



# 2018 Sales Tax Changes

## Mid-Year Update

In the world of sales tax, 2018 will be remembered as a big year for change. You probably don't need this guide to inform you that the ruling of the Supreme Court of the United States in *South Dakota v. Wayfair, Inc.* upended the long-standing precedent that companies need physical presence in a state before they're required to collect and remit sales tax. Now that South Dakota's economic nexus law stands with approval from the highest court, many other states are quickly adopting economic nexus laws. So, what does this mean for remote sellers? Depending on the amount they sell into key states, it could mean a whole new set of obligations to consider.

But nexus isn't the only thing in flux as we enter the fiscal new year. Sales tax changes for marketplace sellers, new tax amnesty programs, and changes to tax on services are also making headlines.

You don't need a crystal ball to predict that more changes are on the horizon. Here's a look at the here and now in the world of sales tax.

Beginning July 1, 46 states start their fiscal new year. That's normally a big deal when it comes to sales tax because many new laws go into effect and many more are proposed and/or dropped by local and state governments. It's a time of transition. But this year's fiscal new year is overshadowed by a ruling of the Supreme Court of the United States (SCOTUS) that essentially gives states the authority to enforce tax obligations on remote sellers without a physical presence.

Sales tax nexus can now be triggered when a company makes a certain volume of transactions into a state (known as economic nexus). The age-old physical presence standard is now just one of a growing list of factors that obligate companies to file and remit sales and use tax in multiple states where they're not registered.

As we enter the second half of 2018, we're sure to see many states get on board with economic nexus, as remote sellers grapple with a major shift in their compliance obligations. But that's not all that's fluctuating in the world of sales tax. We're also seeing a lot of changes for marketplace sellers and service providers, not to mention a bevy of rate and taxability changes. Read on for the details.

## Remote sellers on the hook for sales tax

### Landmark Supreme Court decision gives states authority to impose sales tax obligations on remote sellers

On June 21, SCOTUS ruled in favor of South Dakota in *South Dakota v. Wayfair, Inc.* The state is now free to enforce economic nexus, which requires out-of-state sellers with more than 200 taxable sales transactions delivered into South Dakota in a calendar year, or more than \$100,000 in gross revenue from the same, to collect and remit sales tax.

*South Dakota v. Wayfair, Inc.* challenged the physical presence standard upheld by the Supreme Court in *Quill Corp. v. North Dakota* (1992). *Quill* held that a state cannot tax a business unless it has a substantial connection (nexus) with the state, defined as a physical presence. That decision has now been repealed, and the case has been remanded to the South Dakota Supreme Court “for further proceedings not inconsistent with” the SCOTUS opinion. In other words, now that the state has the blessing from the highest court, expect South Dakota to enforce its law.

### What does the decision mean for remote sellers?

For remote sellers that do business into states where they’re not registered to collect and remit sales tax, economic nexus changes their tax obligations. Rather than require a physical presence in a state, economic nexus is based entirely on sales revenue, transaction volume, or a combination of both.

#### What is economic nexus?

Economic nexus is a tax collection obligation imposed on companies based solely on a certain level of economic activity within a state. Unlike nexus that’s based on physical presence, economic nexus is based entirely on sales revenue, transaction volume, or a combination of both. Like many sales tax laws, economic nexus criteria vary by state.

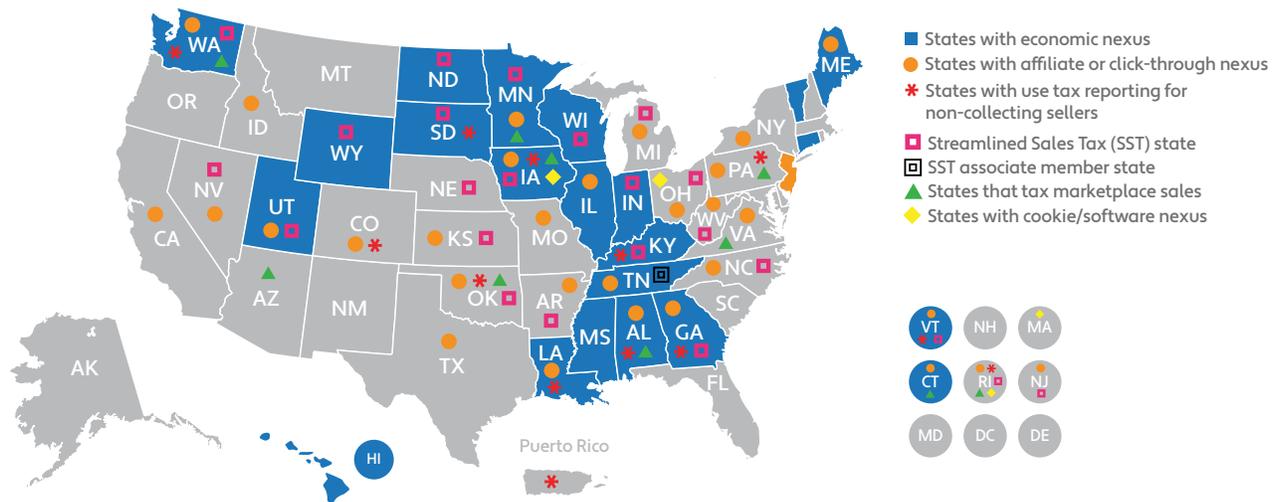
### Will other states follow South Dakota’s lead?

