



JOHN B. GOLDHAMER, MBA, J.D. Equivalent

Glen Allen, Virginia

www.Linkedin.com/in/JohnGoldhamer

www.JohnGoldhamer.com

I can *Hammer* out any Problem!

John B. Goldhamer is an “*Authored Tax Law Expert*” with *Education and Experience in all Business Disciplines*, including J.D. Equivalent Legal Education, Finance, Marketing, MBA, Accounting, and Information Systems.

John’s Position Papers are *Educational, Entertaining, and Empowering* that provide definitions, procedures, website links for cross reference, and a Table of Contents for easy review.

SOUTH DAKOTA v. WAYFAIR - SALES TAX ECONOMIC NEXUS

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South Dakota v. Wayfair, Inc., 585 U.S. ____ (2018) - A United States Supreme Court case in which the court held by a 5–4 majority that states may charge tax on purchases made from out-of-state sellers, even if the seller does not have a physical presence in the taxing state.

The case requires sellers with sales of over US\$100,000 or with more than 200 different transactions shipped to addresses in a state to collect sales tax.

https://en.wikipedia.org/wiki/South_Dakota_v._Wayfair,_Inc.

The South Dakota v. Wayfair case means that for a *Customer-Consumer* purchasing *Tangible Personal Property (Product)* from an *Out-Of-State Seller (Merchant)* that *ships the item*, the Merchant *might* be registered with the state to charge the *Customer-Consumer* their *State and Local Sales Tax* on the *purchase price* of the *Tangible Personal Property (Product)* bought.

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DEFINITIONS

Sales and Use Tax (S&U) – An “Indirect Tax” paid to a governing body for the sales of certain goods and services. Usually laws allow the seller to collect funds for the tax from the consumer at the point of purchase. When a tax on goods or services is paid to a governing body directly by a consumer, it is usually called a use tax. Often laws provide for the exemption of certain goods or services from sales and use tax. A value-added tax (VAT) collected on goods and services is similar to a sales tax.

https://en.wikipedia.org/wiki/Sales_tax

Use Tax – Also called *Consumer Use Tax*. A type of tax levied in the U.S. by numerous state governments. It is essentially the same as a sales tax but is applied not where a product or service was sold but where a merchant bought a product or service and then converted it for its own use, without having paid tax when it was initially purchased. They are typically levied upon the use, storage, enjoyment, or other consumption in the state of tangible personal property that has not been subjected to a sales tax.

https://en.wikipedia.org/wiki/Use_tax

No Sales Tax - The five states do not have a sales tax: *Alaska, Delaware, Montana, New Hampshire and Oregon*, which leaves forty-five [45] states that charge sales tax.

Sales Tax Exemption Certificates - Exemption certificates are a way for a business or organization to attest that you are a tax exempt entity, or that you are purchasing an item with the intent to use it in a way that has been deemed exempt from tax. In other words, sales tax exemption certificates are your proof that you can buy an item tax free.

<https://blog.taxjar.com/sales-tax-exemption-certificates>

VDA (Voluntary Disclosure Agreement) - A program in the U.S. where taxpayers can receive benefits from proactively *disclosing prior period tax liabilities* and to encourage companies to comply with a state's tax laws and register to collect and remit sales tax.

https://en.wikipedia.org/wiki/Voluntary_disclosure_agreement

Home Rule State - A state with self-administered local taxing authorities (cities, counties, or special tax jurisdictions) that have chosen to collect and administer sales or use tax independently from the state. Self-administered jurisdictions within these states may require separate returns.

Home Rule States: *Alabama, Alaska (localities impose tax), Arizona, Colorado, Idaho, and Louisiana*.

https://help.avalara.com/Frequently_Asked_Questions/Product_and_Service_Taxability_FAQ/What_are_home_rule_states%3F

Economic Nexus - Having economic activity in a state, or by having income from sales to customers in that state. Sales tax nexus is no longer solely based on having a physical presence in a state.

The Supreme Court ruled in South Dakota v. Wayfair Inc. that a state is allowed to collect sales tax from remote sellers on remote transactions, if specific amounts and thresholds are met.

All manufacturers and distributors selling B2B (Business to Business) or B2C (Business to Consumer), are subject to consumer use tax on purchases.

<https://www.infor.com/blog/how-the-sales-and-use-tax-game-is-changing-and-how-tax-compliance-through-automation-can-help>

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DEFINITIONS (Continued)

Manufacturing Exemption – For example the *Code of Virginia* provides a liberal definition.

Virginia Code § 58.1-609.3 2 (iii) provides an exemption from sales and use tax for "machinery or tools or repair parts thereof or replacements thereof, fuel, power, energy, or supplies, *used directly in processing, manufacturing, refining, mining or converting products for sale or resale....*"

The term "Used directly" is defined in Va. Code § 58.1-602 as "those activities which are an integral part of the production of a product, including all steps of an integrated manufacturing ... process, but not including ancillary activities such as general maintenance or administration."

