

## Internet Sales Tax After *Wayfair*

### What was the *Wayfair v. South Dakota* case about?

At issue in [Wayfair](#) was whether states can require out-of-state retailers that sell goods and services in the state, but have no physical presence there, to collect and remit sales tax.

In earlier decisions, the U.S. Supreme Court had ruled that retailers must have a substantial nexus in a state in order for the state to impose sales tax collection obligations on them and satisfy the Commerce Clause. In its 1992 *Quill* decision, the court ruled that retailers must have a physical presence in a state in order to create a substantial nexus.

The court's *Wayfair* decision overruled *Quill*'s physical presence standard, allowing states to require retailers with substantial nexus, but with no physical presence there, to collect and remit sales tax. The court ruled that substantial nexus is established "when the taxpayer [or collector] 'avails itself of the substantial privilege of carrying on business' in that jurisdiction" and that this standard was satisfied in *Wayfair* based on the "economic and virtual contacts" remote sellers had with South Dakota.

The court did not, however, resolve the constitutionality of South Dakota's economic nexus law, which requires sellers to collect and remit sales tax if their South Dakota sales of goods and services exceed \$100,000 in gross revenue or 200 transactions in the previous or current calendar year ([S.D. Codified Laws § 10-64-2](#)). The court cited features of the law that were designed to prevent discrimination between sellers, including its adoption of the Streamlined Sales and Use Tax Agreement, but left it to South Dakota's state supreme court to resolve the question of whether the law violates other Commerce Clause principles. South Dakota ultimately entered into a [settlement agreement](#) to resolve the remaining issues in the case. On November 1, 2018, it will begin collecting sales tax from remote sellers, except for those that were party to the suit, who will begin collecting on January 1, 2019.

### FACTS AND FIGURES



**9.6%**

U.S. retail e-commerce sales as a percentage of total retail sales for the second quarter of 2018



**\$70  
mil**

additional revenue from e-commerce sales that CT expects to collect annually as a result of *Wayfair* and sales tax nexus law changes



**\$229  
mil**

total estimated sales tax gap in CT (i.e., the difference between what is collectible and what is collected)

Source: U.S. Census Bureau and Office of Fiscal Analysis

## What does the *Wayfair* decision mean for Connecticut?

The decision appears to clear the way for Connecticut to begin enforcing its own economic nexus law, which is comparable to South Dakota's, with certain key differences. Connecticut's law, which the General Assembly amended during the 2018 session, (1) establishes a higher sales threshold than South Dakota's; (2) applies to sales of goods only, rather than both goods and services; and (3) specifies the types of activities that retailers must undertake in order to be considered "engaged in business in the state."

## What is Connecticut's economic nexus law?

The new law, which takes effect December 1, 2018, requires out-of-state retailers that regularly or systematically solicit sales of tangible personal property in Connecticut to collect and remit sales tax if they had at least (1) \$250,000 in gross receipts and (2) 200 retail sales in Connecticut during the preceding 12-month period (ending September 30). It applies to retailers soliciting sales in Connecticut by various means, including outdoor advertisements; print, radio, or television media; and internet, mail, telephone, cable, or other communication forms (CGS § [12-407](#)(a)(12) and (a)(15), as amended by [PA 18-152](#), §§ 2 & 3).

## What about the recently enacted "marketplace facilitator" legislation?

The same public act that amended the state's economic nexus law also requires online marketplaces (i.e., marketplace facilitators) to collect and remit sales tax on behalf of their third-party sellers. The act's requirements generally apply to online marketplaces that facilitate at least \$250,000 in sales for marketplace sellers, collect receipts from customers, and remit payments to sellers ([PA 18-152](#), §§ 2 & 4-5).

A number of other states have enacted similar online marketplace laws, including Alabama, Arizona, Iowa, Minnesota, Oklahoma, Pennsylvania, and Washington. The *Wayfair* decision, however, did not specifically address the validity of these state laws.

## What is the Streamlined Sales and Use Tax Agreement (SSUTA)?

SSUTA is a voluntary multistate agreement to simplify state and local sales and use tax laws and administrative procedures. It is designed to (1) encourage better and less expensive tax collection and minimize administrative costs and burdens on retailers, particularly those operating in multiple states, and (2) encourage Congress to enact federal legislation allowing states to require remote sellers to collect sales tax. It requires member states to, among other things, (1) adopt uniform definitions for taxable and exempt products and services, (2) simplify tax rates by limiting themselves generally to one state sales and use tax rate for all taxable products and services and eliminating exemptions based on sales price, and (3) adopt uniform rules for sourcing transactions based on where items or services are delivered or used.

In 2007, the General Assembly established a commission to study whether to join the agreement. The commission determined that Connecticut would have to make extensive changes in its sales tax laws and policies to comply with the agreement, including (1) eliminating special rates for certain transactions, such as room rentals and computer and data processing services; (2) changing how certain taxable products and services are defined; and (3) eliminating price-based exemptions.

Learn  
More

National Conference of State Legislatures, [Remote Sales Tax Collection](#)

State Tax Notes, "[Implications of the Supreme Court's Historic Decision in Wayfair](#)." July 9, 2018

"Streamlined Sales and Use Tax Agreement," OLR Report [2018-R-0182](#)

"Legislative Changes Affecting Motor Vehicle Fuels Tax, Sales and Use Taxes, and Rental Surcharge," Department of Revenue Services [SN 2018 \(5.1\)](#)

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