

PA Adopts New Standard for Sales Tax Collection

Sales Tax Background

Most states have historically looked to nexus as a condition relevant to their capability to levy sales taxes. For decades, states have been bound by the United States Supreme Court [National Bella Hess](#)¹ and [Quill](#)² decisions in defining the required nexus standard for levying taxes in those states. The most relevant determinant of nexus was physical presence under these rulings. In other words, it was necessary for the seller of taxable goods to be located within the state before that states' sales tax was assessed.

As e-commerce has expanded, states have been losing revenue due to sales of taxable goods within those jurisdictions from remote locations. Taxable goods that are purchased on the Internet from an e-commerce vendor and shipped into a particular state often escape taxation, thus, costing that state revenue.

Major Change with Wayfair Decision

In June 2018, the U.S. Supreme Court overturned that long-standing Quill decision and created a new standard called economic nexus. In [South Dakota v. Wayfair](#)³ the Court ruled in favor of the state, which sought to have a statute imposing economic nexus standards on remote sellers upheld by the Court.

In its decision, the Court concluded that the physical presence standard that had existed for decades for sales and use tax nexus was "unsound and incorrect." The Court overruled its prior decisions in National Bellas Hess and Quill, thus opening the door for states to require remote sellers to collect and remit sales and use taxes.

Essentially, the Wayfair decision makes it easier for states to require the collection of taxes from remote sellers on the sale of taxable goods within their borders.

Economic nexus is generally based on whether a business has an "economic presence" in a state by directing economic activity in the state, or by having income from sales to customers in the state. Under this standard, physical presence in a state is not required for the state to impose the responsibility to collect those sales taxes due by remote sellers. As long as a vendor has a substantial nexus with a taxing state, and the tax does not create an undue burden to that vendor, a virtual presence is sufficient to require the vendor to collect sales tax.

The Court did not ultimately opine on the constitutionality of South Dakota's law, but remanded the case for the state court to determine whether there were any other Commerce Clause concerns with South Dakota's economic nexus law. However, the Court noted that the law contained several provisions that appeared to ensure that the law would pass constitutional muster and would not create undue burdens on sellers.

While the litigation is not yet over in South Dakota, over a dozen states have already acted and have added laws or regulations similar to South Dakota's law. The effective dates of these provisions vary by state. Certain states are currently prohibited from enforcing their economic nexus laws or have provisions stating that that the laws can only be enforced prospectively. As these provisions become effective and enforceable in the weeks and months to come, sellers will need to respond accordingly.

¹ National Bellas Hess v. Department of Revenue, 386 U.S. 753 (1967)

² Quill Corp. v. North Dakota, 504 U.S. 298 (1992)

³ South Dakota v. Wayfair, Inc., No. 17-494 (S Ct. June 21, 2018)

New Sales Tax Rules in Pennsylvania

Sellers doing business in Pennsylvania need to be aware of the new rules issued in the Commonwealth. On January 11, 2019, the Pennsylvania Department of Revenue issued [Sales and Use Tax Bulletin 2019-01](#), which states that it has adopted the economic nexus standard embraced by the Wayfair decision.

Beginning July 1, 2019, persons making over \$100,000 in Pennsylvania sales in the previous 12 months must: 1) Register for a license; and 2) Collect, report, and remit sales tax.

In order to prevent an undue burden for marketplace sellers with limited virtual presence, the rules include the following vendor safeguards:

- A marketplace facilitator with no physical presence in Pennsylvania should determine whether it has exceeded the threshold by using both facilitated sales and direct sales. A marketplace facilitator that meets the \$100,000 economic nexus threshold must collect tax on all Pennsylvania sales. This rule applies even if the sale is on behalf of a marketplace seller that does not have any nexus with Pennsylvania.
- A marketplace seller with no physical presence in Pennsylvania should determine whether it has exceeded the threshold by using only its direct sales and any sales made through a marketplace facilitator that does not collect sales tax on its behalf. The \$100,000 nexus standard does not affect marketplace sellers for whom marketplace facilitators collect and remit tax on their behalf.
- To further assist these vendors in meeting the new requirements, the Department of Revenue plans to certify service providers to offer software and services that, when relied upon by a vendor, will relieve the vendor of liability upon audit. These certified service providers will also help in the registration, collection, reporting and remittance of sales tax.

Pennsylvania Election Requirements Not Affected by New Rules

Currently, Pennsylvania permits certain marketplace facilitators, remote sellers, and referrers to elect to either: 1) collect and remit Pennsylvania sales tax, or 2) comply with certain notice and reporting requirements.

The election requirement applies to marketplace facilitators, remote sellers, and referrers that do not maintain a Pennsylvania place of business. Depending on its activities, a single business can be a marketplace facilitator, a remote seller and a referrer, or any combination of these activities.

The [PA Department of Revenue website](#) provides complete details about the applicability and timing for the Marketplace Sales Election.

The new \$100,000 economic nexus standard does not replace or provide an alternative to the election requirement and related provisions. The election and related provisions remain valid and apply to vendors who do not have a physical presence in Pennsylvania or meet the State's \$100,000 economic nexus threshold.

The election is not available to marketplace facilitators and remote sellers that meet the \$100,000 threshold.

In Summary

There is no question that adopting economic nexus as the standard to impose the sales tax collection process on remote sellers for goods sold within the Commonwealth marks a seminal change in the way these taxes are collected. Remote sellers must be familiar with these rules to ensure compliance and to avoid costly penalties and interest for failure to comply.

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