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enormous impact on marketplace facilitators in Louisiana.

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The Louisiana Supreme Court is currently deliberating a case that could have an enormous impact on marketplace facilitators in Louisiana.

### **Who owes the tax on marketplace sales?**

The state's highest court is being asked to decide who's responsible for collecting and remitting Jefferson Parish sales tax on marketplace sales (essentially, who's the "dealer"). Is it the marketplace facilitator, Walmart? Or is it the individual marketplace seller?

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Walmart isn't the first marketplace facilitator to take this stance, and it isn't the first to be challenged on this issue. Amazon and South Carolina have been embroiled in a lengthy battle over marketplace sales tax. Recently, a South Carolina administrative law judge [found in favor of the Department of Revenue](#), though Amazon could still appeal the decision.

The Amazon case in South Carolina doesn't necessarily set a precedent for the Walmart case in Louisiana because while there are similarities between the two cases, there are also key differences.

In both cases, the businesses admit to having [sales tax nexus](#) with the tax jurisdiction. Amazon has a physical presence in South Carolina, and Walmart has a physical presence in Jefferson Parish, Louisiana. Neither Amazon nor Walmart contested their status as the dealer of their direct sales.

Yet the two states have very different policies regarding marketplace facilitators.

### **The states' stances**

The state of South Carolina has a unified position on who's liable for marketplace sales taxes. After the legal dispute with Amazon began, South Carolina enacted a [law](#) requiring marketplace facilitators with South Carolina nexus to collect and remit the tax on third-party sales in South Carolina. More than 35 other states have similar marketplace facilitator laws.

Louisiana has no such law. [It did enact an economic nexus law](#) requiring out-of-state businesses with a certain threshold of sales in the state to collect and remit sales tax, and early versions of that legislation included a marketplace facilitator provision. But it was left out of the final law

Furthermore, prior to Jefferson Parish’s 2017 assessment on Walmart, the Louisiana

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their own local taxes. And unlike the Louisiana Legislature and Louisiana Department of Revenue, Jefferson Parish tax authorities clearly believe Walmart is liable for Jefferson Parish sales tax on all marketplace transactions.

Two lower courts have sided with Jefferson Parish. However, several organizations have submitted an amicus curiae in support of Walmart, including the [Chamber of Commerce of the United States of America](#), the [Council on State Taxation](#) (COST), the [Retail Litigation Center](#), and the [Tax Executives Institute](#). They believe it’s up to the Louisiana Legislature to decide whether marketplace facilitators should be liable for the tax on their marketplace sales.

Some interested parties worry that if Jefferson Parish wins this case, other Louisiana parishes could follow its lead and define “dealer” differently than the state. If this happens, other marketplace facilitators that have a physical presence in a parish could face the same fate as Walmart — and Walmart could be required to collect local tax on third-party sales in multiple jurisdictions in the state.

Of course, a win for Jefferson Parish could also inspire the state to change the definition of “dealer” so marketplace facilitators are required to collect and remit the tax on behalf of marketplace sellers — though that will probably happen even if the Supreme Court rules in favor of Walmart. Scott Peterson, VP of Government Relations at Avalara, believes the Louisiana Legislature will almost certainly enact a marketplace facilitator law when they reconvene next March. If they do, Louisiana’s sales tax collection requirement would likely also apply to remote marketplace facilitators that have [economic nexus with Louisiana](#).

What that would mean at the local level remains to be seen. Louisiana has yet to enforce its remote sales tax collection requirement because it’s still trying to figure out the best way to go about it. The [Louisiana Sales and Use Tax Commission for Remote Sellers](#) is on the job, working to replace the current reporting system — in

which a seller has to file a state return and multiple local returns — with a

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but they can't require the same from marketplaces without physical presence. Only if the state adopts a marketplace law will home-rule jurisdictions have authority, but then only if it is administered through this commission.”

Other states, notably Alabama and Texas, have simplified local sales tax administration by instituting a single use tax rate for remote sellers. Although Louisiana currently has a single consumer use tax rate that Louisianans must pay when remote sellers don't collect the tax due, it plans to repeal the single use tax rate once the state starts taxing remote sales.

The Louisiana Supreme Court heard oral arguments for [Normand vs. Wal-Mart.com USA, LLC, La., No 2019-C-263](#), on October 22, 2019.

[This article first appeared on the [Avalara blog](#).]

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Sales Tax

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