



TaxNewsFlash

United States

No. 2018-466
October 29, 2018

KPMG report: Update on state actions responding to “Wayfair” decision (CA, CO, LA, UT, VA)

U.S. state governments have issued guidance or statements in response to the U.S. Supreme Court’s decision in “South Dakota v. Wayfair, Inc.”

In *Wayfair*, the U.S. Supreme Court overruled the physical presence nexus standard of *Quill* and *National Bellas Hess* with respect to state and local taxation of remote sales. Soon after the Supreme Court issued its decision in *Wayfair*, various states began issuing guidance or statements or began to take legislative actions in response to the decision in the *Wayfair* case. Read [TaxNewsFlash](#)

California

The California Department of Tax and Fee Administration (CDTFA) on October 24, 2018, held a meeting to seek input from businesses and practitioners on what economic thresholds the state should apply to remote sellers. The CDTFA plans to issue notices requiring businesses that meet the to-be-determined thresholds to begin collecting and remitting sales tax by early 2019. While the exact thresholds have not yet been determined, the Director of the CDTFA indicated that the thresholds outlined in the South Dakota law are favorable.

The Director further stated that existing law did not authorize the CDTFA to consider when adopting nexus thresholds, concerns such as California’s complex sales and use tax system, not being a member of the Streamlined Sales and Use Tax Agreement, and appropriate thresholds based upon California’s population. These issues, according to the Director, would be for the state legislature to consider as they are more policy in nature.

The Director of the CDTFA noted the agency is not planning to delay implementation of economic nexus until the legislature is back in session because it is “implementing legislative action from 2011, and there’s a statute on the books that [the CDTFA]

feel[s] compelled to administer.” The statute referred to applies to retailers “with substantial nexus for purposes of the Commerce Clause of the U.S. Constitution.”

Lastly, CDTFA staff noted the thresholds to be established will also apply to the local “transaction and use taxes” adopted by a number of localities and special districts. According to CDTFA staff, remote sellers meeting the nexus threshold for sales into the state would have to collect and remit sales tax at the statewide “uniform sales tax rate” of 7.25% (divided among the state and local governments) and would also have to meet the same threshold for sales into any transaction and use tax district before being required to collect and remit that district transaction and use tax. District taxes are locally adopted levies in addition to the uniform rate and can range up to 1.0%.

Colorado

Effective December 1, 2018, the Colorado Department of Revenue will adopt new [sales and use tax rules](#) providing that retailers with over \$100,000 in receipts from sales in Colorado or 200 Colorado transactions in the previous or current calendar year are considered to have substantial nexus with the state. At the same time, it is adopting a rule mandating that all sellers collect local sales tax based on the tax rate at the point of delivery for any local and special district taxes administered by the state. Specifically, when a taxable good is delivered to a Colorado address, the seller must collect local sales tax based on the tax rate in the destination jurisdiction. Sales made at a seller’s place of business will continue to be subject to tax at the rate in effect for the seller’s business location.

To comply with the new rules, sellers will need to add each applicable delivery point to their revenue online account and determine the applicable tax rate for each jurisdiction using form DR 1002.

Lastly, although not included within the new rule, the Department plans to offer a grace period through March 31, 2019, to provide sellers with sufficient time to comply with the new local tax collection rules (but not the economic nexus standard). The new local tax collection rule applies only in localities and districts in which the state administers the local tax. The Department advises sellers to contact each home rule jurisdiction for collection requirements pertaining to sales into the jurisdiction.

Louisiana

The Louisiana Sales and Use Tax Commission for Remote Sellers on October 24, 2018 held a meeting to discuss the appropriate definition of “remote seller.” The Commission had previously requested that the Louisiana Department of Revenue draft an Information Bulletin defining remote seller for purposes of the state’s economic nexus standard. Information Bulletin 18-XXX, currently in draft form, defines remote seller as “a seller who regularly sells for sale at retail, use, consumption, distribution, or for storage to be used for consumption or distribution any taxable tangible personal property, products transferred electronically, or services for delivery

within Louisiana but does not have physical presence in Louisiana.” Notably, marketplace facilitators are specifically excluded from the definition of remote seller.

According to the draft bulletin, remote sellers with cumulative annual gross receipts in excess of \$50,000, including those gross receipts of its affiliates, per calendar year must comply with the state’s use tax reporting requirements. The draft bulletin notes that remote sellers with gross revenue from Louisiana sales in excess of \$100,000, or that make 200 or more sales transactions into Louisiana, should voluntarily collect and remit sales tax on sales for delivery in Louisiana. Sellers that do so will not have to comply with the use tax reporting requirements from the date they begin to collect. The draft information bulletin notes that collection will become mandatory in the future. In July 2018, Louisiana Secretary of Revenue Kim Robinson noted the Department has targeted January 1, 2019 for an update to its processing systems that would allow the Commission to serve as the single collector of state and local sales and use tax for remote sellers as required by Louisiana statute.

Utah

The Utah Tax Commission issued [guidance](#) with regard to Senate Bill 2001, which imposes a sales and use tax collection and remittance obligation on remote sellers receiving gross revenue of more than \$100,000 from the sale of tangible personal property; any product transferred electronically; or services for storage, use, or consumption in Utah; or that has 200 or more separate transactions from such sales.

The standards set forth in Senate Bill 2001 become effective January 1, 2019. The guidance notes that for sales occurring on or after January 1, 2019, Senate Bill 2001 repeals the 18% collection discount offered to remote sellers that voluntarily collected and remitted sales tax.

Virginia

The Virginia Secretary of Finance told the tax press that the governor’s administration intends to pursue legislation in the 2019 legislature that would require remote sellers to collect tax on sales into the Commonwealth. The Secretary also indicated the legislation would be based on the South Dakota approach to economic nexus, but would likely include “some proportionality” for the size of the Virginia economy as well as a requirement for marketplace operators to collect tax on sales they facilitate.

Read an [October 2018 report](#) prepared by KPMG LLP

The information contained in TaxNewsFlash is not intended to be "written advice concerning one or more Federal tax matters" subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230, as the content of this document is issued for general informational purposes only, is intended to enhance the reader’s knowledge on the matters addressed therein, and is not intended to be applied to any specific reader’s particular set of facts. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

KPMG International is a Swiss cooperative that serves as a coordinating entity for a network of independent member firms. KPMG International provides no audit or other client services. Such services are provided solely by member firms in their respective geographic areas. KPMG International and its member firms are legally distinct and separate entities. They are not and nothing contained herein shall be construed to place these entities in the relationship of parents, subsidiaries, agents, partners, or joint venturers. No member firm has any authority (actual, apparent, implied or otherwise) to obligate or bind KPMG International or any member firm in any manner whatsoever.

Direct comments, including requests for subscriptions, to [Washington National Tax](#). For more information, contact KPMG's Federal Tax Legislative and Regulatory Services Group at + 1 202.533.4366, 1801 K Street NW, Washington, DC 20006-1301.

To unsubscribe from TaxNewsFlash-United States, reply to [Washington National Tax](#).

[Privacy](#) | [Legal](#)