<https://www.tax.virginia.gov/laws-rules-decisions/rulings-tax-commissioner/15-154>

Note: The Virginia Manufacturing Exemption starts with the handling and storage of the raw materials and ends handling and storage of the finished products; and everything in between is exempt.

Sales Tax Exemptions on Manufacturing Equipment and Machinery - Thirty-seven [37] states provide full exemptions from sales and use taxes on manufacturing equipment and machinery, but for the rest of the states, the rules can be very different.

Partial Exemptions - Reduced Tax Rate – Four [4] states provide partial exemptions or offer a *reduced tax rate* for machinery and equipment: *California, Hawaii, Mississippi and Alabama.*

No Special Tax Treatment – Four [4] states do not provide a special tax treatment for manufacturing and machinery: *Nevada, New Mexico and South Dakota, and the District of Columbia.*

<https://www.accountingtoday.com/opinion/sales-tax-exemptions-vary-on-manufacturing-equipment>

Corporation Income Tax Return - A "Direct Tax" imposed by a jurisdiction on the income or capital of corporations or analogous legal entities. Many countries impose such taxes at the national level, and a similar tax may be imposed at state or local levels.

Partnerships are not taxed at the entity level, but taxed by their owners.

46 states impose state corporation taxes and 4 states do not have an income tax: *Nevada, South Dakota, Washington, and Wyoming.*

https://en.wikipedia.org/wiki/Corporate_tax

Corporation Tax Income - Apportionment Formulas - All states with corporation taxes use an apportionment formula to distribute corporation tax income.

Most states use a "Three-Factor Formula," which uses three fractions representing the *ratios of a company's Property, Payroll, and Sales within a state* compared to its Total Everywhere of Property, Payroll, and Sales.

Some states "Double weight" the Sales Factor.

<https://cga.ct.gov/2012/rpt/2012-R-0414.htm>

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ISSUE

Based on South Dakota v. Wayfair, Inc., 585 U.S. ____ (2018), what is a company's potential sales tax liability?

ANSWER

In South Dakota v. Wayfair, Inc., 585 U.S. ____ (2018), the U.S. Supreme Court provided that states may charge tax on purchases made from out-of-state sellers, even if the seller does not have a physical presence in the taxing state.

If a company is a manufacturer of machinery and equipment used in Industrial Manufacturing and either sells directly to an Industrial Manufacturer or an Equipment Broker then:

1. In thirty-seven [37] states that provide full exemptions from sales and use taxes on manufacturing equipment and machinery, there would not be any sales tax liability.
2. In the four [4] states that provide partial exemptions or offer a *reduced tax rate* for machinery and equipment: *California, Hawaii, Mississippi and Alabama*, there might be some sales tax liability.
3. In the four [4] states *do not provide a special tax treatment* for manufacturing and machinery: Nevada, New Mexico and South Dakota, and the District of Columbia there will be a sales tax liability.
4. In the five states do not have a sales tax: *Alaska, Delaware, Montana, New Hampshire and Oregon*, there is not any sales tax liability.
5. In 'Home Rule States' *Alabama, Alaska localities impose tax, Arizona, Colorado, Idaho, and Louisiana* with *self-administered local taxing authorities*, like Denver, CO are allowed to create their own laws; regardless of the state laws, there might be a sales tax liability.

SUGGESTIONS

1. A company should be diligent to *collect, save, sort, and post on a spreadsheet* all Exemption Certificates from purchasers, especially "Resale Certificates."
 2. A company should be diligent to create systems to track all Exemption Certificates and to be sure that there are not any missing names, dates, or signatures.
 5. A company when filing Sales Tax Returns, should list their Gross Sales in the state less the Exempt Sales in the state to arrive at the taxable sales, which might be nominal.
 4. A company should determine in which states they meet the "*Economic Nexus Threshold*" to register for Sales Tax. Some states include exempt sales when determining "*Economic Nexus Threshold*."
- See the South Dakota v. Wayfair Economic Nexus Threshold Table for each state starting on page 6.

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6. A company should determine if they meet a state's "*Economic Nexus Threshold*" to register to collect sales tax with a VDA (Voluntary Disclosure Agreement)

This can be accomplished by reviewing their Corporation Tax Income - *Apportionment Factors of Property, Payroll, and Sales* in each state.

7. A company might determine if they should register to collect sales tax with a VDA based on if:
1. Due to the high risk of a tax assessment they should register to collect sales tax with a VDA,
 2. Due to meeting the "Economic Nexus Threshold," they should register to collect sales tax with a VDA,
 3. Just collect exemption certificates and wait, or
 4. There is not any sales tax liability.

CONCLUSION

In conclusion, I hope this position paper answered your question what is a company's potential sales tax liability from on the South Dakota v. Wayfair, Supreme Court case.

