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the thresholds of the South Dakota law, but you never know. I think we'll hear from more states soon and perhaps even from a few in Congress.

Annette Nellen • Aug. 13, 2018

What are some states saying about the U.S. Supreme Court's decision in *South Dakota v. Wayfair, et al* [see my [6/22/18 post](#) for more on the case]

Here is news from several states. I don't think most states will strive to collect below the thresholds of the South Dakota law, but you never know. I think we'll hear from more states soon and perhaps even from a few in Congress. I'll continue to update this post.

Free CPE Webcast on Thurs, Aug 16, 2pm ET

[“Implementing the Supreme Court’s Sales Tax Decision in Wayfair vs. South Dakota](#)

States in **bold** are [full members](#) of the Streamlined Sales and Use Tax project. The SSUTA scheduled an emergency meeting of the SSUTA Board for July 19-20 to discuss the *Wayfair* decision. [Agenda](#) items included use of the Central Registration System and the Certified Service Provider system by non-members.

Also, on 6/29/18, the National Conference of State Legislatures released its [Principles of State Implementation after South Dakota v. Wayfair](#). This 1-page document suggests that states be prepared before more broadly enforcing tax collection and wait until 1/1/19 to start collecting. It also includes suggestions for states that have not adopted the Streamlined Sales and Use Tax Agreement ([SSUTA](#)).

- Alabama – The Dept. of Revenue released a [statement](#) on 7/3/18 that reminds

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that with the repeal of QUIN, likely allows the state agency (California Department of Tax and Fee Administration ([CDTFA](#))) to start collecting from remote vendors with over \$100,000 of sales in the state or 200 or more transactions. I say “likely” because while California Revenue & Taxation Code Section [6203\(c\)](#) provides that retailer in the state includes “any retailer that has substantial nexus with this state for purposes of the commerce clause of the U.S. Constitution,” is the \$100,000 receipts or 200 transaction threshold enough for the state? The U.S. Supreme Court noted three aspects of the SD law that supported nexus within commerce clause parameters (see page 23 of the [opinion](#)): (1) safe harbors of the \$100,000 receipts or 200 transactions, (2) no retroactive application, and (3) SD belongs to the SSUTA which requires states to offer free software for compliance and audit protection if used, as well as standardized definitions and other administrative benefits. While the CDTFA can offer (1) and (2), it can't easily offer (3). That would likely take some additional appropriations. In fact, given the size of California, its customer base likely supports many remote vendors who meet the safe harbors of the SD law. Can the CDTFA handle all of the new registrations and support that would be needed without an allocation of more funds? Also, might the legislature of this state that is home to eBay, want to raise the safe harbor thresholds? And, how important is (3)? Are factors (1) and (2) enough?

- Connecticut – [SB 417](#) ([Public Act 18-152](#); 6/14/18) modifies the states economic nexus for sales tax for remote vendors to having at least \$250,000 of retail sales in the state and 200 or more transactions, effective 12/1/18. Also see Dept. of Revenue Services [Special Notice \(5.1\)](#) explanation of the law change related to Wayfair, as well as the explanation of the marketplace facilitator law change.
- Hawaii – Prior to the Court's decision, Hawaii enacted [SB 2514](#) ([Act 41](#), 6/13/18) to match the SD law, effective 7/1/18, but applying to tax years beginning after 12/31/17. In [Announcement No. 2018-10](#) (6/27/18), the Dept. of Taxation states that it had been unclear when its general excise tax (GET) applied when a seller did not have a physical presence in the state. Act 41 though, provides clarification. Starting

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- **Illinois** – Enacted [HB 3342 \(Public Act 100-0587\)](#) on 6/4/18. Article 80 includes a “marketplace fairness” provision providing that a vendor is considered a “retailer maintaining a place of business” in the state if it makes sales of tangible personal property to buyers in the state, from outside of the state and have cumulative gross receipts from sales of such property of \$100,000 or more, or has 200 or more separate transactions for the sale of tangible personal property to Illinois buyers. The determination is made quarterly by looking 12 months back from the last day of March, June, September or December. If the criteria is met, the retailer must collect and remit sales tax for one year. At the end of that year, if the criteria continue to be met, collection continues. Effective starting 10/1/18.
- **Indiana** – Has an [amnesty program](#) through the end of 2018 for online vendors who should have been collecting such as because they have inventory in the state. The DOR released a [statement](#) noting that on 6/21/18, Governor Holcomb said they were studying the ruling “to better understand its implications for Indiana.”
- **Iowa** – Prior to the Court’s decision, Iowa enacted [SF 2417](#) effective 1/1/19 which basically mirrors South Dakota law. On 6/25/18, the Dept. of Revenue issued an [explanation](#) and a reminder that if a vendor has physical presence and has not been reporting, it should consider the voluntary disclosure purposes. The new economic nexus law is prospective only (starting 1/1/19).
- **Kentucky** – [DOR news release](#) on HR 487.
- **Louisiana** – The Department of Revenue issued a [statement](#) on 6/21/18 that “it is far too soon for a definitive estimate of what the state will receive from online sales as a result of today’s decision, but when appropriate, we will provide updates.”
- **Maryland** – A undated [Tax Alert](#) from the Comptroller states reminds folks that Maryland law imposes sales tax collection obligations “as broadly as is permitted under the United States Constitution. It includes an interesting “figure it out yourself” statement: “If you sell or deliver tangible personal property or a taxable service for use in Maryland, you should review and analyze the United States

Supreme Court’s decision in [*Wayfair*] to identify how it affects you.”

