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SALES TAX & COMPLIANCE

Kansas Looks to Unregistered Remote Sellers for Sale Tax Revenue

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KANSAS

Out-of-state retailers that aren't registered to collect and remit Kansas sales tax could soon be hearing from the Kansas Department of Revenue.

This enforcement effort shouldn't come as a surprise. In August 2019, the Kansas Department of Revenue published a notice announcing [sales tax requirements for retailers doing business in Kansas](#). It explained how the United States Supreme Court's decision on [South Dakota v. Wayfair, Inc.](#) (June 21, 2018) had overturned "prior rulings that a remote seller must have a physical presence in a state before that state can require the remote seller to collect that state's sales or use tax."

Because of the decision, the notice said, "Kansas can, and does, require on-line and other remote sellers with no physical presence in Kansas to collect and remit the applicable sales or use tax on sales delivered into Kansas."

Kansas isn't alone in taxing remote sales, but it is unique. Following the Wayfair decision, legislatures in most states adopted economic nexus laws requiring certain out-of-state businesses to register then collect and remit sales tax. The Kansas Legislature hasn't enacted an economic nexus law (more on this below). Even so, the Department of Revenue believes the Wayfair decision gives it the authority to tax remote sales.

What the Wayfair ruling doesn't do, according to the department, is give it the authority to establish a small seller exception.

Every state except Kansas provides safe harbor for small sellers, those whose sales or transaction volume is under a certain economic nexus threshold. For example, California's economic nexus threshold is \$500,000; South Dakota's is \$100,000 in sales *or* 200 transactions; and so on. Economic nexus thresholds vary from state to state, as seen in this [state-by-state guide to economic nexus laws](#).

Since Kansas has no safe harbor for small sellers, it has no economic nexus threshold. Thus, even very small out-of-state sellers are required to register to do business and collect sales tax in the Sunflower State. In fact, the state has reportedly collected approximately [\\$5 million in sales and use taxes](#) from remote sellers with less than \$100,000 in annual sales in the state since the Kansas Department of Revenue began enforcing its remote sales tax requirement on October 1, 2019.

Out-of-state businesses that aren't currently collecting tax on their Kansas sales should expect to hear from the department in the coming months. At a tax

conference earlier this week, Revenue Secretary Mark Burghart said the department intends to contact large sellers first, before moving on to small sellers.

Will Kansas adopt an economic nexus or marketplace facilitator law?

Though Kansas doesn't have an economic nexus law on the books, it's not for lack of trying. In March 2019, the legislature passed a bill that included an economic nexus provision. It also would have required marketplace facilitators to collect and remit sales tax on behalf of third-party sellers. [Governor Laura Kelly vetoed it.](#)

However, [Gov. Kelly supports taxing remote sales.](#) She believes the Department of Revenue's policy "reaffirms" tax fairness. Should another economic nexus and marketplace bill land on her desk, she'll likely sign it. Burghart expects the legislature to enact a small seller threshold in the upcoming session, scheduled to start January 2021.

Like most states, Kansas could use the additional revenue. [Total tax collections in September 2020 were ahead of projections](#), but they were still \$15.2 million lower than September 2019 collections. This was largely due to a decline in retail sales tax, which came in \$2.4 million (1.2%) less than anticipated.

On the other hand, consumer use tax collections were higher than expected. [Consumer use tax](#) (aka compensating use tax) is due when Kansas residents buy goods from non-collecting vendors in other states — either in person, online, or through another channel — without paying any sales tax or paying less than the rate in effect at their home address. The fact that consumer use tax revenue has increased and sales tax revenue has decreased indicates Kansans are still consuming — they're just buying less from retailers that collect sales tax.

If the department's forthcoming notices have their intended effect, more out-of-state retailers will register to collect Kansas sales tax in the coming months.

Will other states increase enforcement of economic nexus?

According to Scott Peterson, vice president of government relations at Avalara, "The effort Kansas just announced is just the beginning of state remote seller enforcement actions. Most state budgets are in trouble because of the recession and two years have gone by since the Wayfair decision was issued."

Mark Friedlich, senior principal at Wolters Kluwer Tax & Accounting, made a similar prediction in July, calling economic nexus compliance "[fertile territory for tax](#)

auditors.” And Jamie Yesnowitz of Grant Thornton LLP expects states to undertake “[more aggressive auditing](#)” once the pandemic passes.

[Avalara helps businesses of all sizes register to collect sales tax](#). If you’re not sure where you need to register, our free [sales tax risk assessment](#) can help you figure out your state tax obligations.

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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](#).

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