



## SALT INSIGHTS

Jurisdiction: California  
Tax Type: Sales And Use Tax  
Issue: *Wayfair* Update - Sales & Use Tax Collection Requirements  
Date: February 7, 2019

### SYNOPSIS:

The decision in *South Dakota v. Wayfair, Inc.* ("*Wayfair*"), has encouraged California to expand its doing business determination for sales and use tax collection and filing obligations. Beginning April 1, 2019, where a retailer located outside of California meets certain thresholds, they are required to collect and remit sales and use tax if, during the preceding or current calendar year:

- The retailer's sales into California exceed \$100,000, or
- The retailer made sales into California in two hundred (200) or more separate transactions.

An out-of-state retailer reaching either of the above sales thresholds is deemed to be engaged in business in California pursuant to Revenue and Taxation Code section 6203 and the U.S. Supreme Court's decision in *Wayfair*.

Notwithstanding the *Wayfair* decision, retailers with a physical presence in California are still required to be registered with the California Department of Tax and Fee Administration ("CDTFA"). Examples of a physical presence includes, but are not limited to, maintaining inventory or office locations in California, representatives operating in California for purposes of taking orders, making sales or deliveries, or installing or assembling tangible personal property, or leases of equipment, including computer servers, in California.

### INSIGHT:

*Wayfair* continues its impact on the state and local tax landscape with California's new sales and use tax collection requirements which applies to any remote sellers that sell tangible goods for delivery into California such as on-line retailers, mail-order catalogs, telephone, or by any other means. However, California's expanded doing business determination for remote sellers is not retroactive, it applies only to sales on and after April 1, 2019. For retailers already registered to collect California use tax, there is no change in their registration and collection obligations as a result of the recent *Wayfair* decision.

*Wayfair* continues to affect a greater number of states to implement a myriad of new sales and use tax rules can be complex and should be discussed with a state and local tax professional. Contact SimekScott.

### CONTACT:

Eric Drew  
Principal - San Francisco  
O: 628.243.1763  
E: [ericdrew@simekscott.com](mailto:ericdrew@simekscott.com)

Scott Ambrosino  
Principal - New York  
O: 917.512.8395  
E: [scottambrosino@simekscott.com](mailto:scottambrosino@simekscott.com)

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SimekScott LLP  
1412 Broadway | 21st Floor  
New York, NY 10018

SimekScott LLP  
211 W Wacker Dr. | Suite 300  
Chicago, IL 60606

SimekScott LLP  
100 Pine St | Suite 1250  
San Francisco, CA 94111