

## Wayfair update: States begin imposing economic nexus rules as Congress mulls federal legislation



David M. Kall | Thursday, October 11, 2018

Effective Oct. 1, 2018, economic nexus rules take effect for remote sellers in 11 states, including Alabama, Illinois, Indiana, Kentucky, Michigan, Minnesota, New Jersey, North Dakota, Washington, and Wisconsin. That means that remote sellers must begin collecting sales tax in these states if they meet the state's economic nexus threshold, whether they have a physical presence in the state or not.

### **Administrative Compliance Concerns**

Industry and tax professionals are concerned with the rapid pace that many states have taken to imposing economic nexus standards. If state departments of revenue do not have the administrative resources to handle high volumes of tax registrations, it may be difficult or impossible for businesses to register in time to comply the new rules. Of course the tax burden itself could be a significant burden on small online businesses as well.

As we [reported](#) recently, Congress is expected to consider federal legislation that would address these concerns by the end of the calendar year. The bill that has been proposed would prohibit states from imposing the economic nexus standards before January 1 of next year. In addition, the bill aims to establish a small-seller exemption to economic nexus laws.

### **Trade Groups Skeptical**

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Meanwhile, some interest groups promote state, not federal, legislation to respond to the *Wayfair* case. [Bloomberg Tax](#) reported on a conference held earlier this month in St. Louis, where the National Conference of State Legislatures viewed Congressional action with skepticism.

Neal Osten, director of the NCSL's Washington office, said that "From Congress' point of view, this is a settled matter." Congress currently does not have an appetite to restrict state sales tax and collection efforts. "The courts have ruled, and Congress is not going to act," Osten said.

Potential for Congressional action aside, uniformity in state taxation could be achieved through the Streamline Sales and Use Tax Agreement. The SSUTA is a multistate pact to promote uniformity among state sales and use tax laws. In the wake of the *Wayfair* ruling, more government and industry professionals alike are calling for states to voluntarily sign on.

### Ohio Staying on the Sidelines

For its part, the state of Ohio has been relatively quiet following all the post-*Wayfair* drama. Shortly after the *Wayfair* decision was handed down in June, the Ohio Department of Taxation put out a [short statement](#) through its Twitter account.

The department's statement provides the following:

Today's decision does not have an immediate, direct impact on Ohio. The Court ruled on the laws in another state; not on Ohio's tax laws.

We anticipate that we'll see some out-of-state retailers begin to voluntarily charge and collect Ohio sales tax, but otherwise the sales tax rules and laws in Ohio will stay the same until the General Assembly decides whether or not to change them.

Tax practitioners have requested that the department issue more definitive, official guidance on its position following the case, but nothing is forthcoming at this time. We will keep you posted with all the latest developments.



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