



# 2018 Sales Tax Changes

2018 promises to be a big year in the world of sales and use tax. Many states will continue to aggressively push economic nexus laws, impose consumers' use tax reporting requirements (which may very well end tax-free shopping for good!), and start taxing third-party (marketplace) sales.

2018 could also be the year the United States Supreme Court overturns the landmark *Quill Corp. v. North Dakota* (1992) ruling, which currently prohibits states from taxing remote businesses without an in-state presence.

While we can't predict the future, we can highlight major trends in sales and use tax that will likely impact the way many companies manage their business.

## 2017 Recap

There was no shortage of activity in 2017, as tens of thousands of taxability changes occurred across every state and several legislative changes impacted online sellers, manufacturers, service providers, software and technology providers, and more.

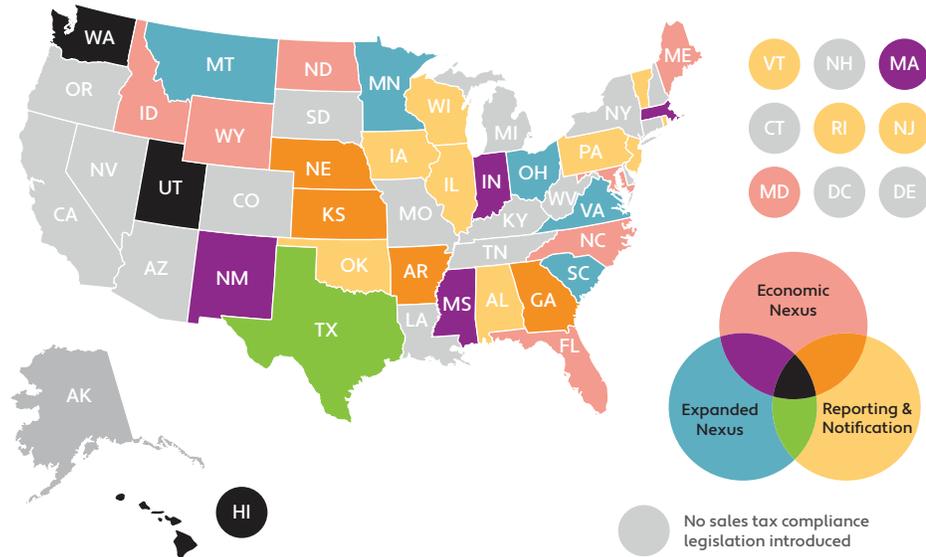
Here's a look at 2017 by the numbers:

- **36,254 tax changes** (including rate and product/service taxability)
- **80 sales and use tax compliance bills**
- **26 states** offer amnesty on back taxes, penalties, and interest for online marketplace sellers
- **15 states** introduce or propose consumers' use tax requirements for non-collecting online sellers
- **12 states** propose imposing economic nexus on out-of-state businesses that reach the threshold of maximum gross receipts

States are likely to continue with these and other efforts to increase sales and use tax collections in 2018. In fact, some have already enacted legislation that will take effect in 2018 or 2019.

### State Sales and Use Tax Compliance Legislation

Introduced legislation as of July 10, 2017



Source: MultiState Insider: <https://www.multistate.us/blog/sales-tax-compliance-legislation-is-still-a-hot-topic-at-the-state-and-federal-level>



## State efforts to tax marketplace sales

### Collect tax or comply with use tax reporting requirements

Although Amazon now collects tax in all states with a sales tax, it only does so on its own sales; sales by its marketplace sellers go untaxed unless the seller specifically asks (and pays) Amazon to collect it. That will change in 2018 – at least in Washington state.

Starting January 1, Amazon will collect tax on all of its Washington state sales, marketplace transactions included. The ecommerce giant is complying with Washington state's new marketplace fairness law, which requires it to either collect the tax or comply with new use tax reporting requirements for non-collecting retailers. Why Amazon has chosen to comply with this law is unclear, though Washington is its home state.

