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KPMG report: Franchise tax nexus, proposed changes (Texas)

The Texas Comptroller—in response to the decision of the U.S. Supreme Court in “South Dakota v. Wayfair, Inc.”—issued draft proposed amendments to TAC § 3.586 concerning franchise tax nexus.

Historically, the Comptroller applied a physical presence nexus standard for franchise tax purposes. In a 2018 ruling issued post-*Wayfair*, the Comptroller clarified that, despite the *Wayfair* decision, Texas “has not moved away from the physical presence requirement for franchise tax at this time.”

The draft proposed amendments would revise the regulation to provide that a foreign (non-Texas) taxable entity with gross receipts from business concluded in Texas of \$500,000 or more has Texas nexus, even if the entity has no physical presence in the state.

A taxable entity would be deemed to be “doing business” in Texas on the earliest of: (1) the date the entity has physical presence; (2) the date the entity obtains a use tax permit; or (3) the first day of the accounting period in which the entity has gross receipts from business concluded in Texas in excess of \$500,000.

Under the proposed regulatory amendment, the Comptroller’s office would apply the economic nexus standard beginning with reports due on or after January 1, 2020. Comments on the proposed regulation must be received no later than 30 days from the date of the proposed regulation in the state’s register.

KPMG observation

The Comptroller’s position has historically been that Pub. L. No. 86-272 does not apply for franchise tax purposes. Thus, under an economic nexus standard, remote sellers of tangible personal property with no physical presence in Texas would be deemed to have nexus and will not be able to claim Pub. L. No. 86-272 protection.

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

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