laws. These are designed to tax sales by out-of-state sellers that lack a physical ...

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From the Avalara blog.

With sales tax revenue dropping due to an increase in untaxed (but not exempt) internet and catalog sales, a growing number of states have created economic nexus laws. These are designed to tax sales by out-of-state sellers that lack a physical presence in the state.

In many states, economic nexus policies have also been created with an eye toward triggering a legal battle that would land on the steps of the Supreme Court of the United States and provide an opportunity for the court to abrogate its decision in Quill Corp. v. North Dakota, 504 U.S. 298 (1992). The ruling in Quill upheld the physical presence precedent: that a state cannot impose a tax obligation on a business unless that business has a substantial connection to the state, i.e. a physical presence.

Understanding where economic nexus exists and how policies differ from one state to the next is essential for any business that makes sales in multiple states. The eight states below have adopted economic nexus. The other states listed have considered or are considering the adoption of a similar policy.

Alabama economic nexus, January 1, 2016

Alabama was the first state to adopt an economic nexus policy. Department of Revenue Rule 810-6-2-.90.03 took effect January 1, 2016 and holds that "out-of-state sellers that lack a physical presence in the state but make sales of tangible personal property (TPP) in Alabama have a substantial economic presence in Alabama and must collect and remit tax if *both* of the following are true:

- The seller's retail sales of TPP in Alabama exceed $250,000 per year (based on

challenge was eventually answered by a large online retailer, and the case (Newegg Inc. v. Alabama Department of Revenue, No. s. 16-613) is still making its way through the courts.

In a less contentious move, Alabama created the Simplified Sellers Use Tax policy to make compliance easier for remote retailers. It "allows eligible sellers to participate in a program to collect, report and remit a flat eight percent (8%) sellers use tax on all sales made into Alabama," without worrying about the various combined state and local rates.

Indiana economic nexus, July 1, 2017

House Bill 1129 establishes economic nexus for remote vendors in Indiana as of July 1, 2017. Out-of-state vendors lacking a physical presence in Indiana must collect and remit tax on sales to Indiana customers when *one* of the following is true in the current or preceding calendar year:

- The vendor makes more than $100,000 in gross revenue from Indiana sales transactions
- The vendor makes more than 200 separate sales transactions in the state

Like Alabama, Indiana has created a law it hopes will be challenged. This would create an opportunity for the Supreme Court to overturn its decision in Quill.

Massachusetts economic nexus, July 1, 2017

Effective July 1, 2017, out-of-state internet vendors with significant Massachusetts sales must collect sales or use tax under Massachusetts Department of Revenue Directive 17-1. A remote internet vendor makes significant sales in the state when *both* the following are true:

- The vendor makes more than $500,000 in sales to Massachusetts consumers

The Massachusetts policy differs from the others on this list in that it only applies to internet vendors, not retailers who sell to customers via catalogs or the phone. As a result, the physical presence precedent upheld in Quill doesn't apply.

North Dakota economic nexus, contingent effective date

North Dakota Senate Bill 2298 creates economic nexus for out-of-state sellers that lack a physical presence in the state but meet one of the following criteria in the current or previous calendar year:

- The vendor has gross sales from TPP and other taxable items delivered in North Dakota of more than $100,000
- The vendor makes at least 200 separate taxable sales transactions in North Dakota

Unlike Alabama and Indiana, the state that was involved in the seminal Supreme Court case, Quill Corp. v. North Dakota, is not interested in another lengthy legal battle. Therefore, the effective date of the economic nexus law is contingent "on the date the United States Supreme Court issues an overturning of Quill v. North Dakota" or other confirmation that "a state may constitutionally impose its sales or use tax upon an out-of-state seller" under certain circumstances.

South Dakota economic nexus, May 1, 2016

As of May 1, 2016, Senate Bill 106 requires remote sellers with no physical presence in South Dakota to collect and remit sales tax as if they have a presence in the state, if *one of the two* following criteria in the previous or current calendar year is true:

- The remote seller's gross revenue from sales of TPP, electronically delivered products, or services delivered into South Dakota exceeds $100,000

- The remote seller has 200 or more separate transactions of TPP, electronically

Tennessee economic nexus, July 1, 2017

The Tennessee Department of Revenue's economic nexus rule requires out-of-state dealers to register with the department and report and pay tax on all taxable sales to Tennessee consumers when *both* the following conditions are true:

- The remote seller engages in the regular or systematic solicitation of consumers in the state through any means
- The remote seller makes sales that exceed $500,000 to consumers in the state during the previous 12-month period

Affected out-of-state sellers were required to register with the state by March 1, 2017, and must begin collecting and remitting sales tax by July 1, 2017, "unless a later date is established by the Department by notice." Additional information, including FAQs, is available from the Department of Revenue.

Vermont economic nexus, contingent effective date

Out-of-state vendors that don't have a physical presence in Vermont are required to collect and remit sales tax when they engage in "regular, systematic, or seasonal solicitation of sales of TPP in Vermont" and *one* of the following is true during a preceding 12-month period:

- The vendor makes at least $100,000 in sales to Vermont consumers
- The vendor makes at least 200 individual sales transactions for delivery into Vermont

Under Act No. 134, a vendor is considered to regularly and systematically, or seasonally, solicit sales in Vermont by: displaying advertisements in Vermont; distributing catalogs, periodicals, advertising flyers, or other advertising by means of print, radio, or television media; or using internet, mail, telephone, computer database, cable, or other communication systems for the purpose of affecting sales of

are required to collect and remit Wyoming sales and use tax starting July 1, 2017, if *one* of the following conditions is met in the current or previous calendar year:

- The sellers' gross revenue from the sale of TPP, admissions, or services delivered into Wyoming exceeds $100,000
- The seller sold TPP, admissions, or services delivered into Wyoming in at least 200 separate transactions

The authors of the legislation expect remote vendors to fight its new economic nexus policy. And like many of the abovementioned states, Wyoming would relish the opportunity to argue for the repeal of Quill before the United States Supreme Court.

States considering economic nexus policies

- Hawaii
- Maryland
- Minnesota
- Mississippi
- Nebraska
- Rhode Island
- Washington

The above lists are organic: state sales and use tax policies are always subject to change. And it should be noted that economic nexus policies aren't the only way states are striving to capture tax revenue from remote sellers. Many states have adopted affiliate and click-through nexus policies, whereby out-of-state sellers establish a substantial connection to the state through ties to in-state affiliates, or when links on an in-state business's website generate a certain amount of business for a remote seller.

Furthermore, some states have adopted or are considering use tax notification

What you can do to stay in compliance

Businesses need to be vigilant in order to remain in compliance in all states where sales are made. Tax automation software such as Avalara AvaTax helps businesses of all sizes with sales and use tax compliance. Learn more.

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