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KPMG report: State and local follow-up to “Wayfair” decision (DC, LA, WY)

U.S. state and local 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.

District of Columbia

The District of Columbia council on November 13, 2018, voted to approve the [Internet Sales Tax Amendment of 2018](#) [PDF 32 KB]. In accordance with the District’s legislative process, the council will hold a final vote on the measure during its next meeting before sending it to the mayor for signature.

The bill would require a seller that does not have physical presence in the District to collect and remit District sales tax if the seller has, during the previous or current calendar year, gross revenue exceeding \$100,000 from the sale of tangible personal property, any product transferred electronically, or services delivered into the District, or 200 or more separate transactions from such sales in a 12-month period.

The bill also would extend the collection requirement to marketplace facilitators. Specifically, a marketplace facilitator would be required to collect and remit sales tax on all sales the marketplace facilitator makes on its own behalf and all sales the

marketplace facilitator facilitates on behalf of marketplace sellers to customers in the District of Columbia, regardless of whether the marketplace seller for whom sales are facilitated would have been required to collect sales tax had the sale not been facilitated by the marketplace facilitator.

In addition, the bill imposes tax on sales of “digital goods” which would include digital audiovisual works, digital audio works, digital books, digital codes, digital applications and games, and “other taxable tangible personal property electronically or digitally delivered.” Digital goods would be subject to tax “whether electronically or digitally delivered, streamed, or accessed and whether purchased singly, by subscription, or in any other manner, including maintenance, updates, and support.” The definition of digital goods would exclude “cable television service, satellite relay television service, or any other distribution of television, video, or radio service.”

The provisions would be effective January 1, 2019, except that the inclusion of “digital applications and games” in the sales tax base would be effective April 1, 2019. Once approved by the council and the mayor, the measure would still be subject to a 30-day review by the U.S. Congress during which time it could be vetoed via a resolution passed by both houses and signed by the president.

Louisiana

The Louisiana Sales and Use Tax Commission for Remote Sellers (Commission) in November 2018 held another meeting to consider the appropriate definition of “remote seller” to determine eligibility for the upcoming centralized collection system. The Louisiana Secretary of Revenue has targeted January 1, 2019, as the date that the Commission would begin serving as the single collector of state and local sales and use tax for remote sellers.

The Commission also circulated a revised [draft information bulletin](#) [PDF 415 KB] that includes updates and clarifications. The revised bulletin continues to define a remote seller as “a seller who regularly offers for sale at retail, use, consumption, distribution, or for storage to be used for consumption or distribution any tangible personal property, products transferred electronically, or services for delivery within Louisiana and does not have physical presence in Louisiana.”

Notably, the revised bulletin provides that although the definition of remote seller would exclude marketplace facilitators, the Commission plans to consider and submit a separate definition for marketplace facilitators and related collection and remittance obligations to the legislature during the 2019 Regular Session.

In addition, the draft bulletin explains that remote sellers with over \$50,000 in gross receipts from Louisiana sales would be subject to certain use tax reporting requirements under current law. It also noted that remote sellers with over \$100,000 in gross receipts from Louisiana sales (the state’s economic nexus threshold) would be encouraged to voluntarily register with the Department of Revenue as a remote seller/direct marketer and begin collecting a single statewide, combined state and

local tax of 8.45% on all sales into Louisiana. The draft bulletin also notes that the Commission would begin to require collection by remote sellers meeting the economic nexus threshold at some point in 2019, presumably when the Commission has finalized its decisions and the Department can receive, process, and account for funds remitted to it by remote sellers. The bulletin indicates that remote sellers will be given at least a 30-day notice prior to collection being required.

Wyoming

On November 7, 2018, the Wyoming Department of Revenue issued a revised [remote sellers bulletin](#) [PDF 249 KB]. The revised bulletin eliminates language making the economic nexus provisions effective “subject to court approval.” The Wyoming case challenging its economic nexus statute has been settled, and the corresponding injunction has been lifted. Accordingly, effective February 1, 2019, the Department will require remote sellers to collect and remit Wyoming sales and use tax if the seller has over \$100,000 of gross revenue from Wyoming sales or 200 or more separate transactions for delivery into Wyoming during the current or preceding calendar year.

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