



# TaxNewsFlash

## United States

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## KPMG report: More states respond to “Wayfair” decision (MO, PA, SC, TX, VA)

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](#)

### Legislation proposed or introduced

Various states’ legislative sessions have convened or are about to begin for 2019, and several state legislatures—including Missouri, South Carolina, Texas, and Virginia—have proposed a legislative response to the *Wayfair* decision.

- **Texas:** A [draft bill](#) would amend the definition of a “seller” and “retailer” to include marketplace providers. Under the draft bill, effective October 1, 2019, marketplace providers would be obligated to collect and remit sales tax and provide “collection certificates” to marketplace sellers certifying that the marketplace provider will assume the rights and duties of the seller with regard to sales made through the marketplace. All sales made by a marketplace provider would be sourced using destination-based sourcing.
- **Virginia:** [House Bill 1722](#) [PDF 285 KB] and [Senate Bill 1083](#) [PDF 285 KB] would impose a collection and remittance obligation on remote sellers and marketplace facilitators with gross revenue exceeding \$100,000 or at least 200 separate sales transactions in Virginia in the current or preceding calendar year.
- **Missouri:** Three bills—[House Bill 41](#) [PDF 63 KB], [Senate Bill 46](#) [PDF 6 MB], and [Senate Bill 50](#) [PDF 327 KB]—have been introduced to require remote sellers and/or marketplace facilitators to collect tax based on an economic nexus threshold of \$100,000 or more in gross revenue from sales, or 200 or more transactions into Missouri in the current or preceding calendar year. Senate

Bill 50 would also establish a simplified remote sales tax program in which sellers meeting the economic nexus threshold but having no physical presence in Missouri could collect a 6.5% tax on all sales into the state in lieu of collecting individual local taxes.

- **South Carolina:** [Senate Bill 214](#) would impose a sales tax collection and remittance obligation on marketplace facilitators and remote sellers that “meet constitutional standards for economic nexus.” Note that the South Carolina Department of Revenue issued economic nexus guidance that imposes a sales tax collection and remittance obligation on remote sellers that have gross revenue from sales of tangible personal property, products transferred electronically, and services delivered into South Carolina exceeding \$100,000, effective November 1, 2018. In the guidance, remote seller is defined such that it also includes marketplace facilitators meeting the economic nexus requirements.
- **Federal:** A federal bill was introduced to limit the ability of states to impose a sales tax collection and remittance obligation upon remote sellers. The bill, [Protecting Business from Burdensome Compliance Cost Act of 2019](#) [PDF 40 KB] is substantially similar to H.R. 6724, Protecting Businesses from Burdensome Compliance Cost Act of 2018, which was introduced in the 115th Congress and did not advance. If enacted, the bill would prohibit states from requiring non-physical presence sellers to collect and remit until after the effective date. The bill would also require states to make certain simplifications for remote sellers.

## Pennsylvania

The Department of Revenue issued [Sales and Use Tax Bulletin 2019-01](#) [PDF 93 KB] (January 8, 2019), which revises Pennsylvania’s current “collect or report” provisions. Under legislation enacted in October 2017, a remote seller or marketplace facilitator with more than \$10,000 in taxable sales into Pennsylvania must elect to: (1) register, collect, and remit sales tax, or (2) comply with use tax notice and reporting requirements.

Under the recently issued bulletin, effective July 1, 2019, the Department will require sellers with gross sales exceeding \$100,000 into Pennsylvania in the prior 12 months to begin collecting and remitting sales tax. The economic nexus threshold also applies to marketplace facilitators with no physical presence in Pennsylvania.

- For purposes of determining whether the sales threshold is met, marketplace facilitators must aggregate facilitated and direct sales.
- Marketplace sellers with no physical presence in Pennsylvania need to evaluate whether they meet the threshold based on direct sales and those sales on which a marketplace facilitator did not collect sales tax on its behalf.
- The Department will certify service providers that will offer software and perform services for sellers.
- Vendors relying on the certified service providers for determining the taxability of a product and for registering, collecting, reporting and remitting sales tax will be relieved of liability upon audit.
- Remote sellers and marketplace facilitators exceeding the more than \$100,000 of gross sales economic nexus threshold will no longer be able elect to collect or report. However, the election option is still applicable to remote sellers and marketplace facilitators that have over \$10,000 in taxable sales into Pennsylvania.

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

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