Minnesota, Pennsylvania, and Rhode Island have enacted similar laws. Minnesota won't require collection on these sales until the middle of 2019. Pennsylvania expects marketplace facilitators to register and collect by March 1, 2018. And while the Rhode Island law actually took effect in August of 2017, it's unclear how many businesses are complying with it, or how the state plans to enforce it in the coming months.

These states aren't going after marketplace facilitators only. All hold the marketplace seller liable if the facilitator doesn't collect and remit tax on its behalf. They also impose collection or use tax reporting requirements on certain referrers.

Since Amazon is complying with Washington's law, there's a good chance we'll see more of these laws in 2018. Keep an eye on New York, North Carolina, and Texas, three states that considered taxing marketplace facilitators 2017.

### Identify your third-party sellers

Massachusetts and Connecticut are taking a different tactic. They've asked Amazon to identify all marketplace sellers with inventory in their states.

Last spring, Connecticut Revenue Services Commissioner Kevin B. Sullivan told Bloomberg BNA that he expects Amazon to comply with the state's request. If it has, Connecticut is keeping quiet about it. As far as we know, the online behemoth hasn't complied with Massachusetts' request: It may be in private discussions with the state, or it may plan to fight the Massachusetts Superior Court's order to comply.



A legal battle could drag on for much of 2018 in Massachusetts. On the other hand, the company could work out a deal with one or both states. Stay tuned for more news.

### **Here's looking at you, seller**

Virginia hasn't asked Amazon to identify its third-party sellers. However, it does hold marketplace sellers liable for sales tax if they keep inventory in Virginia. States will be watching to see if Virginia actually brings in the more than \$20 million it expects to get from this in the 2018 fiscal year. Could it be that easy to get remote sales tax revenue?

And as of December 1, 2017, Mississippi is holding certain remote vendors who "purposefully or systematically" exploit the Mississippi market liable for tax on their sales. If it succeeds in getting remote vendors to comply, other states may enact similar legislation in 2018.

### **Just give us the money**

South Carolina has taken still another stance. Earlier this year, it handed Amazon a bill for millions in uncollected tax on its marketplace sales, and that's just for the first quarter of 2016. The state wants Amazon to collect tax and place it in trust until this issue can be resolved, which could happen when the case goes to trial in November 2018.

If South Carolina wins, expect other states to follow its lead.

### **Hungry for sales tax**

If not, Connecticut, Massachusetts, Ohio, and Rhode Island have a plan. They all maintain that out-of-state internet companies establish a physical presence in the state when they place software or web cookies on in-state devices, like computers, phones, and tablets. While this might not impact catalog sellers that don't advertise online, it will surely affect online sellers.

It will be interesting to see how these laws play out in 2018. Rhode Island's policy took effect in August of 2017, Massachusetts' policy in October of 2017, Ohio's policy in January of 2018, and Connecticut will release guidelines in early 2018.

### **Tax Amnesty Programs in Key States**

Tax amnesty programs encourage non-compliant businesses to pay what they owe. Some are also designed to increase tax collections from non-collecting sellers.

- Ohio tax amnesty runs January 1 through February 15, 2018  
More info [here](#)



- Rhode Island tax amnesty runs December 1, 2017 through February 15, 2018  
More info [here](#)
- Texas tax amnesty will run between May 1, 2018 through June 29, 2018  
More info [here](#)

## Consumers' Use Tax Reporting: Is this the end of "tax-free" shopping?

A growing number of states are demanding non-collecting retailers disclose customer information to help them enforce consumer use tax compliance.

### Use tax reporting – What it is?

The idea behind use tax reporting requirements is simple: Force non-collecting retailers to either collect sales tax or provide states with information to facilitate use tax collection.

States know most residents don't remit the use tax they owe, but they can't know who owes what without auditing everyone. However, it would be prohibitively expensive and time-consuming for a state to audit every individual in the hopes of finding some with significant use tax liability. Enter non-collecting vendors, who know who their customers are, where they live, and what they bought.