Please let me know if you have any questions.

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Sales Tax Laws By State

by Avalara - 2020

<https://www.avalara.com/us/en/learn/guides/sales-tax-nexus-laws-by-state.html#lm>

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	Economic nexus	Marketplace facilitator	Non-collecting seller use tax	Affiliate nexus	Click-through nexus	Physical presence	Notes
Alabama	✓	✓	✓	✓	-	✓	Home rule state
Alaska	-	-	-	-	-	-	No general sales tax; allows local sales tax (home rule); some cities enforce economic nexus
Arizona	✓	✓	-	✓	-	✓	Home rule state
Arkansas	✓	✓	-	✓	✓	✓	
California	✓	✓	-	✓	✓	✓	
Colorado	✓	✓	✓	✓	✓	✓	Home rule state
Connecticut	✓	✓	✓	✓	✓	✓	
Delaware	-	-	-	-	-	-	No general sales tax
Florida	-	-	-	✓	-	✓	
Georgia	✓	✓	✓	✓	✓	✓	
Hawaii	✓	✓	✓	✓	-	✓	
Idaho	✓	✓	-	✓	✓	✓	
Illinois	✓	✓	-	✓	✓	✓	
Indiana	✓	✓	-	-	-	✓	
Iowa	✓	✓	-	✓	✓	✓	
Kansas	✓	-	-	✓	✓	✓	
Kentucky	✓	✓	✓	✓	-	✓	
Louisiana	✓	-	✓	✓	✓	✓	Home rule state
Maine	✓	✓	-	✓	✓	✓	
Maryland	✓	✓	-	-	-	✓	
Massachusetts	✓	✓	-	-	-	✓	
Michigan	✓	✓	-	✓	✓	✓	
Minnesota	✓	✓	-	✓	✓	✓	
Mississippi	✓	-	-	-	-	✓	
Missouri	-	-	-	✓	✓	✓	
Montana	-	-	-	-	-	-	No general sales tax
Nebraska	✓	✓	-	✓	-	✓	
Nevada	✓	✓	-	✓	✓	✓	
New Hampshire	-	-	-	-	-	-	No general sales tax
New Jersey	✓	✓	-	✓	✓	✓	
New Mexico	✓	✓	-	-	-	✓	
New York	✓	✓	-	✓	✓	✓	
North Carolina	✓	✓	-	-	✓	✓	
North Dakota	✓	✓	-	-	-	✓	
Ohio	✓	✓	-	✓	✓	✓	
Oklahoma	✓	✓	✓	✓	-	✓	
Oregon	-	-	-	-	-	-	No general sales tax
Pennsylvania	✓	✓	✓	✓	✓	✓	
Puerto Rico	-	✓	✓	-	-	✓	
Rhode Island	✓	✓	✓	✓	✓	✓	
South Carolina	✓	✓	-	✓	-	✓	
South Dakota	✓	✓	✓	✓	-	✓	
Tennessee	✓	-	-	-	✓	✓	
Texas	✓	-	-	-	-	✓	
Utah	✓	✓	-	✓	-	✓	
Vermont	✓	✓	✓	✓	✓	✓	
Virginia	✓	✓	-	✓	-	✓	
Washington	✓	✓	✓	-	✓	✓	
Washington, D.C.	✓	✓	-	-	-	✓	
West Virginia	✓	✓	-	✓	-	✓	Allows local sales tax (home rule)
Wisconsin	✓	✓	-	✓	-	✓	
Wyoming	✓	✓	-	✓	-	✓	

On June 21, 2018, the Supreme Court of the United States ruled in favor of the state in [South Dakota v. Wayfair, Inc.](#) This ruling allows the state to begin taxing remote sales via their economic nexus laws. Since the ruling, more than 40 states enacted economic nexus laws of their own.

After the Supreme Court of the United States issued a sweeping decision in 2018 that [allows states to impose tax obligations on businesses without a physical presence](#), the states saw the opportunity and ran with it. And run with it, they did. Economic nexus laws spread like wildfire.

Prior to this ruling, states could only enforce a tax collection obligation on businesses that had a [physical presence in the state](#), such as a brick-and-mortar location or remote employees. While the physical presence standard still exists, nexus laws were expanded to include a sales tax obligation based on a certain level of [economic activity within the state](#), including [sales revenue](#), [transaction volume](#), or a [combination of both](#). Like many sales tax laws, [economic nexus criteria vary by state](#) and by the type of tax.

[Economic nexus](#) is one of the many ways your business can establish nexus: an obligation to register, collect, and remit sales tax in a jurisdiction. To see other sales tax laws and nexus rules by state, view our sales tax laws by state resource.

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South Dakota v. Wayfair Economic Nexus Threshold Table

In the second to the last column on the right titled, Exempt Transactions, I highlighted in red, the word **“Are”** included in the threshold and highlighted in blue, the word **“Not”** included in the threshold to file a Sales Tax Return.

