate [unanimously passed](#) a bill designed to create barriers to taxing Granite State businesses for their online sales. But the state House of Representatives rejected it just as quickly. New Hampshire Governor Chris Sununu recently directed the State's Department of Justice to investigate the matter further and launched a website, www.nheconomy.com/nosalestax, to gather information.

We will keep you posted as the latest developments emerge.



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