Use tax notice and reporting laws vary by state but generally require non-collecting sellers to:

- Inform purchasers at the time of sale that sales or use tax may be owed on the transaction
- Provide an annual purchase summary to purchasers
- Provide an annual customer information report to the Department of Revenue

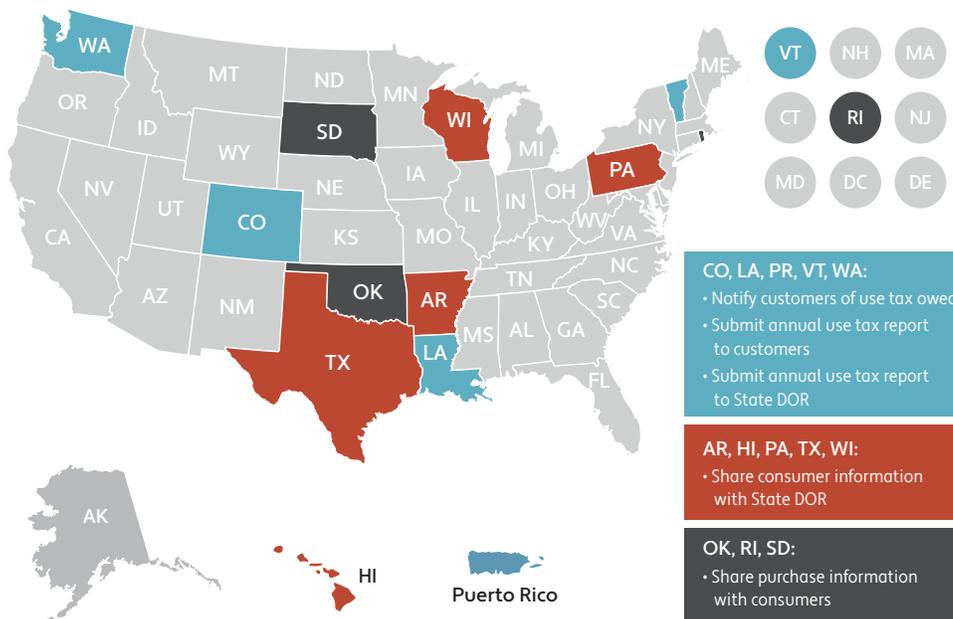
### Which states have use tax reporting requirements?

Colorado was the first state to ask non-collecting retailers to identify customers. Its 2010 [use tax notice and reporting requirement](#) applies to non-collecting retailers with total annual gross sales in Colorado of at least \$100,000. The rule was challenged and the state spent nearly seven years in litigation, emerging victorious when the U.S. Supreme Court let the law stand in December 2016. [The nation's first use tax notification and reporting law took effect in Colorado on July 1, 2017.](#)



“If tax reform has the end result of decreasing the amount of federal money currently going to states, taxpayers may instead see a surge in their state and local tax burdens.”

—Katie Devinney,  
Bloomberg BNA



Several other states have followed Colorado’s lead. To date, use tax notification and/or reporting policies have been adopted by:

- [Alabama](#) (as of July 1, 2017)
- [Colorado](#) (as of July 1, 2017)
- [Louisiana](#) (as of July 1, 2017)
- [Oklahoma](#) (as of November 1, 2016)
- [Pennsylvania](#) (as of March 1, 2018)
- [Puerto Rico](#) (as of July 1, 2017)
- [Rhode Island](#) (as of August 17, 2017)
- [Vermont](#) (as of July 1, 2017)
- [Washington](#) (as of January 1, 2018)

Lawmakers in several other states have considered use tax notice and reporting legislation. These include [Arkansas](#), [Hawaii](#), [Pennsylvania](#), [Texas](#), and [Wisconsin](#). Certain other states have adopted public notice requirements but don’t oblige sellers to send annual reports to purchasers or the state. These include [Kentucky](#) and [South Dakota](#). [South Carolina](#) required Amazon to provide South Carolina purchasers with a notice of use tax obligation and a



summary of annual purchases until the company started collecting South Carolina tax on January 1, 2016.

If any of the above states substantially benefit from their use tax reporting policies, more states could jump on the use tax reporting bandwagon in 2018 and beyond.