The big question of many tax experts and remote sellers is: How will the decision impact their sales and use tax obligations in other states? Within weeks of issuing a verdict, other states enacted economic nexus legislation in the same vein as South Dakota SB 106. It’s clear that the repeal of the physical presence rule is a game changer: Approximately 20 states have already adopted economic nexus laws or rules that could be impacted by the South Dakota v. Wayfair, Inc. ruling. The following map highlights the states with economic nexus laws as of July 2018. Additionally, the chart below provides the effective dates and threshold triggers for each state with economic nexus rules.

**Note:**

States are responding fast in the wake of this decision. Be sure to check Avalara’s [website](#) for the most current information.

## Various types of nexus by state (as of July 2018)



## Will the SCOTUS ruling prompt Congress to (finally) intervene?

Not every member of the Supreme Court backed the decision on South Dakota v. Wayfair, Inc. Justice Roberts wrote, “I would let Congress decide whether to depart from the physical-presence rule that has governed this area for half a century.”

However, it’s unlikely anything will be done at the federal level in 2018. Four pieces of legislation have been in consideration for several years, but little headway has been made. Perhaps the recent SCOTUS decision will prompt Congress to act and deliver their own solution.

If Congress does decide to intervene, here’s a look at the proposed legislation under review:

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

This legislation, which has been in the works in various forms 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.

Learn more [here](#).

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

The RTPA of 2015 is similar to the MFA in that it would allow states to apply sales tax to remote sales. As with the MFA, the 23 member states of the Streamlined Sales Tax and Use Tax Agreement (SSUTA) would be authorized to require remote sellers to collect and remit sales tax soon after legislation is passed. Non-SSUTA 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 the MFA. In the RTPA, 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 the RTPA, 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 the OSSA differs dramatically from the MFA and the RTPA. According to its authors, the 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 the 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."

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 SCOTUS in 1992 (Quill Corp. v. North Dakota).

### **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.”

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.”

### **What about consumer use tax reporting?**

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:

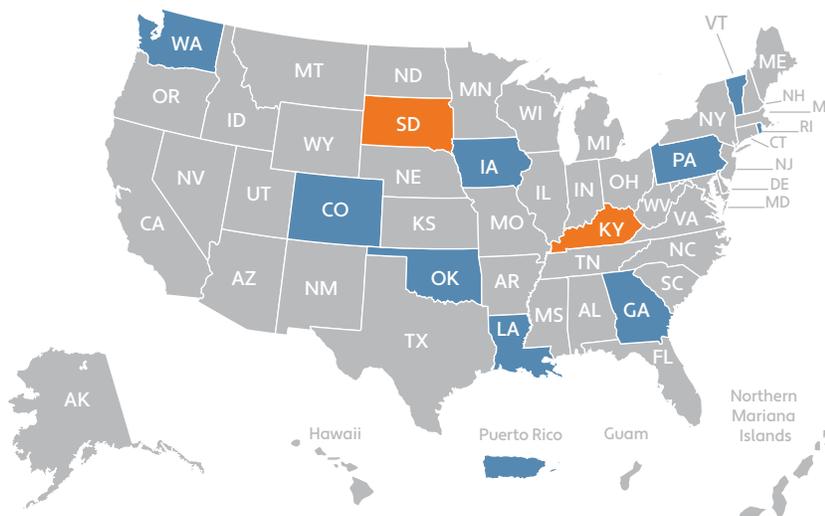
- » Inform purchasers at the time of sale that sales or use tax may be owed on the transaction
- » Provide an annual purchase summary to purchasers
- » Provide an annual customer information report to the Department of Revenue

