

## EXPANDING THE REACH OF STATE SALES TAXES FOR NFPO'S Impact of South Dakota vs. Wayfair Inc. 138 S. CT 2080 (2018)

The Supreme Court of the United States decision in this case has overturned the precedent that historically prohibited any state from requiring out of state businesses to collect sales or use taxes on sales of products shipped into the state for use within the state.

Simply put, depending on the volume of sales within a specific state, the Wayfair decision allows states to require out of state sellers to collect and remit sales tax on sales of products or services to be provided within the state.

As of February 1, 2019, in addition to South Dakota, 32 states and the District of Columbia have enacted laws requiring remote sellers to collect sales tax.

Exempt Organizations who make remote sales will need to take the following steps to ensure compliance with the sales tax laws of the states that products are sold and delivered to:

1. Identify the states in which they engage in the sale of products and services;
2. Determine whether any such state requires the collection of sales or use tax for such products and services;
3. Determine whether the organization's sales within each state meets the threshold for collecting and remitting the state's sales or use tax;
4. Determine whether the state exempts EOs from the collection and remittance of such taxes; and
5. Apply for such exemption where applicable.

This document addresses the question of the collection of sales taxes for sales made in the following states: California, Illinois, Maryland, New York, Pennsylvania, Virginia and the District of Columbia.

**CALIFORNIA:** Effective 4/1/2019 taxable sales from outside the state into California of more than \$100,000 or 200 or more separate transactions in the current or previous tax year trigger a requirement to collect and remit sales tax to the state. Information to register with the state of California can be found at [www.cdtfa.ca.gov](http://www.cdtfa.ca.gov).

**ILLINOIS:** Effective 10/1/2018 taxable sales from outside the state into Illinois with gross receipts of \$100,000 or more or 200 or more separate sales transactions into the state in the previous 12 month period trigger a requirement to collect and remit sales tax to the state. Illinois has an exemption for certain not for profit organizations that are exclusively charitable, religious or educational who make sales to their members primarily for the purposes of the selling organization (uniforms, insignia and scouting equipment by Scout organizations to their members, bible sales by a church to its members), for elementary or secondary teacher sponsored student organizations and for sales by certain not for profit service organizations operated for the benefit of persons 65 years of age or older. Registration information can be found at [www.mytax.illinois.gov](http://www.mytax.illinois.gov).

**MARYLAND:** Effective 10/1/18 taxable sales from outside the state into Maryland with gross receipts in excess of \$100,000 or 200 or more separate transactions from sales of property or taxable services delivered into the state in the current or previous tax year trigger a requirement to collect and remit sales tax to the state. Information regarding registration with the State of Maryland in connection with sales tax can found at [www.interactive.marylandtaxes.gov](http://www.interactive.marylandtaxes.gov).

**NEW YORK:** Effective immediately after the Wayfair ruling (6/21/18) taxable sales from outside the state into New York in excess of \$300,000 in gross sales of tangible personal property and more than 100 sales in the immediately preceding four quarters trigger a requirement to collect and remit sales tax to the state. Information regarding registration with the State of New York can be found at [www.tax.ny.gov](http://www.tax.ny.gov).

**PENNSYLVANIA:** Effective 7/1/2019 taxable sales from outside the state to inside PA in excess of \$100,000 in the previous 12 months triggers economic nexus within the state. Referrers, remote sellers and marketplace facilitators that don't meet the \$100,000 threshold, but have taxable sales within PA of at least \$10,000 in the prior 12 months must either collect and remit sales tax or comply with non-collecting seller use tax reporting. A "referrer" is one who receives consideration to advertise a seller's products, and transfers a buyer to a seller, facilitator or other party to complete the sale, without collecting a receipt from the purchaser. A "marketplace facilitator" are persons, including vendors, who list and advertise tangible personal property for sale in any forum, directly or indirectly, collect the payment from the purchaser, and transmit the payment to the marketplace seller. A "marketplace seller" is one who used a marketplace facilitator to facilitate a sale. A "remote seller" is anyone other than a marketplace facilitator, marketplace seller or referrer, who does not maintain a place of business in PA, but who sells tangible personal property that would be subject to sales tax in PA. Information regarding registration with the State of PA can be found at [www.pa100.state.pa.us](http://www.pa100.state.pa.us).

**VIRGINIA:** Virginia does not presently have a sales tax economic nexus law, but it is anticipated that one will be enacted in the near future, possibly by mid-summer. The law is expected to include a small seller exemption and marketplace provisions.

**DISTRICT OF COLUMBIA:** effective 1/1/2019 taxable retail sales, including digital sales, from outside the District of Columbia to inside D.C. of more than \$100,000 or 200 or more transactions in the current or previous year trigger economic nexus and a requirement to collect and remit sales tax. Information regarding registration can be found at [www.mytax.dc.gov](http://www.mytax.dc.gov).

While they may differ somewhat from conferences and meetings, trade show activities may trigger sales tax liabilities. Whether or not you try to and sell goods or services at a trade show is the number one factor in determining if you have nexus. In some states, simply having a sales person at a trade show is enough to give you a tax obligation. This is true in Illinois, which considers any out-of-state retailer occasionally attending trade shows in the state with any order taking representative, must collect and remit use tax. A second factor is the amount of time spent at a trade show in a particular state over the course of a year. In California, you do not have a sales tax obligation if you engage in trade show activities for no more than 15 days during any 12 month period and did not derive more than \$100,000 of income from these activities. If time is spent in various states during the course of a year, it is wise to review and understand the sales tax requirements in advance to prepare accordingly. With the nexus created by the Wayfair decision, remote sales to states where conferences and meeting are held possibly creates a second source of sales tax for the states.