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KPMG report: Economic nexus legislation, remote sales (Georgia, South Carolina, Tennessee)

State lawmakers in Georgia, South Carolina, and Tennessee turned to address economic nexus legislation to take advantage of the authorization contained in the U.S. Supreme Court's decision in "South Dakota v. Wayfair, Inc."

In addition, a rapidly increasing number are imposing the tax collection obligation on what are described as "marketplace facilitators" or "marketplace providers."

Georgia

House Bill 182 that addresses the obligations of remote sellers was signed into law.

In 2018, prior to *Wayfair*, Georgia enacted legislation requiring remote sellers with greater than \$250,000 in revenue from retail sales or 200 or more separate retail sales in Georgia, either to collect sales tax or to comply with notice and reporting requirements beginning January 1, 2019. Enactment of House Bill 182 reduces the nexus threshold to \$100,000 in gross revenues from retail sales or 200 retail transactions for the rule to collect and remit sales tax on deliveries into Georgia, effective January 1, 2020. The legislation also eliminates the existing "collect or report" provisions.

South Carolina

The governor signed Senate Bill 214 to codify the Department of Revenue's position with regarding marketplace facilitators.

South Carolina Revenue Ruling #18-14 provides that a remote seller and marketplace facilitator with gross revenue exceeding \$100,000 from the sale of tangible personal property, products transferred electronically, and services delivered into South Carolina, in the previous or current calendar year, were considered to have nexus with the state beginning November 1, 2018, and thus would be required to collect tax on goods and services sold or facilitated into South Carolina.

Senate Bill 214 amends the definition of a "retailer" and "seller" to include a person "operating as a marketplace facilitator."

Previously, the Department of Revenue in 2017 made an assessment against a major marketplace facilitator, contending that under South Carolina law (prior to *Wayfair*) the marketplace was effectively making a consignment sale and, therefore, was responsible for collecting tax on the sales it facilitated. Senate Bill 214 states (in the preamble) that it is not intended to affect the applicability of South Carolina law to any litigation or audit currently in process. Senate Bill 214 was effective immediately when signed by the governor (April 26, 2019).

Tennessee

The General Assembly approved House Bill 667 that, if signed by the governor, would authorize the Department of Revenue to enforce an economic nexus rule that was first issued over two years ago.

In February 2017, the Department proposed Rule 129 requiring remote sellers with over \$500,000 in sales into the state in the current or previous calendar year to collect tax on sales into the state. The proposed rule was challenged in court by certain direct marketers, and the legislature passed a law in 2017 preventing enforcement of the rule until subsequently approved by the legislature. The court challenge was ultimately dismissed, and House Bill 667 allows enforcement of Rule 129 effective July 1, 2019.

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

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