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KPMG report: States respond to “Wayfair” decision (IA, NJ, UT)

More U.S. state and local governments have responded 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](#)

Iowa

The Iowa Department of Revenue issued [guidance](#) addressing the sales tax collection obligations for remote sellers and marketplace facilitators.

Effective January 1, 2019, remote sellers and marketplace facilitators, with gross revenue of \$100,000 or more or 200 or more separate sales transactions in the preceding calendar year (2018) in Iowa, will be required to collect and remit Iowa sales tax, including local option sales tax. The Department’s guidance provides that “remote sellers” that do not meet the threshold in 2018, but do so beginning 2019, are to register for an Iowa sales tax permit and collect sales tax and applicable local option sales tax on the “first day of the next calendar month that starts at least 30 days from the day the remote seller first exceeded” the threshold amount.

The Department employs a broad definition of “marketplace facilitators” that includes consignment stores, auctions, and online marketplaces. The guidance:

- Clarifies that marketplace sellers are not required to register for an Iowa sales tax permit or file an Iowa sales tax return, provided that the seller makes retail sales only through the facilitator and the facilitator is collecting on its behalf

- Provides that if a remote seller makes sales both on a marketplace and through other means, the remote seller must calculate the total gross revenue from the two sources or the total number of transactions to determine its sales tax obligations (In such case, the Department has posted specific [instructions](#) for filing sales tax returns)
- Requires retailers with a physical presence in Iowa that make marketplace and non-marketplace sales to collect Iowa sales tax and applicable local option sales tax on non-marketplace sales regardless of the seller's gross revenue or the number of sales transactions made because the small remote seller exception does not apply to sellers with a physical presence in Iowa

New Jersey

The New Jersey Division of Taxation posted updated [guidance](#)—including a list of “frequently asked questions” ([FAQs](#))—on its website for remote sellers.

Effective November 1, 2018, remote sellers are required to register, collect and remit sales tax if the remote seller had either (1) gross revenue from sales of tangible personal property, specified digital products, or services exceeding \$100,000, or (2) sold tangible personal property, specified digital products, or services delivered in 200 or more separate transactions, during the current or prior calendar year.

The FAQs provide that to determine gross revenue, a seller must aggregate taxable and nontaxable sales delivered into the state. Thus, a remote seller making only nontaxable retail sales will still need to register with New Jersey if it meets the nexus threshold, but can then seek to be placed on a “non-reporting basis” for sales tax purposes. A remote seller that does not meet the threshold in 2018, but does so in 2019, will be required to collect sales tax during 2019 and 2020.

Utah

The Utah State Tax Commission recently published a revised sales and use tax [guide](#) [PDF 249 KB].

Under Utah law, businesses must collect and remit sales tax if their Utah sales exceed \$100,000 or if they have more than 200 sales in Utah, during the current or prior calendar year. The guidance mandates that a business—with either physical presence or economic presence, or with a related business in Utah—must file sales tax returns for every period, despite having no tax liability for that period.

Federal tax bill, legislative proposal

In the House of Representatives, a [bill](#) was introduced to prohibit the retroactive taxation of internet commerce. This bill is a second attempt to restrict state efforts to begin collecting sales tax from remote sellers. Particularly, the bill provides that “[a] State may not impose a sales tax collection duty on a remote seller for any sale that occurred prior to June 21, 2018.”

This version of the bill does not contain language that required a \$10 million small-seller exception; delayed enforcement date of January 1, 2019, for all states; and states to join compacts like the Streamlined Sales and Use Tax Agreement.

Read a [December 2018 report](#) prepared by KPMG LLP

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