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KPMG report: State actions, economic nexus for remote sales

Eight months after the U.S. Supreme Court's landmark decision in "South Dakota v. Wayfair," states continue to enact legislation and issue guidance in response to the decision.

- Lawmakers in three states—Florida, Kansas, and New Mexico—have proposed legislation that would, among other things, establish a sales tax collection and remittance obligation on remote sellers and marketplace facilitators.
- Proposed legislation in five other states—Georgia, Kentucky, Maryland, Texas, and Utah—would expand the state's existing economic nexus thresholds and sales tax collection and remittance obligations to marketplace facilitators.

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.

California

Lawmakers in California have proposed amended Assembly Bill 147 to define "marketplace facilitator" and to provide that a marketplace facilitator would be considered the seller and retailer for each sale facilitated through its marketplace. Assembly Bill 147 would amend the definition of a "retailer engaged in business in California" to include retailers and marketplace facilitators that have a cumulative sales price from sales of tangible personal property for delivery into California that exceeds \$500,000. If enacted, the provisions in Assembly Bill 147 applicable to marketplace facilitators would be effective October 1, 2019, and the provisions applicable to retailers would be effective April 1, 2019.

Under existing California authority, the California Department of Tax and Fee Administration has been requiring remote sellers with over \$100,000 of sales into California, or 200 or more separate transactions into California, to collect sales and use tax effective April 1, 2019.

Maryland

A representative from the state comptroller's office publicly stated that a "wait-and-see approach" was being taken with regard to auditing remote sellers, and that this approach was partly due to the irregularity of filings and that it may be "too early to put out an all-out audit of companies that may not be registered."

There has been an increase in the number of remote sellers that have registered each month since Maryland's economic nexus regulations took effect on October 1, 2018. Specifically, the comptroller's office has found that about 2,300 remote sellers have registered with the state over a three-month period. The comptroller's office plans to provide guidance based on various questions it has received from remote sellers and proposed legislation.

South Dakota

The Department of Revenue issued a "Marketplace Bulletin" outlining the obligations imposed on certain marketplace providers effective March 1, 2019, under the terms of legislation passed in a special legislative session in 2018. The Department also released information indicating that tax collections from remote sellers increased by over \$1 million in each of the first two months since its economic nexus requirements took effect on November 1, 2018.

Tennessee

There are proposed bills that would, among other things, impose collection obligations on remote sellers that meet an over \$100,000 sales / 200 transactions threshold. Tennessee currently has an economic nexus rule with a higher standard that is not enforceable absent legislative approval.

Wyoming

The governor signed H.B. 69 that effective July 1, 2019, requires marketplace facilitators exceeding the state's economic nexus threshold of \$100,000 in gross revenue or 200 or more retail sale transactions to collect sales and use taxes on sales into the state.

A marketplace facilitator exceeding either of these thresholds will be treated as a vendor for tax collection purposes and will be required to collect tax on all taxable sales it makes or facilitates on behalf of a marketplace seller. A marketplace facilitator is defined as:

...any person that facilitates a sale for a marketplace seller through a marketplace by: (1) offering for sale by a marketplace seller ... [taxable] tangible personal property, admissions or services and (2) directly, or indirectly ... collecting payment from a purchaser and transmitting the payment to the marketplace seller, regardless of whether the person receives compensation or other consideration in exchange for facilitating the sale or providing any other service.

The legislation also relieves a marketplace facilitator of liability for failing to collect or remit sales tax as a result of incorrect or insufficient information provided by a marketplace seller, provided the relief granted does not exceed 5% of the total sales tax due from the marketplace facilitator. If such relief is granted, the liability shifts to either the marketplace seller or purchaser. However, no relief is granted if the marketplace seller is affiliated with the marketplace facilitator.

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

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