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requisite in-state physical presence. ...”

a. property interests in and/or the use of in-state software (*e.g.*, “apps”) and ancillary data (*e.g.*, “cookies”) which are distributed to or stored on the computers or other physical communications devices of a vendor’s in-state customers, and may enable the vendor’s use of such physical devices;

b. contracts and/or other relationships with content distribution networks resulting in the use of in-state servers and other computer hardware and/or the receipt of server or hardware-related in-state services; and/or

c. contracts and/or other relationships with online marketplace facilitators and/or delivery companies resulting in in-state services, including, but not limited to, payment processing and order fulfillment, order management, return processing or otherwise assisting with returns and exchanges, the preparation of sales reports or other analytics and consumer access to customer service.”

- **Minnesota** – The Department of Revenue issued a [news release on 6/21](#) stating that the *Wayfair* decision means that “states like Minnesota can require certain retailers with no physical presence, such as online sellers, to collect and remit the applicable sales or use tax on sales delivered to locations within their state.” The DOR also stated that they “will work with our customers to ensure fair, efficient, and transparent implementation of this decision. We will provide further guidance within 30 days. The department will work hard to provide our customers with the information and services they need to meet their sales and use tax obligations under Minnesota tax law in as smooth and efficient manner as possible.” The DOR expects to issue guidance within 30 days for vendors not presently collected sales tax from Minnesota customers. The DOR also observes that vendors who want to start collecting now can register to do so with

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includes links to the relevant law ([297A.66](#)) and some [FAQs for remote sellers](#).

Small remote sellers are exempt from collection if during the prior consecutive 12-month period they had less than 100 retail sales shipped to Minnesota and less than ten retail sales shipped to Minnesota that total over \$100,000.

- **Mississippi** – The Department of Revenue stated in a [6/21/18 release](#) that it is studying the *Wayfair* ruling to determine its effect in the state. “It is our belief this will create a more level playing field for Mississippi businesses that compete with online sellers.” The DOR reminds sellers with out a physical presence in the state that existing state law requires those with sales in excess of \$250,000 in the prior 12-month period to [register](#) and collect sales tax.
- **Montana** – Has a [website](#) explaining the effect of *Wayfair* on its residents and in-state businesses. Montana does not itself impose a sales tax. They suggest that in-state vendors “seek competent legal advice on how to proceed with collecting and remitting sales tax for sales tax states such as South Dakota.”
- **Nevada** – The Nevada Tax Commission released a draft regulation on 7/17/18 ([R189-18](#)) that basically adopts the SD threshold for a remote vendor to be subject to sales tax obligations in the state.
- **New Hampshire** – Governor Sununu [news release](#) of 6/28/18 to fight the decision. NH doesn't impose a sales tax.
- **New Jersey** – legislation pending.
- **North Dakota** – The Tax Commissioner [states](#) that remote sellers must now follow ND's law enacted in 2017 ([SB 2298](#); 4/10/17) that is similar to that of South Dakota. At 6/25/18, the website states that it is a “work-in-progress” and more information will be added later.
 - [SB 2298](#) included a “contingent effective date” provision: “This Act becomes effective on the date the United States Supreme Court issues an opinion overturning *Quill v. North Dakota*, 504 U.S. 298 (1992), or otherwise confirming a state may constitutionally impose its sales or use tax upon an

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[Regulation 2018-29 \(7/23/18\)](#) provides additional information for non-collecting retailers.

- **Texas** – Comptroller Hegar [announced](#) 6/27/18 his office would study the situation with input from the public and lawmakers. He suggested there would be no retroactive application.
- **Vermont** – The Dept. of Taxes [announced](#) that the Court's decision makes [Act 134](#) (2016) effective. That law is similar to that of SD affecting out-of-state vendors that made at least \$100,000 or sales or 200 individual transactions in any prior 12-month period.
- **Wisconsin** – The DOR [website](#) states that starting 10/1/18, remote vendors will have to start collecting sales tax from Wisconsin customers if they meet the new standards that match the SD thresholds. The website also has a set of FAQs. Also see [DOR's Statement of Scope](#) regarding work needed. The Legislative Fiscal Bureau reports in a [7/2/18 memo](#) that if the state changed its law to follow SD law, it would generate an additional \$120 million per year. It also notes that state law likely needs to be changed to specify a threshold for “an electronic nexus threshold.” The memo also notes that a law change in 2013 states that additional sales and use tax revenues generated from “any federal law” expanding the ability of the state to impose sales tax obligations on remote vendors is to be used to reduce income tax rates.
- **Wyoming** – The DOR issued a [memo](#) reminding readers that the state has an economic nexus rule similar to that of SD. The DOR is studying the decision's “impacts” to determine a “date certain for licensing deadline.” The rule will be enforced prospectively only.

States with South Dakota type laws will need to issue guidance on the effective date and how to measure the \$100,000 sales and 200 transaction thresholds (or other thresholds specified by the state). For example, do sales of tax-exempt items count?

Have you checked the existing sales tax nexus/jurisdiction law in states where you or

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