CO, GA, IA, LA, PA, OK,  
PR, RI, VT, WA:

- Notify customers of use tax owed
- Submit annual use tax report to customers
- Submit annual use tax report to State DOR

KY, SD:

- Post public notices that sales tax isn't collected in the state and the consumer may owe use tax



### 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 SCOTUS 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.

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)
- » [Georgia](#) (as of January 1, 2019)
- » [Iowa](#) (as of January 1, 2019)
- » [Louisiana](#) (as of July 1, 2017)
- » [Oklahoma](#) (as of November 1, 2016, and October 1, 2018)
- » [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.

[Connecticut](#) has imposed information and reporting requirements on certain "referrers." Starting July 1, 2019, they must provide certain information to each seller to whom they referred a potential purchaser, and share the names of addresses of certain sellers with the Connecticut Department of Revenue Services.

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: 1) notifying consumers of their obligation to report and pay use tax, 2) reporting purchase information to the consumer, and 3) 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

## 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. These programs generally run for a limited period of time. For example:

- » The Alabama Department of Revenue will offer a short-term tax amnesty program this summer. [Alabama](#)’s program will run for three months, from July 1 through September 30, 2018.
- » [New Jersey](#) is providing a tax amnesty program later in the year. Exact dates are still to be determined; it may not begin until after November 1, 2018, and must conclude by January 15, 2019.

## States bolster 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 generally 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 changed in 2018 – at least in Washington state.

At the beginning of 2018, Amazon began collecting 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.

Washington is not alone. The following states have also enacted taxes on marketplace sales:

- » [Alabama](#)
- » [Connecticut](#)
- » [Iowa](#)
- » [Minnesota](#)
- » [Oklahoma](#)
- » [Pennsylvania](#)
- » [Rhode Island](#)

#### Note:

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.

### Identify your third-party sellers

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

In late January, Amazon [agreed](#) to disclose the identities of Fulfillment by Amazon (FBA) sellers with inventory in Massachusetts to the Massachusetts Department of Revenue. In February, Amazon shared [third-party seller information](#) with the Rhode Island Division of Taxation.

These are some of the first known releases of such data. It's only a matter of time before Massachusetts and Rhode Island share what they know with other states.

### **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?

### **South Carolina takes Amazon to trial**

South Carolina has taken still another stance. In early 2018, 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.

### **Other states 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.

## **Everything else**

And, those are just some of the biggest issues facing sales tax as we cruise into the latter half of 2018, but they're far from the only changes.

### **Taxing more services**

A growing number of states are looking to tax services, which are generally exempt in most states. Kentucky has been considering this since 2012, and it succeeded at last. Starting July 1, 2018, it will tax a host of new services, including admissions, janitorial services, and landscape services.

Other changes include:

- » The Virginia Department of Taxation has stated that personal shopping services are taxable.
- » Iowa plans to tax services as of January 2019, along with digital goods and remote sales. Learn more [here](#)
- » Louisiana is temporarily taxing a variety of services through June 30, 2025.
- » California hasn't committed to it, but it's looking at taxing services, too. Learn more [here](#).

**Note:** The following four states impose tax on virtually all services: Hawaii, New Mexico, South Dakota, and West Virginia. The following states tax the least number of services: California, Colorado, Illinois, Nevada, and Virginia.

### 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 raised the sales tax rate on both candy and soda on January 1, the same day new taxes on sweetened beverages took 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, California has banned new local taxes on soda through January 1, 2031, a 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.

A new exemption for feminine hygiene products took effect in Florida (effective January 1). And an exemption for both diapers and feminine hygiene products took effect in Connecticut (as of July 1, 2018).

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

On January 1, sales-tax-free Oregon began taxing 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 decreased the state sales tax rate as of January 1, and Louisiana dropped its sales tax rate on July 1. 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 digital goods and services and cloud computing services. More and more states and localities are adopting and considering [taxes on streaming services](#) such as Netflix. 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 the latter part of 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 we enter the second half of 2018, we're bound to see many more changes take effect. With 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.

Contact us to learn more.

877-759-6520

[avalara.com](http://avalara.com)

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