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PRODUCT & SERVICE GUIDE

States Redefine Nexus to Tackle Online Sales Taxes

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Gail Cole • Jun. 20, 2016

As the middle of the year approaches, it's worth taking stock of remote sales tax. Numerous states have enacted or are considering legislation enabling them to collect sales and use tax revenue from remote retailers lacking a physical presence in the state. Lawsuits have been filed. Online sellers are poised to respond as needed.

Done deals

With ongoing inaction at the federal level, states have continued the [trend started in 2015](#) with vows to [fight for online sales tax revenue](#). The National Council of State Legislatures (NCSL) stands behind them. It [reports](#) that, as of April 2016, lawmakers in 16 states had introduced 24 bills that would “require out-of-state companies to collect taxes on internet sales and remit them to the states.”

[Louisiana](#) was the first to act in 2016. Its internet sales tax law took effect on April 1, the same date the state sales tax rate increased and numerous exemptions were temporarily suspended. The law establishes click-through nexus and affiliate nexus

and notes that any federal legislation authorizing states to require a remote seller to collect sales tax on taxable transactions would preempt the provisions of the bill.

Next up: [South Dakota](#). Beginning May 1, remote sellers earning an excess of \$100,000 from South Dakota customers or making at least 200 sales of tangible personal property or services to South Dakota customers are required to collect sales or use tax under the new law. The law is unusual in that it declares the state's inability to effectively collect sales or use tax from remote sellers "is seriously eroding the sales tax base of this state" and that sales and use tax revenue is essential because there is no income tax. The state is suing several businesses for refusing to comply with the law, and is in turn being sued by trade associations (see [Sue Me, Sue You](#)).

This week, [Oklahoma](#) enacted the Retail Protection Act, which expands the definition of "vendor" and "maintaining a place of business in this state" and gives out-of-state retailers a choice to *either* voluntarily collect and remit Oklahoma use tax *or* notify customers of their obligation to remit use tax and provide an annual report of their online purchases. It takes effect November 1, 2016.

Other news of note: new requirements for remote sellers took effect in [Alabama](#) on January 1, when Amazon's grace period in [South Carolina](#) came to a close and it started collecting tax. In addition, the Tenth Circuit Court of Appeals [upheld Colorado's use tax notification](#) requirements.

Under discussion

Calls to tax more out-of-state sellers are being heard throughout the nation this year.

Minnesota enacted [remote sales tax legislation](#) in 2013 but lawmakers are currently [considering several bills](#) that would expand nexus to companies with storage facilities in the state, workers in home offices in Minnesota, and sellers with marketplace providers or other third parties that facilitate sales in Minnesota.

The Vermont House and Senate have approved a [measure](#) that would create use tax notification requirements for certain non-collecting out-of-state vendors. It is on the governor's desk.

Not this session

[Rhode Island](#) lawmakers have been considering a remote sales tax collection bill loosely inspired by South Dakota's new law. [House Bill 7375](#) explains that it is no longer reasonable to base sales tax on a physical presence in a state and insists that

remote sales tax collection is no longer an undue burden due to technological advances. It has been held in committee for further study.

Internet sales tax legislation was shelved in [Utah](#) last March due to opposition from “mommy bloggers,” women who supplement their household income with revenue generated from click-through advertisements on their blogs. Their concerns that Amazon would terminate their contracts in response to a remote sales tax law persuaded Rep. Mike McKell to withdraw his bill, SB 182, from consideration.

Remote sales tax legislation has also been under consideration in Connecticut, Kansas, Massachusetts, Mississippi, Nebraska and Ohio.

Meanwhile, in the capitol

Federal lawmakers have been in a deadlock over remote sales tax for years. [Two remote sales tax bills and one in working draft form](#) have been gathering dust in the House since they were penned near the start of 2015. Bob Goodlatte (VA-R), Chair of the House Judiciary Committee, is clear in his opposition to the Marketplace Fairness Act of 2015 and its cousin, the Remote Transactions Parity Act. The Chairman supports the Online Sales Simplification Act (OSSA), which would source sales to the origin state rather than the destination state. Mr. Goodlatte remains committed to OSSA and recently circulated a four-page summary of his proposal.

Earlier this year, a vote on the Marketplace Fairness Act (MFA) was [promised with a handshake](#). Longtime remote sales tax proponent Sen. Lamar Alexander (R-Tenn) has said there’s a good chance MFA will be considered this year. Time will tell.

Prudence advised

Retailers currently making sales to multiple states or planning to expand in that direction should be closely tracking the remote sales tax situation. A growing number of states are directly [challenging the policy upheld in the 1992 Supreme Court decision, Quill Corp. v North Dakota](#), that a business must have a physical presence in a state before the state can impose a sales or use tax collection obligation. They want more sales tax revenue, and they want it now.

As Rhode Island lawmakers have noted, it no longer has to be an undue burden to collect sales and use tax in multiple states. Sales tax software (SaaS) simplifies compliance. [Learn how it works](#).

Gail Cole is a sales tax expert with [Avalara](#) who has a penchant for digging through the depths of BOE sites and discovering and reporting rate changes across the country.

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