Then I filtered and sorted the spreadsheet by color listing the **“Are”** included in the threshold first followed by the **“Not”** included in the threshold or a combination of both words.

<https://sovos.com/mandates/south-dakota-v-wayfair-economic-nexus-threshold-table>

<https://www.avalara.com/us/en/learn/guides/state-by-state-guide-economic-nexus-laws.html>

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STATE	ECONOMIC NEXUS (Bill/Regulation/Directive)	Status/Effective Date	Transaction Count Threshold	and/or	Revenue Threshold	Measurement Period	Included Transactions	Exempt Transactions	Additional Notes		
Alabama	Rule 810-6-2-90-03	10/1/2018	-	-	\$250,000	Preceding Calendar Year	Retail sales of tangible personal property delivered into the state.	Exempt sales (except <u>wholesale sales</u>) are included in the threshold. Exempt services are not included.	Registration requirements: Alabama hasn't specified how soon a remote business must register once it crosses the economic nexus threshold.		
Arizona	HB 2757	10/1/2019	-	-	\$200,000 for calendar year 2019 \$150,000 for calendar year 2020 \$100,000 for calendar year 2021 and for each calendar year thereafter.	Preceding or Current Calendar Year	Gross proceeds of sales of tangible personal property or gross income derived from business in the state (excluding marketplace sales). Taxable services are included in the threshold.	Exempt sales and exempt services are included in the threshold.	Registration requirements: A remote business must register in Arizona by the first day of the month that starts at least 30 days after it crosses the economic nexus threshold.		
Arkansas	Act 622		200	or	\$100,000	Previous or current calendar year	Sales of taxable tangible personal property, taxable services, digital codes, or specified digital products subject to Arkansas sales or use tax delivered into the state.	Exempt sales and exempt services are <u>not</u> included in the threshold.	Registration requirements: Arkansas hasn't specified how soon a remote business must register once it crosses the economic nexus threshold. It could be as early as the next transaction.		
California	AB 147	4/25/2019	-	-	\$500,000	Preceding or Current Calendar Year	Retail sales of tangible personal property delivered into the state by the retailer and all persons related to the retailer. Taxable services are not included in the threshold.	Exempt sales, including sales for resale, are included but <u>exempt services are not</u> included in the threshold.	California businesses meeting the economic nexus threshold in the state are required to collect all district (local) taxes starting April 25, 2019. Registration requirements: California requires remote businesses to register and begin collecting sales tax on the day they cross the economic nexus threshold. See CDFA FAQs for more details.		
Colorado	1 CCR 201-4: Regulation 39-26-105	4/14/2019 (Grace Period Ended 6/1/2019)	-	-	\$100,000	Preceding or Current Calendar Year	Retail sales or taxable services delivered into the state are included in the threshold.	Exempt sales and exempt services are included in the threshold, <u>except</u> <u>wholesale sales</u> .	Out-of-state sellers required to collect also need to collect and remit applicable local and special district sales taxes that are state-collected. Sellers that make sales in Home Rule Cities where the state doesn't collect sales tax should contact the cities directly to learn about their requirements.		
Connecticut	SB 417 Amended by HB 7424 (6/26/2019)	12/1/2018 (Threshold decrease effective 7/1/2019)	200	and	\$100,000	12-month period ending on September 30th immediately preceding the month or quarterly period a person's liability for sales tax is determined	Out-of-state sellers making retail sales from outside the state to a destination within the state, while not maintaining a place of business in the state, that regularly or systematically solicit the sale of tangible personal property in the state. Taxable services are not included. As of July 1, 2019, taxable services are included in the sales and transaction threshold, and the regular or systematic solicitation component is eliminated.	Exempt sales are included but <u>exempt services are not</u> included in the threshold. As of July 1, 2019, both exempt sales and exempt services are included in the sales threshold but not the transaction threshold.	Registration requirements: Connecticut hasn't specified how soon a remote business must register once it crosses the economic nexus threshold.		
District of Columbia	DC Bill 22-1070	1/1/2019	200	or	\$100,000	Preceding or Current Calendar Year	Retail sales of tangible personal property, digital goods, and taxable services delivered into the district.	Exempt sales and exempt services are included in the threshold. Sales for <u>resale</u> are <u>not</u> included in the threshold.	Registration requirements: A remote business must register and start collecting sales tax in the District of Columbia "as soon as its sales into the District exceed" the economic nexus threshold. See the OTR FAQs (#4) for more details.		
Georgia	HB 61	1/1/2019 (Threshold Change took place 1/1/2020)	200	or	\$100,000	Preceding or Current Calendar Year	Retail sales of tangible personal property delivered electronically or physically to a location in the state for consumption, use, or storage in the state. Taxable services are not included in the threshold.	Exempt sales, except <u>resales</u> , are included but <u>exempt services are not</u> included in the threshold.	As of April 26, 2019, remote sellers that meet the economic nexus threshold in Georgia must collect and remit sales tax. They can no longer opt out by complying with non-collecting seller use tax reporting requirements. Registration requirements: Georgia hasn't specified how soon a remote business must register once it crosses the economic nexus threshold. It could be as early as the next transaction.		
Hawaii	Act 41 (S.B. 2514)	7/1/2018	200	or	\$100,000	Preceding or Current Calendar Year	Gross income or gross proceeds of tangible personal property, intangible property, or services delivered or consumed in the state.	Exempt sales and exempt services are included in the threshold.	Registration requirements: Hawaii requires a remote business to file its first periodic return by the deadline for the periodic return following the period in which it crossed the economic nexus threshold. See the Department of Taxation Announcement 19-10 for more details.		

