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Tax Alert: Wayfair

Businesses selling their product into other states face a rapidly changing world when it comes to sales and use tax compliance. In June, the Supreme Court issued a decision in *South Dakota v. Wayfair, Inc. (Wayfair)*. This decision allows the state of South Dakota to require remote businesses to collect sales tax, even those without a physical presence in South Dakota.

Supreme Court rulings over the last fifty years generally had exempted businesses from sales and use tax collection if they had no physical presence in the state. If a business had employees, property (owned or leased), or equipment in a state, the state could require the business to collect its sales and use taxes. *Wayfair* effectively eliminated the physical presence requirement. Under the South Dakota law the Supreme Court upheld, a business located completely outside the state would be required to collect South Dakota sales tax if the business had more than \$100,000 in revenue OR more than 200 transactions in that state.

Many states have enacted similar statutes. Some states had been waiting for the Court's decision in *Wayfair* and may have legislation in progress providing new rules. Several states have said they have a threshold but do not yet define it. The table below lists states that have enacted legislation with bright line tests for sellers with no physical presence in the state. In all cases, the threshold is an "or."

State	Threshold		Enforcement Date
	Dollar	Transaction	
Alabama	\$250,000	None	Oct 1, 2018
Connecticut	\$250,000	200	Dec 1, 2018
Georgia	\$250,000	200	Jan 1, 2019
Hawaii	\$100,000	200	July 1, 2018
Illinois	\$100,000	200	Oct 1, 2018
Indiana	\$100,000	200	Oct 1, 2018
Iowa	\$100,000	200	Jan 1, 2019
Kentucky	\$100,000	200	Oct 1, 2018
Louisiana	\$100,000	200	Jan 1, 2019
Maine	\$100,000	200	Nov 1, 2017
Massachusetts	\$500,000	100	Oct 1, 2017
Michigan	\$100,000	200	Oct 1, 2018
Minnesota	\$100,000 in 10 transactions	100	Oct 1, 2018
Mississippi	\$250,000	None	December 1, 2017
New York	\$300,000	100	Not Available
North Carolina	\$100,000	200	Nov 1, 2018
North Dakota	\$100,000	200	Oct 1, 2018
Ohio	\$500,000	None	June 30, 2017
Oklahoma	\$10,000	None	Jul 1, 2018
Pennsylvania	\$10,000	None	April 1, 2018
Rhode Island	\$100,000	200	Aug 17, 2017
South Dakota	\$100,000	200	Not Available
Tennessee	\$500,000	None	Not Available
Utah	\$100,000	200	Jan 1, 2019
Vermont	\$100,000	200	Jul 1, 2018
Washington	\$100,000	200	Oct 1, 2018
Wyoming	\$100,000	200	Not Available

Summary:

- Each state imposes its own rules and rates for sales and use tax, including what transactions are exempt.
- If you have physical presence in a state, you should register with that state and are subject to that state's sales and use tax statutes.
- If you have no physical presence in a state but exceed one of the thresholds listed above, you should register with that state and are subject to that state's sales and use tax statutes.
- Since Illinois also has a threshold for these purposes, you may start to see Illinois tax on invoices from out-of-state vendors. Be sure to not self-assess use tax on those items.

Please contact us if you have specific questions.