

What business owners should expect following *South Dakota v. Wayfair*



David M. Kall | Thursday, July 5, 2018

Many businesses face a wave of new sales and use tax burdens in the wake of *South Dakota v. Wayfair*. The U.S. Supreme Court's decision in the case set aside 50 years of settled law to hold states may require online and direct mail sellers to collect sales tax from their consumers, whether they have a physical presence in the state or not.

Tax compliance is now more important than ever as cash-strapped states step up audit and enforcement efforts to raise tax revenue for essential government services. Our recent alert, "[What the biggest sales tax case in 25 years means for your business](#)," discusses strategies to avoid costly penalties associated with noncompliance. Most states have programs that allow vendors to voluntarily disclose potential tax liability without penalty. But businesses must first identify exposure and proactively work through these programs with tax attorneys.

For now, businesses must comply with different tax sales and use laws in thousands of state and local tax jurisdictions across the country. The good news is [compliance software is available](#) to streamline administrative and compliance burdens. And 23 states adhere to the Streamlined Sales and Use Tax Agreement, which is a multistate pact to promote uniformity among state sales and use tax laws.

WHAT BUSINESS OWNERS SHOULD EXPECT FOLLOWING SOUTH

Currently, there are 20 states, listed below with an economic nexus regime in place for their sales and use tax. In addition, many states have also adopted other taxes and regulations on remote sellers, including:

- Requirements to notify consumers as to their use tax obligations and report such information to the state
- Laws that require marketplace providers such as Amazon to collect tax on third party transactions occurring through their platforms
- Laws that require retailers with a virtual presence in the state to collect tax

But the legal environment is constantly changing, particularly following the landmark decision in *Wayfair*. Tax practitioners expect that states with a sales and use tax in place, but no economic nexus threshold, to soon adopt one. Some states may repeal the burdensome rules listed above now that economic nexus has been blessed. Should Congress step into the fray with federal legislation, we could see still further developments.

SURVEYING STATE ECONOMIC NEXUS LAWS

States adopting economic nexus standards would be wise to adopt laws mirroring the South Dakota law upheld in *Wayfair*. That law applies to sellers who, on an annual basis, deliver more than \$100,000 of goods or services into South Dakota or engage in 200 or more separate transactions for the delivery of goods or services in the state. South Dakota is also a member of the SSUTA and its law did not apply retroactively. Legal challenges could arise in states that do not follow South Dakota's blueprint, including states with aggressively low economic nexus thresholds or retroactive application of law changes.

As things stand, [Bloomberg Tax](#) reports twenty states currently have economic nexus standards, as follows:

- Alabama (Jan. 1, 2016), \$250,000 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 (contingent on *Wayfair* ruling) 200 transactions or \$100,000 in in-state sales
- Maine (Oct. 1, 2017) 200 transactions or \$100,000 in in-state sales
- Minnesota (contingent on *Wayfair* ruling) 100 transactions or \$100,000 in in-state sales in at least 10 transactions
- Mississippi (Dec. 1, 2017) \$250,000 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

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- 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 (contingent on state's Supreme Court approval, following high court Wayfair decision) 200 transactions or \$100,000 in in-state sales
- Tennessee (Currently on hold due to litigation) \$500,000 in in-state sales
- Vermont (contingent on Wayfair ruling, July 1, 2017) 200 transactions or \$100,000 in in-state sales
- Washington (July 1, 2017) \$10,000 in in-state sales
- Wyoming (July 1, 2017) 200 transactions or \$100,000 in in-state sales



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