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STATE	ECONOMIC NEXUS (Bill/Regulation/Directive)	Status/Effective Date	Transaction Count Threshold	and/or	Revenue Threshold	Measurement Period	Included Transactions	Exempt Transactions	Additional Notes		
Idaho	HB 259	6/1/2019	-	-	\$100,000	Preceding or Current Calendar Year	Cumulative gross receipts from sales including taxable products and taxable services delivered into the state	Exempt sales and exempt services are included in the threshold	Remote sellers with economic nexus are not responsible for collecting or remitting local sales tax in Idaho. Registration requirements: Idaho requires remote businesses to track their sales and register before reaching the threshold, so they'll have their seller's permit in time to begin collecting sales tax as soon as they cross the economic nexus threshold.		
Illinois	P.A. 100-587 (H.B. 3342), Laws 2018	10/1/2018	200	or	\$100,000	Preceding 12 months calculated on the last day of March, June, September, and December	Sales of tangible personal property and property sold incident to a service into the state, including occasional sales, taxable services are not included	Exempt sales, including exempt sales of property sold incident to a service, are included; sales for resale are not included; annual services are not included in the threshold	Registration requirements: A remote business must determine, on a quarterly basis, whether it crossed the economic nexus threshold in Illinois during the immediately preceding 12-month period. If it has, it must register and start collecting sales and use tax by the first day of the next quarter. See FY 2019-05 for more details.		
Indiana	H.B. 1129, Laws 2017	10/1/2018	200	or	\$100,000	Preceding Calendar Year	Sales of tangible personal property, electronically delivered products, and taxable services into the state	Exempt sales and exempt services are included in the threshold	Registration requirements: Indiana requires remote businesses to register to collect and remit sales tax "immediately upon reaching the threshold." See Remote Seller Information for more details.		
Iowa	SB 2417	1/1/2019	-	-	\$100,000	Preceding or Current Calendar Year	Sales of tangible personal property, electronically delivered products, and services into the state	Exempt sales and exempt services are included in the threshold	Registration requirements: Iowa requires remote businesses to register to collect and remit sales tax "on the first day of the next calendar month that starts at least 30 days from the day the remote seller first exceeded" the threshold. See Remote Sellers for more details.		
Kansas	Publication, 2019 Legislative Changes & Enactments Notice No. 19-04	10/1/2019	-	-	-	-	The rule applies to all remote sellers who make sales into Kansas	Awaiting further clarification on the treatment of exempt sales and services	Registration requirements: The Kansas Department of Revenue requires any remote business making sales into the state to register to collect and remit sales tax. See Notice 19-04 for more details.		
Kentucky	HB 487, Laws 2018	10/1/2018	200	or	\$100,000	Preceding or Current Calendar Year	Sales of tangible personal property or digital property delivered or transferred electronically into the commonwealth. Taxable services are not included in the threshold.	Exempt sales are included, but exempt services are not included in the threshold	Registration requirements: Kentucky requires a remote business to register to collect and remit sales tax on the first day of the calendar month that begins no later than 30 days after crossing the economic nexus threshold. See Ky. Rev. Stat. Ann. §139.340(2)(g)(2) for more details.		
Louisiana	HB 17	7/1/2019	200	or	\$100,000	Preceding or Current Calendar Year	Sales of products, electronically transferred products, or taxable services into the state	Exempt sales and exempt services are not included in the threshold	Registration requirements: Louisiana requires a remote business to register to collect and remit sales and use tax within 30 days of surpassing the economic nexus threshold. See Information Bulletin No 18-002 for more details.		
Maine	L.D. 1405 (S.P. 483), Laws 2017	7/1/2017	200	or	\$100,000	Preceding or Current Calendar Year	Gross sales of tangible personal property* and taxable services delivered into the state	Exempt sales are included in the threshold, exempt services are not included in the threshold	Registration requirements: Maine may require a remote business to register to collect and remit sales and use tax as soon as it crosses the economic nexus threshold.		
Maryland	MD Emergency regulations (03.06.01.33)	10/1/2017	200	or	\$100,000	Preceding or Current Calendar Year	Sales of tangible personal property or taxable services delivered into the state	Exempt sales are included but annual services are not included in the threshold	Registration requirements: Maryland hasn't specified how soon a remote business must register once it crosses the economic nexus threshold.		
Massachusetts	Reg. 830 CMR 64H.1.17 and H4000	10/1/2019	100	and	\$100,000	Preceding or Current Tax Year	Taxable sales of tangible personal property and services	Exempt sales and exempt services are included in the threshold	Registration requirements: Massachusetts requires a remote vendor to register to collect and remit sales tax by the first day of the first month beginning two months after the month in which the threshold was crossed. Different rules may apply to businesses who crossed the threshold in 2019. See 830 CMR 64H.1.9 for more details.		
Michigan	MI Revenue Admin. Bulletin 2018-16	10/1/2018	200	or	\$100,000	Preceding or Current Calendar Year	Sales of tangible personal property or taxable services delivered into the state	Exempt sales and exempt services are included in the threshold	Registration requirements: Michigan requires a remote business to register to collect and remit sales tax by the start of the calendar year after the threshold was crossed.		

