

SALT INSIGHTS

Jurisdiction: Multistate
Tax Type: Sales Tax
Issue: Wayfair – States Respond (Part Two)
Date: August 10, 2018

SYNOPSIS:

Imposing sales tax on remote sellers continues to come into focus as more states respond to the U.S. Supreme Court's decision, in *South Dakota v. Wayfair*, 17-494 (06/21/2018) establishing that a remote seller can create substantial nexus with a taxing state through economic and virtual contacts. Currently, more than half the states with a sales and use tax have implemented economic nexus standards. Remaining states such as New Jersey, South Carolina, Arkansas, Nevada, Texas, Florida and Tennessee have either proposed regulations or have indicated nexus policies are forthcoming.

Consistent with *Wayfair*, New Jersey, South Carolina and Arkansas, have announced economic nexus policies targeting remote sellers with gross revenue from delivery of tangible personal property, specified digital products, or services into the state exceeding \$100,000 or having 200 or more separate transactions.

In addition, although Nevada has not established guidance, it is holding public hearings for comments from interested parties. Similarly, the Texas Comptroller has met with taxpayer and business advisory groups to gain insight on possible approaches to an economic nexus policy. Further, and of particular note, Florida's Attorney general is using the arguments in *Wayfair* in litigation with a remote seller notwithstanding the fact that Florida has not formally adopted economic nexus legislation.

Lastly, the Tennessee DOR has acknowledged that its economic nexus rule cannot be enforced until the General Assembly reviews the *Wayfair* decision, most likely in 2019. However, the Department indicated that it will announce the specific date for enforcement and that it encourages remote sellers meeting the threshold to voluntarily collect and remit the tax as a convenience to their customers.

INSIGHT:

While more states are moving toward and economic nexus standards, there is still a fair amount of uncertainty with respect to how remaining states will react to the decision. Contact SimekScott to discuss.

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