

SALT INSIGHTS

Jurisdiction: Michigan
Tax Type: Sales Tax
Issue: Wayfair Update - Michigan Responds
Date: August 17, 2018

SYNOPSIS:

Michigan Department of Treasury recently announced that in an effort to align with the ruling in the *Wayfair* decision (*South Dakota v. Wayfair, Mich. Dept. Treas., 08/01/2018*), effective October 1, 2018, Michigan will require remote sellers, with sales exceeding \$100,000 or having more than 200 transactions to Michigan purchasers in the previous calendar year, to collect and remit sales tax. The Department has also issued guidance addressing "economic presence" sales and use tax nexus standards for remote sellers.

Similar to Michigan, South Dakota's economic nexus law imposes sales and use tax collection and remittance obligation on out-of-state sellers making more than \$100,000 in sales of goods or services delivered in South Dakota or engaging in 200 or more separate sales of goods or services delivered in the state.

The U.S. Supreme Court's decision in *South Dakota v. Wayfair* nullified a 1992 Supreme Court precedent set by *Quill Corp. v. North Dakota*, which allowed states to compel online retailers to collect sales tax only if they maintained a physical presence in the state. Specifically, the U.S. Supreme Court ruled that states can impose sales tax on remote retailers, even if the retailer has no physical presence in the state.

The Michigan Department of Treasury has indicated that it will waive any failure to file and deficiency penalties for returns and payments due prior to December 31, 2018, to the extent a taxpayer incurred the penalties solely as a result of the adoption of the economic nexus standards. The Department however will not waive interest.

INSIGHT:

By all accounts, more states will continue to adopt bright line nexus standards related to sales tax, creating additional complexity in managing nexus and state sales tax compliance. As an example, Michigan is joined only by Alabama, Hawaii, Indiana, Maryland, North Dakota, Rhode Island, Texas, and Wisconsin to have published guidance on sales tax nexus standards post *Wayfair*. Contact SimekScott to discuss.

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