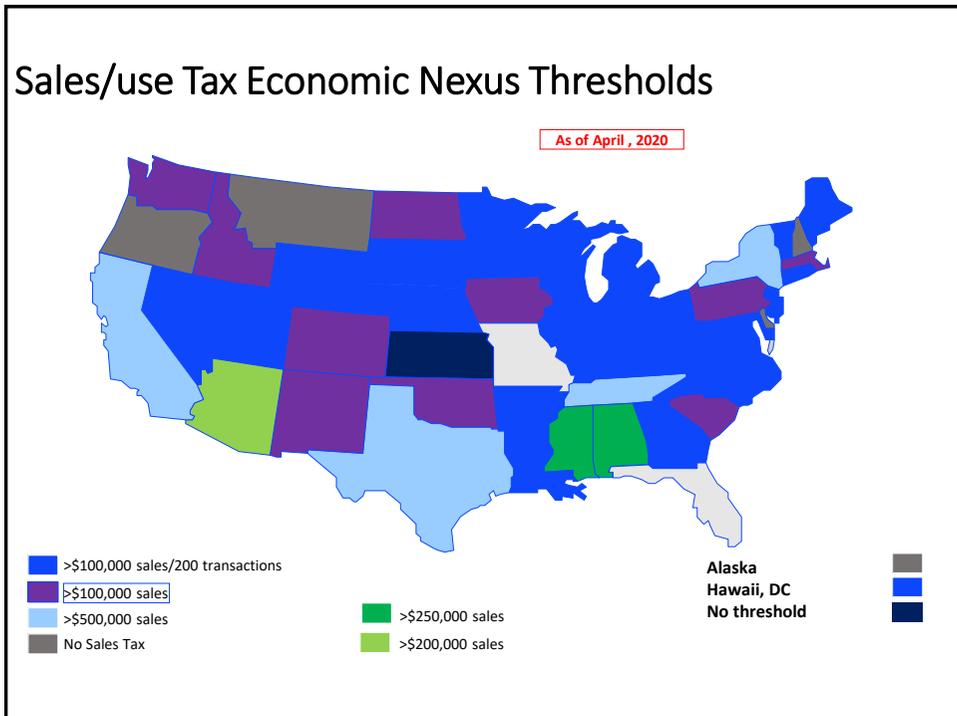


Update on Economic Nexus and Marketplace Facilitator Collection Laws

Nexus Committee Meeting Alexandria, VA April 21, 2020

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Multistate Tax Commission

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Economic nexus statutes

Threshold >\$100,000 in sales/yr or 200 transactions/yr:

Hawaii, Maine, Vermont (SST)— eff. 7/1/18

Illinois, Indiana (SST), Kentucky (SST), Maryland, Michigan (SST), Wisconsin (SST)—eff. 10/1/18

New Jersey (SST), North Carolina (SST), South Dakota (SST)—eff. 11/1/18

DC, Nebraska (SST), Utah (SST), West Virginia (SST)—eff. 1/1/19

Wyoming (SST)—eff. 2/1/19

Arkansas (SST), Virginia, Rhode Island (SST)--eff. 7/1/19

Ohio (SST)—eff. 8/1/19

Minnesota (SST)—eff. 10/1/19

Georgia (SST)—eff. 1/1/20 (>\$250,000 sales/200 transactions threshold from 4/28/19 thru 12/31/19)

Louisiana HB 547--eff. NLT 7/1/20

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Economic nexus statutes (continued)

Threshold >\$500,000 sales/yr:

New York—eff. 6/21/18 (in prior 4 quarters and 100 transactions)

California—eff. 4/1/19

Texas—eff. 10/1/19

Threshold >\$200,000 sales/yr.:

Arizona—eff. 10/1/19 (\$150,000 for 2020, \$100,000 for 2021)

Threshold \$100,000 and 200 transactions/yr:

Connecticut—eff. 7/1/19; \$250,000 and 200 transactions/yr eff. 12/1/18 thru 6/30/19

Threshold >\$100,000 sales/yr:

South Carolina—eff. 11/1/18

North Dakota (SST)—eff. 1/1/19

Washington (SST)—eff. 3/18/19

Colorado, Idaho—eff. 6/1/19

Iowa (SST), New Mexico, Pennsylvania—eff. 7/1/19

Massachusetts—eff. 10/1/19

Oklahoma (SST)—eff. 11/1/19

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Economic nexus by regulation/ruling and notice

Threshold \$500,000 sales/yr:

- **Tennessee** reg (Assoc. M.-SST); HB 667 enacted, legislative approval of reg, eff. 7/1/19; Tennessee DOR Notice 19-04 requires collection eff. 10/1/19

Threshold >\$250,000 sales/yr:

- **Alabama** reg eff. 10/1/18
- **Mississippi** reg eff. 9/1/18

Other

- **Kansas** eff. 10/1/19 (SST) (no threshold stated in Notice 19-04)

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Sales tax
states
considering
enacting
economic
nexus laws

Florida: SB 126 economic nexus (>\$100,000 sales/200 transactions/yr) passed 2/13/20 by Senate Finance and Tax Committee; HB 159 introduced in House

Kansas: HB 2537 introduced (>\$100,000 sales/yr)

Missouri: HB 1957, SB 648 introduced. HB 2957 passed H. W & M Com. (economic nexus >\$100,000 sales/yr)

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Streamlined Sales Tax

Although no additional states have joined the Streamlined Sales and Use Tax Agreement since *Wayfair*, Connecticut, Illinois, New Mexico and Pennsylvania have recently authorized use of Certified Service Providers.

The SST Governing Board has amended the SSUTA to adopt policies to encourage non-SST states to use its centralized registration and simplified electronic return system.

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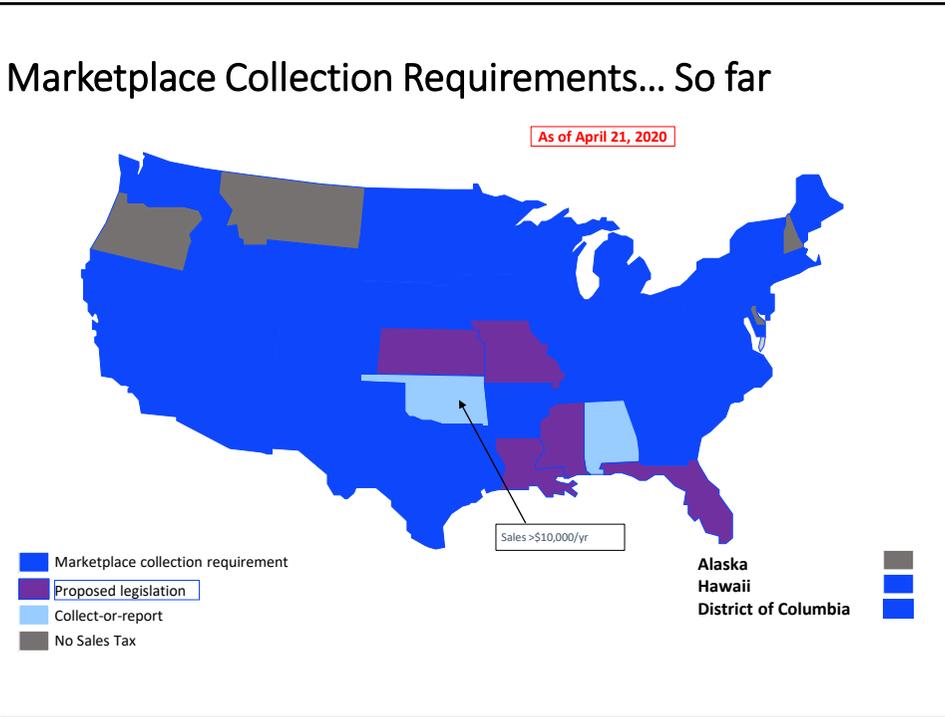
Local Sales Tax Simplification

Colorado 2020 HB 1023 (awaiting Governor Polis' signature): creates geographic information data system to enable remote sellers to determine the proper local jurisdiction to which sales tax is owed; provides hold-harmless protection for sellers using the database in filing returns.

Colorado 2020 HB 1022 (pending): continues the sales and use tax simplification task force for 5 years, modifies the task force's duties

Louisiana 2020 HB 429 (pending): streamline local sales and use tax collections for remote sellers through a state-operated collection portal created under a constitutional amendment

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Marketplace facilitator as collector/reporter laws

Enacted in 2017:

- Minnesota** (HF 1 news release published 7/25/18--collect eff. 10/1/18 if place of business in MN; HF 5 enacted mandating collection sales>\$100,000/200 trans/yr. eff. 10/1/19)
- Pennsylvania** (HB 542 collect or report if sales >\$10,000/yr; Bulletin 2019-01, mandatory collection for sales >\$100,000/yr. eff. 7/1/19; 2019 HB 262 codified)
- Rhode Island** (H5175A collect or report if sales/yr >\$100,000/200 trans eff. 8/17/17; 2019 H. 5278 Sub A and S. 251 Sub A enacted, removing reporting requirements and requiring collection)
- Washington** (HB 2163 collect eff. 1/1/18; 2019 HB 5581 enacted, repealing notice/reporting eff. 7/1/19)

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Marketplace facilitator as collector/reporter laws

Enacted in 2018 pre-*Wayfair*:

- **Alabama** (HB 470 collect if sales/yr >\$250,000 or report eff. 1/1/19)
- **Connecticut** (SB 417 collect/referrer report if sales/yr >\$250,000 + 200 trans eff. 12/1/18; HB 7424 \$100,000 + 200 trans eff. 7/1/19)
- **Iowa** (SF 2417 collect/referrer report if sales/yr >\$100,000/200 trans eff. 1/1/19; >\$100,000 eff. 7/1/19)
- **Oklahoma** (HB 1019XX collect if sales/yr >\$10,000 or report eff. 7/1/18)

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Marketplace facilitator as collector laws

Enacted in 2018 post-*Wayfair*:

South Dakota (SB 2 collect if sales/yr >\$100,000/200 trans eff. 3/1/19)
New Jersey (A. 4496 collect if sales/yr >\$100,000/200 trans eff. 11/1/18)
DC (B22-1070 collect eff. 4/1/19)

Enacted in 2019:

Nebraska (LB 284) eff. 4/1/19
South Carolina (SB 214) eff. 4/26/19
Idaho (HB 259) **New York** (S. 1509, part G) **Vermont** (HB 536) eff. 6/1/19
Arkansas (SB 576, including OTC collection) **Indiana** (HB 1001) **Kentucky** (HB 354) **New Mexico** (HB 6) **Pennsylvania** (HB 262) **Rhode Island** (H. 5278 Sub A, S. 251 Sub A) **Virginia** (HB 1722, SB 1083) **West Virginia** (HB 2813) **Wyoming** (HB 69) eff. 7/1/19
Ohio (HB 166) eff. 8/1/19
Arizona (HB 2757) **California** (AB 147) **Colorado** (HB 19-1240) **Maine** (LD 1452/ HP 1064) **Maryland** (HB 1301) **Massachusetts** (H 4000) **Nevada** (AB 445) **North Dakota** (SB 2338) **Texas** (HB 1525) **Utah** (SB 168) eff. 10/1/19
Hawaii (SB 396/SD 1) **Illinois** (SB 689) **Wisconsin** (AB 251) eff. 1/1/20

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Marketplace Facilitator Collection Laws Enacted in 2020

- Georgia HB 276 eff. 4/1/2020
- Tennessee SB 2182 eff. 10/1/2020

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Marketplace facilitator as collector litigation

Louisiana (*Normand v. Wal-Mart.com*: Louisiana S. Ct. reversed lower court decision in favor of parrish; determined Wal-Mart.com, marketplace facilitator, is not a “dealer” obligated to collect)

South Carolina (lower court decision upholding SC DOR assessment against Amazon Services on appeal; SC DOR considers marketplace facilitator to be the retailer; ruling #18-14 requiring collection if sales/yr >\$100,000 effective 11/1/18; SB 214 enacted)

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2020 pending marketplace facilitator as collector bills

Florida: SB 126, HB 159 (session ended 3/19/20 without action)

Kansas: HB 2513, SB 369 (session ended 3/ /20 without action)

Louisiana: SB 138

Mississippi: HB 379 (passed House 2/25/2020), SB 2273

Missouri: HB 1957, SB 648

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post-*Wayfair* income tax nexus statutory/regulatory activity

- Hawaii 2019 SB 495: economic nexus for corporate income tax (200+ transactions into the state annually, or \$100,000+ in gross income from in-state sources, presumed to have economic nexus beginning in tax year 2020)
- Washington 2019 SSB 5581: reduced economic nexus threshold for B&O tax to \$100,000+/yr., effective 1/1/2020
- Oregon 2019 HB 2164, 3427: economic nexus standard for new "corporate activity tax" (gross receipts tax) with "factor-presence" nexus (\$50,000+ property, \$50,000+ payroll, \$750,000+/yr. commercial activity, or 25% of any one factor), effective tax years beginning 1/1/2020
- Massachusetts reg 830 CMR 63.39.1: guidance on corporate income tax nexus: "in-state sales activity" under *Wayfair* and \$500,000+ annual sales threshold creates presumption of nexus, promulgated 10/18/2019
- Texas proposed amendment to franchise tax reg section 3.586: economic nexus for annual gross receipts from business done in Texas of \$500,000+, effective 1/1/2020

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post-*Wayfair* income tax nexus
statutory/regulatory activity (cont.)

- Philadelphia section 103 of business income & receipts tax (BIRT) regs: economic nexus for \$100,000+ in Philadelphia gross receipts in prior 12 months, effective tax years beginning 1/1/2019
- Pennsylvania DOR Bulletin 2019-14: rebuttable presumption – corporate net income tax economic nexus for direct or indirect sales \$500,000+/yr., eff. TY beginning 1/1/2010