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By Scott Peterson, Avalara's Vice President of U.S. Tax Policy and Government Relations

In the case of *South Dakota v. Wayfair, Inc.* (decided on June 21, 2018), the Supreme Court of the United States overturned the rule that a state cannot tax a business unless it has a physical presence in the state. The court found the defendants' "economic and virtual" connections to South Dakota to be sufficient grounds for nexus, the connection with a state that triggers a tax collection obligation.

This expansion of state taxing authority could have far-reaching consequences. More than a dozen states had already adopted economic nexus provisions prior to the June 21 ruling, though most didn't actively enforce them due to the physical presence rule. Many states linked the effective date of their policies to the *South Dakota v. Wayfair* ruling, or to possible future action by Congress.

Each of the following states is or soon will enforce its economic nexus laws, as shown in the chart below.

States with South Dakota-style economic nexus

States with economic nexus	Effective date	Thresholds triggering a collection obligation (\$ and/or transaction volume)
Alabama	Will be applied proactively for sales made on or after 10.1.2018; statutory start date was 1.1.2016	More than \$250,000 and

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		in the state via the internet or other means
		More than \$250,000
Georgia	1.1.2019	or
		200 or more retail sales
		At least \$100,000
	7.1.2018	
Hawaii		or
		200 or more separate transactions
		At least \$100,000
Illinois	10.1.2018	or
		200 or more separate sales
Indiana	7.1.2017	More than \$100,000
	Under an injunction	or
		200 or more separate transactions

At least \$100,000

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		200 or more separate transactions
		More than \$100,000
Louisiana	Start date to be determined	or
		200 or more separate transactions
		More than \$100,000
Maine	10.1.2017	or
		200 or more separate transactions
		Makes 10 or more retail sales totaling more than \$100,000
Minnesota	Start date to be determined	or
		100 or more retail sales
		and
		systematic solicitation of sales in the state
Mississippi	12.1.2017	More than \$250,000
		and

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South Dakota	5.1.2016 (under an injunction until further notice)	or	200 or more separate transactions
Tennessee	7.1.2017 (under an injunction until further notice)	and	More than \$500,000  systematic solicitation of sales in the state
Vermont	7.1.2018	or	200 or more individual sales transactions  and  systematic solicitation of sales from in-state customers
Washington	7.1.2017 (for B&O tax only)	or	More than \$267,000 of yearly gross receipts sourced or attributed to WA in 2017, \$285,000 in 2018

at least 25% of total yearly

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	7.1.2017 (under an injunction until further notice)	More than \$100,000 or 200 or more separate transactions
Wyoming		

South Dakota v. Wayfair doesn't give states carte blanche

While the ruling does allow states to tax businesses based on economic and virtual connections, it doesn't necessarily give them carte blanche.

The Supreme Court [found](#) that "South Dakota's tax system includes several features that appear designed to prevent discrimination against or undue burdens upon interstate commerce." These are:

1. South Dakota affords small merchants "a reasonable degree of protection" from taxation. Remote vendors must have more than \$100,000 in gross revenue from South Dakota sales, or 200 or more separate transactions of the same in the current or previous calendar year to trigger a tax collection obligation.
2. The law ensures no obligation to remit the sales tax may be applied retroactively.
3. South Dakota is a member of the [Streamlined Sales and Use Tax Agreement](#), which reduces administrative and compliance costs by requiring a single, state level tax administration, uniform definitions of products and services, simplified tax rate structures, and more. It also provides sellers access to sales tax administration software paid for by the state, and sellers that use such software are immune from audit liability.

States with remote sales tax policies at odds with any of the above could be

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In the meantime, businesses that sell in multiple states should track changing state nexus laws and develop a plan to ensure compliance. Find helpful resources [here](#).

More questions? Read our full [FAQ \(download PDF\)](#)

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Scott Peterson is [Avalara](#)'s Vice President of U.S. Tax Policy and Government Relations. Prior to Avalara, he was the first Executive Director of the Streamlined Sales Tax Governing Board – an organization devoted to making sales tax simpler and more uniform for the benefit of business. Scott also spent 10 years as the Director of the South Dakota Sales Tax Division and 12 years providing research and legal writing for the South Dakota legislature.

Sales Tax

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