



TaxNewsFlash

United States

No. 2018-481
November 5, 2018

KPMG report: More state reactions to “Wayfair” decision (NJ, NC, SC, SD, WY)

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](#)

Effective November 1, 2018, New Jersey, North Carolina, South Carolina, and South Dakota joined the list of states requiring remote sellers meeting specified economic nexus thresholds to collect and remit applicable sales and use tax.

New Jersey

The New Jersey Division of Taxation on November 1, 2018, issued [guidance](#) for remote sellers. The guidance provides that effective November 1, 2018, remote sellers must register for and collect and remit sales tax if the remote seller has during the current or prior calendar year either:

- Gross revenue from sales of taxable products or services exceeding \$100,000, or
- Sales of taxable products or services that were delivered in 200 or more separate transactions

Sellers that do not satisfy either requirement will not be required to register with the Division of Taxation.

The guidance also references Technical Bulletin 83 (discussed below), and states that remote sellers are not required to collect and remit sales tax if sales are made through a marketplace facilitator. Sellers that exceed the economic nexus threshold but are making sales solely through a marketplace must register with the Division, but can request to be placed on a non-reporting basis for sales tax.

In addition to remote sellers being required to collect sales tax, New Jersey law also requires marketplace operators to begin collecting tax on sales into the state that they facilitate beginning November 1, 2018. The Division of Taxation issued [Technical Bulletin 83](#) [PDF 256 KB] as guidance addressing the sales and use tax collection and remittance requirements for marketplace facilitators.

A “marketplace facilitator” is defined as a person that owns, operates or controls any physical or electronic marketplace and engages in certain of a broad range of activities, including, but not limited to: listing or advertising a seller’s products; providing fulfillment services; providing an electronic or physical infrastructure for making sales, and processing payments for the transaction. Effective November 1, 2018, marketplace facilitators must collect sales tax on sales of tangible personal property, specified digital products, and services delivered into New Jersey that were made by a seller using the marketplace—even if the marketplace seller is registered in New Jersey for sales tax purposes. A marketplace facilitator is required to register and collect regardless of whether it meets the economic nexus thresholds set forth for remote sellers.

Technical Bulletin 83 makes clear that marketplace sellers are not required to collect and remit sales tax on taxable products and services delivered into New Jersey if a marketplace facilitator is required to collect and remit sales tax on the transaction. However, marketplace facilitators and marketplace sellers may enter an agreement regarding which party is responsible for the collection and remittance of sales tax.

The law setting forth the marketplace collection requirement authorizes the Division to grant marketplace facilitators, upon written application and for good cause shown, a delay in their collection and reporting obligations for a period of less than 180 days. The request must explain the reasons a delay is necessary and set forth the date on which the marketplace will be in a position to collect. Technical Bulletin 83 also sets forth that marketplace facilitators will be subject to audit for all retail sales made on their platform. Marketplace sellers will not be audited for the same retail sales for which the marketplace facilitator is audited unless the marketplace facilitator is granted relief from liability because it was provided inaccurate information necessary to collect the appropriate amount of tax by the seller.

North Carolina

North Carolina has joined those other states requiring remote sellers meeting specified economic nexus thresholds to collect and remit applicable sales and use tax. North Carolina’s Department of Revenue issued guidance requiring all remote sellers with over \$100,000 of gross sales sourced to North Carolina, or 200 or more separate

transactions sourced to North Carolina in the current or previous calendar year, to collect and remit sales and use tax on sales into the state.

South Carolina

South Carolina's Department of Revenue issued guidance providing that remote sellers (including marketplace facilitators) with gross revenue exceeding \$100,000, from the sale of tangible personal property, of products transferred electronically, and of services delivered into South Carolina, in the previous or current calendar year, have economic nexus with South Carolina and have an obligation to collect and remit.

South Dakota

South Dakota's governor and attorney general announced that the *Wayfair* plaintiffs have all agreed that beginning January 1, 2019, they will collect and remit sales and use tax on South Dakota sales. Other remote sellers not specifically named in the *Wayfair* litigation that meet the economic nexus standard are required to begin remitting sales tax to South Dakota effective November 1, 2018, under the terms of special legislation passed in September 2018.

Wyoming

The Wyoming Department of Revenue on November 1, 2018, announced that the state had settled its *Wayfair*-related litigation with the taxpayers involved.

Based on [guidance](#) released by the Department in late October 2018, remote sellers will be required to collect and remit Wyoming sales tax (assuming they meet the state's economic nexus threshold) effective February 1, 2019. The threshold provides that sellers with over \$100,000 of gross revenue from Wyoming sales or 200 or more separate transactions for delivery into Wyoming are required to collect and remit sales tax—even though they have no physical presence in the state.

For purposes of the revenue threshold, gross sales includes taxable, exempt, and wholesale sales. For purposes of the transaction standard, the guidance provides that each invoice is a transaction. However, a yearly subscription paid through installments is considered a single transaction.

Read a [November 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](#)