### **What do states expect to gain from use tax reporting?**

Use tax reporting could benefit states by:

- Filling their coffers with consumer use tax revenue
- Encouraging non-collecting retailers to register and collect

### **What is expected of retailers?**

There are three parts to these requirements: notifying consumers of their obligation to report and pay use tax, reporting purchase information to the consumer, and reporting consumer information to the state. Exact requirements vary by state but tend to include the following.

**Customer notification.** Generally, for every taxable sale where tax was not collected, non-collecting retailers must inform their customers that:

- They don't collect that state's sales or use tax
- The purchase may not be exempt
- The state requires purchasers to pay any tax owed

Notice must be conspicuously posted on the seller's website, catalog, etc., as well as at checkout and on customer invoices. Some states also require additional notification.

**Annual purchase summary.** Non-collecting retailers must send an annual purchase summary to consumers in the state. These must be sent by first class mail and marked "Important Tax Document Enclosed," though states may allow retailers to notify customers electronically. Annual purchase summaries typically must include:

- The total amount paid by the purchaser to the retailer that year, including taxable shipping charges and other fees
- The dates of each purchase, if available
- The amounts of each purchase, if available
- The taxability of each purchase, if known



Some states also require sellers to provide a description or category for each purchase, if available (e.g., book, food, household appliance). Most do not.

The retailer may also have to explain that the state requires the purchaser to pay the tax owed – reporting it on either an income or sales or use tax return – and that seller will share consumer information with the state Department of Revenue.

**Annual customer information reports.** Non-collecting retailers must file with the state Department of Revenue an annual customer information report describing:

- The name of the purchaser
- The billing address, notice address, and/or shipping address of the purchaser
- The total dollar amount of the reportable purchases, including applicable shipping charges and fees

## Will decision on sales tax (Quill v. North Dakota) get overturned?

### What is Quill?

**Quill Corp. v. North Dakota**, 504 U.S. 298 (1992), is a landmark U.S. Supreme Court ruling concerning use tax and a state's authority on how and when it can impose a tax on an entity outside of its jurisdiction.

**Quill Corporation** is an office supply retailer. Quill had no physical presence in North Dakota (neither a sales force nor a retail outlet) but it had a licensed computer software, which was used by some of its North Dakota customers for checking inventories and placing orders. North Dakota attempted to impose a use tax on Quill, which was struck down by the Supreme Court.

### 2018 could give states the ammunition they need to impose sales tax on out-of-state sellers

The slow-burning battle to kill Quill took a major turn in January of 2018. In October 2017, South Dakota petitioned the Supreme Court of the United States to hear a case involving its remote seller compliance law, which was created specifically to challenge the physical presence precedent upheld by Quill. As of January 2018, the court agreed to take on the case. If it abrogates Quill, states will have a clearer path to tax sales by remote vendors.

### The future of nexus now depends on Congress

Many states hope the court will rule in favor of South Dakota because Congress has been slow in issuing federal reform, despite repeated calls for it to do so. Just prior to accepting the case, Congressman Bob Goodlatte, Chairman of the House Judiciary Committee, asked the court to not “give up on Congress.” He said his committee “has been working diligently and assiduously” to solve the problem of untaxed remote sales and urged the court to let Congress finish what it's started. But the ultimate question is if and when proposed legislation will go into effect.

Learn more [here](#).



## Will congress finally move on sales tax legislation in 2018?

It's unlikely anything will be done at the federal level in 2018. Four pieces of legislation are in consideration, but it's clear that federal tax reform is the priority on Capitol Hill, so if lawmakers finally address sales tax, it likely won't happen until later in the year, if at all. Until then, expect more activity at the state level.

Just in case there is federal action, here's a review of the propositions in place:



### **Marketplace Fairness Act (MFA) – *the proposal that launched a thousand debates***

This legislation, which has been in the works in various form for over five years, would grant states meeting certain reporting criteria the authority to require non-exempt remote sellers to collect sales tax. If passed, the MFA would broaden state authority to require remote sellers to collect sales tax regardless of whether that business has a physical presence within those states. On the surface, it seems straightforward.