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STATE	ECONOMIC NEXUS (Statute/Regulation/Directive)	Status/Effective Date	Transaction Count Threshold	and/or	Revenue Threshold	Measurement Period	Included Transactions	Exempt Transactions	Additional Notes		
Minnesota	MN Statute 297A.66, Sub 3(b)	10/1/2018	200	or	\$100,000	12 Consecutive Months	Applies to retail sales made into the state from outside the state. Taxable services are included in the threshold.	Exempt sales and sales to tax-exempt entities are included in the threshold, but sales for resale are not . Exempt services are not included in the threshold.	Registration requirements: Minnesota requires a remote business to register to collect and remit Minnesota sales tax on the first taxable retail sale into Minnesota occurring no later than 60 days after the threshold has been crossed. See Remote Seller FAQs.		
Mississippi	MS Rule 35, IV.3.09	9/1/2018	-	-	\$250,000	Preceding 12 Months	Sales of tangible personal property into the state by remote sellers that purposefully or systematically exploit the market in the state and have a substantial economic presence. Taxable services are included in the threshold.	Exempt sales and exempt services are included in the threshold.	Registration requirements: Mississippi hasn't specified how soon a remote business must register once it crosses the economic nexus threshold. It could be as early as the next transaction.		
Nebraska	N/A	1/1/2019	200	or	\$100,000	Preceding or Current Calendar Year	Retail sales of tangible personal property into the state. Awaiting further clarification on the treatment of taxable services.	Exempt sales and exempt services are included in the threshold, resales are not included in the threshold.	Registration requirements: Nebraska requires a remote business to register to collect and remit Nebraska sales tax on or before the first day of the second calendar month after the threshold is exceeded. See FAQs for remote sellers for more details.		
Nevada	Proposed Regulation R189-18	10/1/2018	200	or	\$100,000	Preceding or Current Calendar Year	Retail sales of tangible personal property into the state, excluding sales for resale. Taxable services are not included in the threshold.	Exempt sales are included in the threshold. (except sales for resale) exempt services are not included in the threshold.	Registration requirements: Nevada requires a remote business to register to collect and remit Nevada sales tax starting on the first day of the first calendar month that begins at least 30 calendar days after it crosses the economic nexus threshold. See LCB File No. R014-201 for more details.		
New Jersey	Assembly Bill 4496	11/1/2018	200	or	\$100,000	Preceding or Current Calendar Year	Gross revenue of tangible personal property, specified digital products, or taxable services (enumerated services under N.J.S.A. 54:32B-3(b)) delivered into the state, excluding sales for resale.	Exempt sales are included in the threshold. (except sales for resale) All receipts from taxable services delivered into the state should be included in the threshold calculation even if a service is exempt .	Registration requirements: New Jersey requires a remote business to register to collect and remit New Jersey sales tax within 30 calendar days after crossing the economic nexus threshold. See Remote Sellers FAQs for more details.		
New Mexico	House Bill 6/Act 270	7/1/2019	-	-	\$100,000	Preceding Calendar Year	Taxable gross receipts from taxable sales, taxable services, leases, and licenses of products, as well as sales of licenses and services of licenses for use of real property sourced to the state.	Exempt sales and exempt services are not included in the threshold.	New Mexico businesses meeting the economic nexus threshold in the state are required to collect city and county, GRT starting July 1, 2021 . Registration requirements: New Mexico requires a remote business to register for New Mexico gross receipts tax by January 1 of the year following the year it crossed the economic nexus threshold.		
New York	NY Important Notice: N-19-1, AB843/SB6615 of 2019 (Signed Chapter: 39)	Threshold retroactively effective to June 21, 2018. Notice N-19-1 issued: 1/15/2019. Law increasing threshold to \$500,000 signed on 6/24/2019 with retroactive effective date of 6/21/2018.	100	And	\$500,000 (Sales of TPP only). (previously 300,000)	Preceding Four Sales Tax Quarters	Gross sales of tangible personal property delivered into the state, but taxable services are not included in the threshold.	Exempt sales are included in the threshold count but exempt services are not .	Registration requirements: New York requires a remote business to register to collect and remit New York sales tax within 30 days after crossing the economic nexus threshold and begin to collect tax 20 days thereafter. See Nexus FAQs for more details.		
North Carolina	NC Directive # SD-18-6	11/1/2018	200	or	\$100,000	Preceding or Current Calendar Year	Gross sales of products, including tangible personal property, digital property, and taxable services sourced to the state.	Exempt sales and exempt services are included in the threshold.	Registration requirements: North Carolina requires a remote business to register to collect and remit North Carolina sales tax within 60 days of crossing the economic nexus threshold. See Remote Sales for more details.		
North Dakota	S.B. 2298, Laws 2017 (Amended by S.B. 2191)	10/1/2018	-	-	\$100,000	Preceding or Current Calendar Year	Gross retail sales from the sale of tangible personal property and taxable services delivered into the state.	Exempt sales and exempt services are not included in the threshold.	A seller that exceeds the sales threshold must begin to collect sales tax on sales delivered during the following calendar year or 60 days after the threshold is met, whichever is earlier. Registration requirements: North Dakota requires remote businesses to register to collect and remit North Dakota sales tax the earlier of the following calendar year or 60 days after crossing the economic nexus threshold.		

