

What the South Dakota v. Wayfair, Inc. decision may mean for your business

Understanding Economic Nexus





Understanding where your company has nexus is an integral part of your sales tax compliance strategy because nexus dictates where your business is required to collect and remit tax. There are a lot of business activities that can cause your business to have nexus, but one is getting a lot of attention from states right now because it was at the forefront of the Supreme Court of the United States (SCOTUS) case South Dakota v. Wayfair, Inc. (Wayfair): **economic nexus.**

TO START, LET'S DEFINE THE CONCEPT OF NEXUS

Sales tax nexus is the connection between a seller and a state that requires the seller to collect and remit tax on sales made in that state. Historically, nexus was based on physical presence. After the Wayfair decision, nexus can now also be established based on economic activity.

If you have sales tax nexus in California and Texas, for example, you must collect and remit sales tax in California and Texas. Unfortunately, you can't just figure out where you have nexus today and forget about it – you must closely monitor nexus on an ongoing basis because it is constantly changing, and the business activities that can trigger your business to have nexus can vary from state to state.





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.

WHAT WAS THE SOUTH DAKOTA V. WAYFAIR, INC. CASE ABOUT, AND HOW DOES IT RELATE TO ECONOMIC NEXUS?

In 1992, the Supreme Court ruled – in *Quill Corp. v. North Dakota* (Quill) – that a state can't force a business to collect sales tax unless it has a physical presence in the state. The state of South Dakota petitioned the Supreme Court of the United States to overturn that long-standing rule.

The June 21, 2018, ruling in *South Dakota v. Wayfair, Inc.* overturned Quill's physical presence rule. States now have a path to tax remote sellers that have no physical presence in the state. In *Wayfair*, SCOTUS found the remote retailers' "economic and virtual contacts" with South Dakota to be a sufficient basis for establishing nexus.

It's important to note that the SCOTUS ruling adds economic nexus to the existing list of activities that create nexus, and it does not impact any other state nexus laws. Nexus is still enforced when companies have a physical presence in another state.

Furthermore, while *Wayfair* removes Quill's physical presence limitation, it doesn't give blanket approval to all economic nexus laws, which vary by state. The South Dakota law itself has been sent back to state court "for further proceedings not inconsistent with this opinion." Any nexus law determined to be inconsistent with the ruling could be vulnerable to a legal challenge.



IMPORTANT NOTE

This document explains **economic nexus**, which is what the Supreme Court authorized in *South Dakota v. Wayfair, Inc.* However, there are many other types of nexus triggers.



According to SCOTUS, South Dakota's law "affords small merchants a reasonable degree of protection," in part because:

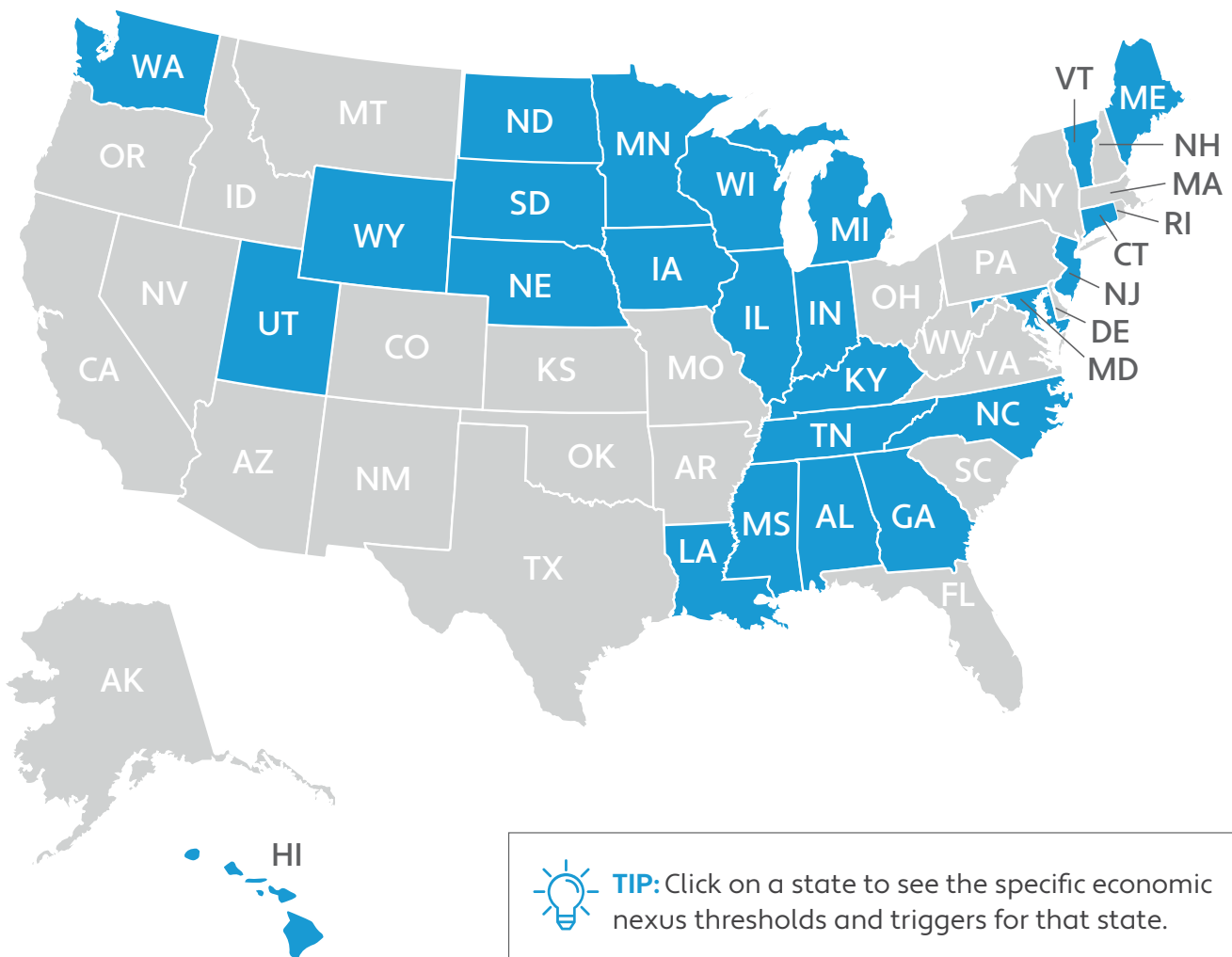
- It requires a merchant to collect the tax only if it does a considerable amount of business in the state
- It ensures no obligation to remit sales tax may be applied retroactively
- South Dakota is a member of the Streamlined Sales and Use Tax Agreement and has taken steps to simplify compliance and reduce costs for businesses



As mentioned, economic nexus criteria vary by state. To help you gain a better understanding of economic nexus and how individual states are addressing it, we'll review the states that have enacted or adopted an economic nexus provision on the pages that follow.

STATES WITH ECONOMIC NEXUS LAWS

(As of September 1, 2018)



The above lists are always subject to change. And it should be noted that economic nexus policies aren't the only way states are striving to capture tax revenue from remote sellers.



STATES WITH ECONOMIC NEXUS THRESHOLDS AND TRANSACTION TRIGGERS

This information was current as of September 1, 2018.

TIP: To find more detailed information on individual state laws, including changes or updates to economic nexus, click on the state name, and you will be directed to the state taxing authority's website.



▶ [ALABAMA](#)

Effective date: January 1, 2016, but will be applied prospectively for sales made on or after October 1, 2018

Included transactions: Retail sales of tangible personal property delivered into the state. Taxable services are not included in the threshold count.

Treatment of exempt transactions: Awaiting further clarification on the treatment of exempt sales. Exempt services are not included in the threshold count.

Trigger: Sales **and** additional activities

Sales/transactions threshold: \$250,000

Other: Threshold applies to sales from the previous calendar year. Out-of-state sellers must conduct one or more specified activities.



▶ [CONNECTICUT](#)

Effective date: December 1, 2018

Included transactions: Out-of-state sellers that regularly or systematically solicit the sale of tangible personal property in the state via the internet or other means. Awaiting further clarification on whether taxable services are included in threshold count.

Treatment of exempt transactions: Awaiting further clarification on the treatment of exempt sales and exempt services

Trigger: Sales **and** transaction volume

Sales/transactions threshold: \$250,000 **and** 200 transactions

Other: Threshold applies to all transactions within the 12-month period ending on the September 30th immediately preceding the monthly or quarterly period during which liability is established



▶ [GEORGIA](#)

Effective date: January 1, 2019

Included transactions: 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 count.