Here's where it gets complicated: The MFA would not override current state and local statutes surrounding product and service taxability, tax holidays, exemptions, or related rates, boundaries, and rules. The bill would also authorize states to require remote sellers to collect and remit sales tax in accordance with state and local laws, as long as those states are in full compliance with the Streamlined Sales and Use Tax Agreement, are a member of the Streamlined Sales Tax (SST) organization, or implement a minimum set of simplification measures.

For more information on the MFA, read this [whitepaper](#).



### **Remote Transactions Parity Act (RTPA) – *same idea as MFA but friendlier to small business***

The RTPA is similar to the MFA in that it would allow states to apply sales tax to remote sales. As with MFA, the 23 member states of the SST initiative would be authorized to require remote sellers to collect and remit sales tax soon after legislation is passed. Non-SST member states would have to adopt and implement certain minimum simplification requirements.

The small remote seller exception is different from the small seller exception under MFA. In the Remote Transactions Parity Act, remote sellers must comply only if they have gross annual receipts exceeding:



- \$10,000,000 in the “calendar year preceding the first calendar year any State can exercise the authority provided under this Act”
- \$5,000,000 in the “second calendar year any State can exercise the authority provided under this Act”
- \$1,000,000 for the “third and subsequent calendar year any State can exercise the authority provided under this Act”

Under RPTA, sales made to states with no sales tax would not be subject to tax. In addition, it would create no new taxes and have no effect on intrastate sales or the Mobile Telecommunications Sourcing Act.

Learn more [here](#).



### **Online Sales Simplification Act (OSSA) – *not as simple as the title suggests***

Remote sales tax is a divisive issue among federal lawmakers, and OSSA differs dramatically from MFA or RTPA. According to its authors, OSSA is grounded on two key principles: Simplicity, particularly for small businesses, and No Regulation Without Representation. It takes a hybrid approach to taxing remote sales: Generally, taxability would be determined by the seller’s origin state (defined as the state where the company has the most employees) rather than the consumer’s home state, but the rate would be determined by the consumer’s location.

The most current version of OSSA (2016) exists in draft form only. According to the OSSA discussion draft, “A state may impose a sales, use or similar tax on a seller, or impose on a seller an obligation to collect such a tax imposed on a purchaser, with respect to remote sale of a product or service only if:

1. The State is the origin State for the remote sales (where the company had the most employees during the previous calendar year);
2. The tax is applied using the origin State’s tax base applicable to non-remote sales; and
3. The State participates in the State tax clearinghouse.”

### **The clearinghouse**

Central to the plan proposed in OSSA is a state tax clearinghouse, “to be established by the participating States.” The clearinghouse would collect sales and use tax revenue from state revenue offices and distribute that revenue to participating states. It would also create



audit regulations and reporting requirements. Participation in the clearinghouse, although encouraged, would not be mandatory.

### Rates and rules

For states participating in the clearinghouse, remote sales would be taxed at a single statewide rate established by the destination state (the location of the consumer). In this scenario, a seller based (with the most employees) in New York City would collect the California single statewide rate on a sale to a consumer located in California. If the destination state doesn't participate in the clearinghouse, the origin state's normal tax rate (the combined state and local rate) would apply. In this case, the New York seller would apply the New York City rate to the California consumer's sale. Retailers would rely on the origin state's product taxability rules to determine which goods and services are taxable and which are exempt. In both above examples, New York and not California product taxability rules would apply. OSSA also presents a plan for dealing with buyers and sellers located in the five states without a general sales tax: Alaska, Delaware, New Hampshire, Montana, and Oregon.

Learn more [here](#).

### **No Regulation Without Representation Act – *takes the legs out from under each proposition***

The **No Regulation Without Representation Act** seeks to prevent states from taxing *any* seller lacking a physical presence and codify the physical presence requirement upheld by the U.S. Supreme Court in 1992 (Quill Corp. v. North Dakota case).