SOUTH DAKOTA v. WAYFAIR - SALES TAX ECONOMIC NEXUS

By John B. Goldhamer, www.JohnGoldhamer.com

South Dakota v. Wayfair Economic Nexus Threshold Table

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STATE	ECONOMIC NEXUS (Bill/Regulation/Directive)	Status/Effective Date	Transaction Count Threshold	and/or	Revenue Threshold	Measurement Period	Included Transactions	Exempt Transactions	Additional Notes		
Pennsylvania	PA Sales and Use Tax Bulletin 2019-01; HB 262	7/1/2019	-	-	\$100,000	Preceding 12 Months	Gross sales of products and services in the commonwealth	Exempt sales and exempt services are included in the threshold	The threshold <u>did not include exempt sales or services through June 30, 2019</u> , under a different remote seller sales tax requirement. Registration requirements: If total Pennsylvania sales for 2019 exceed the threshold, a remote seller must collect and remit PA sales tax for taxable sales starting April 1, 2020. The first quarter of each year is set aside for businesses to tabulate their total Pennsylvania sales from the previous calendar year in order to determine their sales tax exposure. See Answers to Economic Nexus for more details.		
Rhode Island	H.B. 5175 Sub. A, Laws 2017	8/1/2017	200	or	\$100,000	Preceding Calendar Year	Gross revenue from sales of tangible personal property, prewritten computer software delivered electronically or by load and leave, vendor-hosted prewritten computer software, specified digital products, and/or taxable services delivered into the state	Exempt sales are included in the threshold, but exempt services are not included in the threshold	Registration requirements: Rhode Island requires a remote business to register and collect and remit sales tax on January 1 of the year following the calendar year they crossed the economic nexus threshold. Different requirements apply if the threshold was passed in 2018. See ADV_2019_11 for more details.		
South Carolina	SC Revenue Ruling #18-14	11/1/2018	N/A	N/A	\$100,000	Preceding or Current Calendar Year	Gross revenue from sales of all products, electronically transferred products, or taxable services delivered into the state	Exempt sales and exempt services are included in the threshold	Registration requirements: Remote businesses that cross the economic nexus threshold on or after October 1, 2018, are responsible for remitting the sales and use tax for all taxable sales made into South Carolina beginning the first day of the second calendar month after economic nexus is established. See SC Revenue Ruling #18-14 for more details.		
South Dakota	S.B. 106	11/1/2018	200	or	\$100,000	Preceding or Current Calendar Year	Gross revenue from sales of tangible personal property, electronically delivered products, or services into the state	Exempt sales and exempt services are included in the threshold	Registration requirements: South Dakota requires remote businesses to register and collect and remit South Dakota sales tax from the moment they cross the economic nexus threshold forward. See Remote Seller Bulletin for more details.		
Tennessee	Rule 1320-05-01-.129	10/1/2019	-	-	\$500,000	Preceding 12 Months	Out-of-state retailers must register to report and pay tax on all taxable and exempt sales and services — except for resale — into the state	Exempt sales and exempt services are included <u>(except sales for resale)</u> in the threshold	Registration requirements: Tennessee requires remote businesses to register and begin collecting and remitting Tennessee sales and use tax by the first day of the third calendar month following the month they cross the economic nexus threshold. See 1320-05-01-.129(2)(b) for more details.		
Texas	34 TAC 3.286(b)(2)	1/1/2019 (Enforceable 10/1/2019)	-	-	\$500,000	Preceding 12 Months	Gross revenue from sales of products and taxable services into the state	Exempt sales and exempt services are included in the threshold	Registration requirements: A remote business must register with the Texas Comptroller no later than the first day of the fourth month after the month it crossed the economic nexus threshold. More details. See 34 Texas Administrative Code §3.286 for more details.		
Utah	SB 2001	1/1/2019	200	or	\$100,000	Preceding or Current Calendar Year	Gross revenue from the sales of tangible personal property, any product transferred electronically, or taxable services delivered into the state	Exempt sales and exempt services are included in the threshold	Registration requirements: Utah hasn't specified how soon a remote business must register once it crosses the economic nexus threshold. It could be as early as the next transaction.		
Vermont	H.B. 873 Sec. 27, Laws 2016	7/1/2018	200	or	\$100,000	Preceding 12 Months	Tangible and nontangible sales of tangible personal property as a result of regular, systematic, or seasonal solicitation from outside the state to a destination within the state while not maintaining a place of business or other physical presence in the state. Taxable services are included in the threshold.	Exempt sales and exempt services are included in the threshold, but <u>only sell tax exempt items</u> into Vermont are <u>not</u> required to register for a sales tax account.	Registration requirements: A remote business must register to collect and remit Vermont sales tax within 30 days after crossing the economic nexus threshold. Sellers must determine whether the threshold has been met in Vermont at the end of each quarter. See Wayfair FAQs for more details.		

