



TaxNewsFlash

United States



No. 2019-204
April 29, 2019

KPMG report: Economic nexus legislative update (California, Colorado)

State lawmakers continue to enact economic nexus legislation to take advantage of the authorization contained in the U.S. Supreme Court's decision in "South Dakota v. Wayfair, Inc."

California

The governor on April 25, 2019, signed Assembly Bill 147 that requires remote retailers to collect and remit state and local sales and use taxes as well as district use taxes if, in the preceding or current calendar year, the retailer (including sales made into California by persons related to the retailer) has total combined sales of tangible personal property for delivery in California that exceed \$500,000.

Prior rules: The California Department of Tax and Fee Administration (CDTFA) previously issued guidance requiring retailers meeting a \$100,000 or 200 transactions threshold to begin collecting and remitting use taxes on sales made to California customers effective April 1, 2019. Also effective April 1, 2019, under the CDTFA guidance, any retailer with sales into a local California use tax district exceeding the \$100,000 / 200 transactions threshold was considered to be engaged in business in that district and was required to collect that district's use tax. If the remote retailer did not meet the threshold in a particular district, it was not required to collect that district's tax.

Under Assembly Bill 147, retailers that meet the statewide economic nexus threshold (over \$500,000 in sales) are deemed "engaged in business" in all local California taxing districts and must collect district taxes on all sales into all districts.

Effective date issue: The provisions of Assembly Bill 147 affecting remote sellers are effective April 1, 2019. However, given that the bill was signed on April 25, 2019, there is some uncertainty over the transition for sellers that met the CDTFA's threshold, but that do not meet the Assembly Bill 147 threshold. The legislation includes a provision that it "shall not have any retroactive effect."

Marketplace facilitators: Assembly Bill 147 also requires marketplace facilitators to begin collecting and remitting tax on sales made through the marketplace effective October 1, 2019. The term "marketplace facilitator" is broadly defined, and a marketplace facilitator will be considered the seller and retailer for each sale facilitated through its marketplace. There are some provisions providing

penalty relief for marketplace facilitators. Specifically, a marketplace facilitator may not be liable for failing to collect and remit the correct amount of sales tax if it can demonstrate that it made a reasonable effort to obtain accurate information and that any error in collecting and remitting the tax was due to the seller providing insufficient or incorrect information to the marketplace facilitator. This protection does not apply if the seller and the marketplace are related.

Colorado

The governor on April 12, 2019, signed Senate Bill 6 that requires the Office of Information Technology and the Department of Revenue to establish an “electronic sales and use tax simplification system” to be used for the acceptance and processing of returns and payments for state and local jurisdiction sales and use taxes.

Currently, the Department of Revenue administers both the state-level sales and use tax and the local-level sales and use taxes for over 200 counties, cities, and special districts. In addition, there are approximately 70 “home rule” jurisdictions in the state, each of which administers its own sales and use tax.

The new system would eventually be used by both the state and home-rule jurisdictions for receiving and processing returns and payments. Specifically, after the system is online, the General Assembly intends for at least three local home-rule jurisdictions to voluntarily use the system—this number would increase over the three succeeding years until all home-rule jurisdictions are voluntarily using the system.

The legislation also provides about \$18 million in appropriations for FY 2020 and FY 2021 to develop and initiate the system (including \$800,000 to the Department of Revenue to develop a geographic information system data base to track taxing district boundaries and rates).

Other legislation: Colorado House Bill 1240 (which would codify the Department’s current economic nexus threshold and extend collection and remittance obligations to marketplace facilitators) has been passed by the House and is pending in the Senate.

If enacted, effective June 1, 2019, the bill would amend the definition of “doing business in this state” to include persons that have made in excess of \$100,000 of retail sales of tangible personal property, commodities, and services in the previous calendar year. The bill, however, would not codify the Department’s 200-transaction threshold. Moreover, effective October 1, 2019, House Bill 1240 would impose a collection and remittance obligation on a marketplace facilitator if the economic nexus threshold is exceeded.

Finally, House Bill 1240 would codify the Department’s new destination-based sourcing provisions that are currently outlined in a regulation.

Read an [April 2019 report](#) prepared by KPMG LLP

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