#### **Taxation with representation only**

According to bill sponsor Congressman Jim Sensenbrenner, "States should not have the ability to tax non-citizens, plain and simple. This legislation would help reduce burdensome overregulation, keep government overreaches in check, and ensure that only residents of a state are subjected to tax obligations." Under his bill, "a state may not obligate a person to:

- Collect a sales, use or similar tax;
- Report the sale;
- Assess a tax on a person; or
- Treat the person as doing business in a state for purposes of such tax, unless the person is physically present in that state during the relevant tax period."



The bill also establishes a de minimis physical presence under which “physical presence” does not include any of the following:

- Referral agreements with in-state persons who receive commissions for referring customers to the seller;
- Presence for less than 15 days in a taxable year; or
- Product delivery in-state by a third-party internet advertising services not exclusively directed toward, or exclusively soliciting, in-state customers.

Finally, it protects non-sellers: “Sales tax payment, collection or reporting obligations may only be imposed on a purchaser or seller having a physical presence in the taxing State.”

## Federal tax reform and sales tax

Until we know exactly what the final plan is, there’s no knowing exactly how state sales and use tax will be impacted by federal tax reform. However, there is guaranteed to be fallout. If Congress succeeds in pushing it through as quickly as it hopes, states will be scrambling to understand and react to it in 2018.

To date, there are two knowns:

- States *must* balance their budgets
- Any tax incentives for businesses could lead to increase in sales tax rates and expanded product/service taxability

## Everything else

The above are some of the biggest issues facing sales tax as we cruise into 2018, but they’re far from the only changes.

### Taxing sin, exempting essentials

State and local governments are still grappling with how to tax specific products: those that aren’t all that good for us (e.g., candy, soda), and those some of us absolutely need (e.g., diapers, tampons).

Arkansas is raising the sales tax rate on both candy and soda as of January 1, the same day new taxes on sweetened beverages take effect in San Francisco and Seattle. And a group in Oregon is looking to put a sugar-sweetened tax to voters some time in 2018. On the other hand, the Cook County soda tax was recently repealed, and a Michigan lawmaker is looking to prohibit local governments from imposing any sort of tax or fee on the manufacture, distribution, or retail sale of food.



Like Wisconsin, the Florida legislature will consider a sales tax exemption for diapers and incontinence products in 2018. They'll likely be joined by several other states, including California and Texas.

Already on the calendar are an exemption for feminine hygiene products in Florida (effective January 1), and an exemption for both diapers and feminine hygiene products in Connecticut (as of July 1, 2018).

### **Tax-free and bike-crazy Oregon to begin taxing ... bikes!**

Starting January 1, sales-tax-free Oregon will tax sales of bikes and vehicles. Be warned, if it has wheels, it could be taxed.

Oregon isn't the only state getting creative with vehicle taxes. Fuel-efficient cars are better for the environment, but they take a bite out of the gas tax revenue cities and states rely on to fund roads. California, Utah, and Seattle are all starting or considering pilot projects to tax miles driven rather than fuel. Expect to see more of this in 2018.

### **Rate changes**

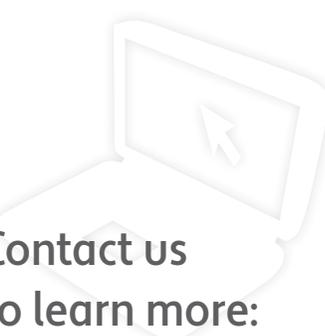
New Jersey is decreasing the state sales tax rate as of January 1, and there will be a plethora of local sales and use tax rate changes in 2018, some of which have already been announced. There could also be changes in product taxability, particularly with respect to cloud computing services. And watch out for Department of Revenue rulings, which often reveal just how complicated sales tax can be.

There is sure to be more sales and use tax news in 2018, but one of the most entertaining aspects of tax (if it can be said to be entertaining), is that we never know what we're going to get.

Stay up to date on the latest rate changes and other sales tax news with Avalara's [blog](#).

### **Scratching the surface!**

As 2018 progresses, we're bound to see many more changes take effect. In sales tax compliance, you can research and memorize all of the sales tax rules that affect your business on your own or you can simply automate – and let Avalara worry about the changes.



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