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KPMG report: State, local responses to “Wayfair” decision (DC, GA, IA, NE, UT, WV)

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](#)

Effective January 1, 2019, the District of Columbia, Iowa, Nebraska, Utah, and West Virginia joined other states requiring remote sellers meeting specified economic nexus thresholds to collect and remit applicable sales and use tax. In addition, certain retailers making sales to Georgia customers will need to collect sales tax or comply with certain notice and reporting requirements under the terms of legislation enacted that was effective beginning January 1, 2019.

District of Columbia

Legislation (the Internet Sales Tax Emergency Amendment Act of 2018) that is substantially similar to the Internet Sales Tax Amendment Act of 2018 was signed by the mayor at the end of 2018. The emergency act allows the District of Columbia to begin enforcing the various provisions immediately. The emergency act is effective for 90 days after it was signed by the mayor on December 31, 2018.

Under the emergency act, a seller that does not have physical presence in the District is required to collect and remit District sales tax if the seller has, during the previous or current calendar year, gross receipts from retail sales exceeding \$100,000 or 200 or more separate retail transactions delivered in the District, effective January 1, 2019. The emergency act also imposes sales and use tax on digital goods including digital audiovisual works, digital audio works, digital books, digital codes, digital applications and games, and “other taxable tangible personal property electronically or digitally delivered.”

Effective April 1, 2019, the District will extend the collection requirements to marketplace facilitators. Specifically, a marketplace facilitator will be required to collect and remit sales tax on all sales made on its own behalf and on sales it facilitates on behalf of marketplace sellers to customers in the District, regardless of whether the marketplace seller is required to collect sales tax. The Office of Tax and Revenue released a guidance addressing the economic nexus provisions.

Georgia

Beginning January 1, 2019, remote sellers receiving more than \$250,000 in gross revenue or engaging in 200 or more separate retail sales, from the retail sale of tangible personal property to be delivered electronically or physically, must either collect and remit Georgia sales tax or comply with the state's notice and reporting requirements. To comply with the state's notice and reporting requirements, the remote seller (1) must provide notice to each potential purchaser immediately prior to the sale that Georgia sales or use tax may be due; (2) send a sales and use tax statement, on or before January 31, 2020, to each purchaser who completed one or more retail sale with such seller that totaled \$500.00 or more in aggregate during the prior calendar year; and (3) and on or before January 31, 2020, file a copy of each sales and use tax statement with the Department of Revenue.

Iowa

Iowa requires remote sellers and marketplace facilitators, with gross revenue of \$100,000 or more or with 200 or more separate sales transactions from sales of tangible personal property, services, or specified digital products, in the current or preceding calendar year, to collect and remit state and local option sales tax. Remote sellers that exceed either threshold after January 1, 2019, must collect Iowa sales tax and applicable local option sales tax starting on the first day of the next calendar month that starts at least 30 days from the day the remote seller first exceeded the small remote seller exception.

Nebraska

Nebraska requires remote sellers engaged in business in the state (defined by statute) and having more than \$100,000 of sales into Nebraska or 200 or more separate transactions for delivery into the state annually to collect and remit sales tax.

Utah

Under Utah law, remote sellers must collect and remit sales tax if their Utah sales from the sale of tangible personal property, products transferred electronically, or services exceed \$100,000 or if they have more than 200 sales from such transactions in Utah, during the current or prior calendar year.

West Virginia

West Virginia has established collection and remittance obligations for remote sellers delivering more than \$100,000 of goods or services into West Virginia, or engaging in 200 or more separate transactions for the delivery of goods and services into West Virginia during current or preceding calendar year. Remote sellers that met the threshold during calendar year 2018 are required to start collecting and remitting tax starting January 1, 2019.

Wisconsin

The Wisconsin Department of Revenue updated its "remote seller common questions" webpage to add two additional questions on marketplace sales (questions 10 and 11). The updated questions clearly indicate that Wisconsin imposes a sales tax collection obligation on marketplace providers for sales made through their marketplaces by third party sellers. A marketplace provider is considered to be a retailer pursuant to Wis. Stats. sec. 77.51(13)(c)—that provision allows the Department to

consider any “representative” of a seller as the “retailer” if it determines that such classification is “necessary for the efficient administration” of the sales tax law. An earlier version of the webpage was not definitive as to whether the state imposes a collection obligation on marketplace facilitators.

Read a [January 2019 report](#) prepared by KPMG LLP

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