Laws

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The United States Supreme Court's decision in South Dakota v. Wayfair, Inc. (June 21, 2018) freed states to impose a sales tax collection requirement on sellers with no physical presence in the state. It's had an enormous impact on interstate sellers of everything from books to boats. But how does it affect direct-to-consumer (DTC)

tax authority then collect and remit sales tax unless the business had a physical presence in the state.

Wayfair overruled that physical presence rule, enabling states to base a sales tax collection obligation entirely on a remote seller's economic activity in the state, or economic nexus. In the wake of the decision, 43 states and Washington, D.C. adopted economic nexus; and these new laws have created numerous new collection requirements for thousands of businesses.

The burden of compliance starts as soon as a business starts making sales in an economic nexus state, because it's necessary to determine whether economic nexus has been established. All states except Kansas provide an exception for companies selling beneath a certain sales threshold (the economic nexus threshold), and all states have unique economic nexus thresholds. For example:

- In New York, it's $500,000 in sales and 100 transactions in the previous four sales tax quarters
- In South Dakota, it's $100,000 in sales or 200 transactions in the current or previous calendar year
- In Texas, it's $500,000 in sales in the previous 12 months
- In Washington, it's $100,000 in sales in the current or previous calendar year

Making matters more complex, each state's threshold includes different sales: Some include taxable and exempt services, some only taxable services, and some exclude all services. Some include digital goods, some exclude sales for resale, and so on. For online sellers with customers nationwide, sales tax compliance became a great deal more complicated after Wayfair and subsequent economic nexus laws.

Have these laws also created new registration and collection obligations for DTC shippers of beer, wine, and spirits?

The not-so-voluntary voluntary registration

Americans have a complicated relationship with alcohol. We happily quaffed buckets of it until prohibiting the manufacture, sale, and transport of alcohol in 1919. After Prohibition was repealed in 1933, alcohol sales continued to be heavily regulated in all states. More states than not still ban DTC shipments of beer and spirits, and lots of states banned out-of-state DTC wine shipments until not so long ago.

See where breweries, distilleries, retailers, and wineries can ship DTC.

In May 2005, the U.S. Supreme Court ruled states could not prevent DTC shipments by out-of-state wine producers if they allowed DTC shipments from in-state wine producers (Granholm v. Heald). The decision was a catalyst for sweeping change. Today, out-of-state DTC wine shipments are fully prohibited in only Alabama, Mississippi, and Utah — and even these holdouts are slowly moving toward more lenient policies.

But entry into the market came with a cost: States required out-of-state DTC wine shippers to register with the state tax department and comply with applicable sales and excise tax laws. In fact, Alcohol Beverage Control (ABC) boards in many states will issue a license to out-of-state DTC shippers only if it can provide proof of registration with the tax department.

For the most part, states with these registration requirements for DTC shippers aren't also enforcing economic nexus. They don't have to. Yet there are exceptions. For example:

- Louisiana is enforcing economic nexus for local sales tax
- Wyoming changed sales tax rules for remote sellers in the wake of Wayfair

4+ states where economic nexus affects DTC shippers

Economic nexus laws also impact DTC shippers in the handful of states that have

product registrations, returns, and tax calculation. Contact us for more information.

*Florida and Missouri don't have the registration requirement, but neither has an economic nexus law.

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Gail Cole has been researching, writing, and reporting tax news for Avalara since 2012. She's on a mission to uncover unusual tax facts and make complex laws and legislation more digestible for accounting and business professionals — or anyone interested in learning about tax compliance. Get more sales tax news from the Avalara blog.

Sales Tax