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Wayfair Sales and Use Tax Legislation Developments

STATE AND LOCAL TAX, TAX

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Recent *Wayfair* sales and use tax legislation developments include:

- **California** enacted new legislation increasing the sales threshold from \$100,000 to \$500,000 and eliminating the 200 individual transaction threshold. This change is retroactive to April 1, 2019 and extends to marketplace facilitators effective October 1, 2019.
- **New Mexico** enacted new economic nexus standards for remote sellers and marketplace providers of at least \$100,000 in sales. All receipts from doing business in New Mexico are subject to gross receipts tax, including sales, leases and licenses of tangible personal property, and sales of licenses and services or licenses for the use of real property that are sourced to New Mexico. Marketplace sellers, may deduct receipts from transactions facilitated by a marketplace provider. To take the deduction the marketplace seller must get documentation from the marketplace provider showing that the marketplace provider is registered with the Taxation and Revenue Department and has remitted or will remit taxes for those transactions. Marketplace sellers choosing to exercise the deduction should issue reliable information to marketplace providers. If not, the Department may determine that the marketplace provider is not liable for the tax on the marketplace seller's transactions. The marketplace provider's taxability depends upon the information provided by the marketplace seller. This legislation is effective, July 1, 2019.
- **Hawaii** enacted legislation extending their economic nexus standards to marketplace facilitators. The legislation applies to sales of intangible property and services as well as tangible personal property. The legislation's definition of "marketplace facilitator" is any person who sells or assist in the sale of tangible personal property, intangible property, or services on behalf of another seller by: 1) providing a forum, whether physical or electronic, in which sellers list or advertise tangible personal and intangible property, or services on the behalf or another; and 2) collects payment from the purchaser either directly or indirectly through an agreement with a third party. This legislation is effective January 1, 2020.
- **Indiana's** Department of Revenue released a ruling regarding an out-of-state bake goods manufacturer reaffirming that once an economic nexus thresholds is reached (when a retail merchant's gross revenue exceeds \$100,000; or 200 or more separate transactions in the state), the remote seller is required by law to register and file zero returns, even if all of their retail sales are exempt. *Revenue Ruling No. 2018-06 ST, Indiana Department of Revenue, January 7, 2019, released March 2019.*
- **Arkansas'** House of Representatives have passed economic nexus standards for remote sellers and marketplace facilitators that made sales into the state during the previous or current calendar year that exceeds either \$100,000 or 200 individual transactions. Should the bill be enacted, it would become effective July 1, 2019.
- **Georgia's** Senate passed an economic nexus bill (H. B. 276) that reduces the economic

nexus sales threshold from \$250,000 to \$100,000 and eliminates the 200 transaction threshold. The Senate amended the Bill to make a marketplace facilitator a dealer on sales it facilitates that are sourced to Georgia, unless the marketplace seller, or a retailer or dealer, pay the sales taxes. Other amendments bar Georgia class action lawsuits against marketplace facilitators regarding the over collection of sales tax and moves the effective date of the changes from July 1, 2019 to January 1, 2020.

- **Idaho** enacted legislation for remote sellers and marketplace facilitators who lack a physical presence in the state to register and collect Idaho state level sales tax once they reach an economic nexus threshold of \$100,000 in sales within the state. The state will provide liability relief for marketplace facilitators who collect the incorrect amount of tax by reason of the retailer or retailer's authorized agent providing misinformation. Customers are barred from filing class action lawsuits against marketplace facilitators to recover refunds for over collected taxes. This law becomes effective on June 1, 2019.
- **West Virginia** expanded their economic nexus standards of \$100,000 in gross revenue or 200 or more separate transactions to marketplace facilitators and referrers. Marketplace facilitators are people who contract with one or more sellers to facilitate, for consideration, the sale of the seller's product through a physical or electronic marketplace operated by that person, regardless of whether the consideration is deducted as fees from the transaction. A referrer is a person who contracts or otherwise agrees with the seller to list or advertise for sale one or more items in any medium, including a website or catalog. They receive a commission, fee or other consideration from the seller for the listing or advertisement. The referrer also connects the purchaser to the seller electronically or through other means to complete the sale but does not collect receipts from the purchaser for the transaction. Businesses that provide internet advertising services and do not provide the marketplace seller's shipping terms or advertise whether a marketplace facilitator charges sales tax are not considered referrers. This standard becomes effective on July 1, 2019.

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