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Virginia	SB 1083	7/1/2019	200	or	\$100,000	Preceding or Current Calendar Year	Gross revenue from retail sales and taxable services into the commonwealth, including sales made by members of same controlled group of corporations	Exempt sales and exempt services are included (except resales) in the threshold	Registration requirements: A remote business must register to collect and remit Virginia sales tax no later than 30 days after crossing the economic nexus threshold. See Guidelines for Remote Sellers and Marketplace Facilitators for more details.		
Washington	EHB 2163, Chapter 28, Laws of 2017	10/1/2018	-	-	\$100,000	Preceding or Current Calendar Year	Cumulative gross receipts from retail sales and taxable services into the state through December 31, 2019. Cumulative gross income in Washington from January 1, 2020, forward.	Exempt sales and exempt services are included in the threshold, except resales .	Until July 1, 2019, remote sellers with between \$10,000 and \$100,000 in sales in the state and fewer than 200 transaction have a choice: Collect and remit sales tax or comply with use tax reporting requirements for non-collecting sellers. Effective July 1, 2019, the non-collecting seller use tax reporting option is eliminated. Washington also enforces economic nexus for its Business and Occupation (B&O) tax on gross receipts . Registration requirements: A remote business must register to collect and remit Washington sales tax on the first day of the month that starts at least 30 days after crossing the threshold. See Registration requirements for out-of-state businesses for more details.		
West Virginia	Admin Notice 2018-18	1/1/2019	200	or	\$100,000	Preceding Calendar Year	Gross sales of tangible personal property and taxable services into the state	Exempt sales and exempt services are included in the threshold	Registration requirements: A remote business must register and begin collecting West Virginia sales and use taxes on sales made after the date the economic nexus threshold was crossed. See Remote Sellers and West Virginia for more details.		
Wisconsin	EmR1819	10/1/2018	200	or	\$100,000	Preceding or Current Calendar Year	Annual gross sales of taxable products and taxable services into the state	Exempt sales and exempt services are included in the threshold, businesses that only make non-taxable sales in Wisconsin are not required to register for a sales tax account.	Registration requirements: A remote business is required to register and begin collecting Wisconsin sales tax upon crossing the economic nexus threshold. See Registration and Collection Dates for Remote Sellers for more details.		
Wyoming	H.B. 19, Laws 2017	2/1/2019	200	or	\$100,000	Preceding or Current Calendar Year	Sales of taxable and wholesale tangible personal property, admissions, or taxable services delivered into the state	Exempt sales and exempt services are included in the threshold count	Registration requirements: A remote business could be required to register and begin collecting Wyoming sales tax as soon as it crosses the economic nexus threshold.		
Reminder: Remote sellers may have obligations if your sales exceed these thresholds. As such, the ability of your tax compliance software to provide always-up-to-date "roof-top" accuracy sales tax rates for any new jurisdictional obligations should be taken into consideration. Also, be sure to work with your out of state suppliers on how to handle invoicing sales and use tax, and make sure any customers with exemptions in economic nexus states have provided up-to-date exemption certificates. Likewise, some states are creating special filing regimes for e-commerce sellers to simplify the filing process, so be sure to check if you're eligible to avoid errors.											
As always – deciding whether or not to register for sales tax in a given jurisdiction is a serious decision – consider involving your accountant or trusted tax advisor if you have any questions or concerns.											