Treatment of exempt transactions: Awaiting further clarification on the treatment of exempt sales. Exempt services are not included in the threshold count

Trigger: Sales **or** transaction volume

Sales/transactions threshold: \$250,000 **or** 200 transactions

Other: Threshold applies to the previous or current calendar year



► [HAWAII](#)

Effective date: July 1, 2018

Included transactions: Sales of tangible personal property, intangible property, or services delivered or consumed in the state

Treatment of exempt transactions: Exempt sales and exempt services are included in the threshold count

Trigger: Sales **or** transaction volume

Sales/transactions threshold: \$100,000 **or** 200 transactions

Other: Threshold applies to the current or immediately preceding calendar year. Applies to taxable years beginning after December 31, 2017



► [ILLINOIS](#)

Effective date: October 1, 2018

Included transactions: Gross receipts from sales of tangible personal property or taxable services in the state

Treatment of exempt transactions: Awaiting further clarification on the treatment of exempt sales and exempt services

Trigger: Sales **or** transaction volume

Sales/transactions threshold: \$100,000 **or** 200 transactions

Other: Threshold applies to the preceding 12 months



► [INDIANA](#)

Effective date: October 1, 2018

Included transactions: Sales of tangible personal property, electronically transferred products, or services delivered into the state

Treatment of exempt transactions: Exempt sales and exempt services are included in the threshold count

Trigger: Sales **or** transaction volume

Sales/transactions threshold: \$100,000 **or** 200 transactions

Other: Threshold applies to transactions in the previous or current calendar year



► [IOWA](#)

Effective date: January 1, 2019

Included transactions: Sales of tangible personal property, electronically-delivered products, and services into the state

Treatment of exempt transactions: Exempt sales and exempt services are included in the threshold count

Trigger: Sales **or** transaction volume

Sales/transactions threshold: \$100,000 **or** 200 transactions

Other: Threshold applies to transactions for an immediately preceding or current calendar year

► KENTUCKY



Effective date: October 1, 2018

Included transactions: Sales of tangible personal property or digital property delivered or transferred electronically into the state. Taxable services are not included in the threshold count.

Treatment of exempt transactions: Awaiting further clarification on the treatment of exempt sales, but exempt services are not included in the threshold count

Trigger: Sales **or** transaction volume

Sales/transactions threshold: \$100,000 **or** 200 transactions

Other: Threshold applies to sales in the previous or current calendar year

► LOUISIANA



Effective date: January 1, 2019

Included transactions: Sales of products, electronically-transferred products, or services into the state

Treatment of exempt transactions: Exempt sales and exempt services are not included in the threshold count

Trigger: Sales **or** transaction volume

Sales/transactions threshold: \$100,000 **or** 200 transactions

Other: Threshold applies to the previous or current calendar year

► MAINE



Effective date: July 1, 2018

Included transactions: Sales of tangible personal property, products transferred electronically, and services delivered into the state

Treatment of exempt transactions: Exempt sales and services are included in the threshold count

Trigger: Sales **or** transaction volume

Sales/transactions threshold: \$100,000 **or** 200 transactions

Other: Threshold applies to sales during the current or previous calendar year

► MARYLAND



Effective date: October 1, 2018

Included transactions: Sales or delivery of tangible personal property or taxable services for use in the state

Treatment of exempt transactions: Awaiting further clarification on the treatment of exempt sales and exempt services

Trigger: Sales **or** transaction volume

Sales/transactions threshold: \$100,000 **or** 200 transactions

Other: Threshold applies to sales during the current or previous calendar year



► MICHIGAN

Effective date: September 30, 2018

Included transactions: Sales of tangible personal property or services delivered into the state

Treatment of exempt transactions: Exempt sales and exempt services are included in the threshold count

Trigger: Sales **or** transactions

Sales/transactions threshold: \$100,000 **or** 200 transactions

Other: Threshold applies to the previous calendar year



► MINNESOTA

Effective date: October 1, 2018

Included transactions: Applies to retail sales made into the state from outside the state. Taxable services are included in the threshold count

Treatment of exempt transactions: Exempt sales and exempt services are not included in the threshold count

Trigger: Sales **or** transaction volume

Sales/transactions threshold: 10 or more sales totaling \$100,000 **or** 100 retail sales

Other: Threshold applies to a period of 12 consecutive months



► MISSISSIPPI

Effective date: September 1, 2018

Included transactions: Sales into the state apply to remote sellers lacking physical presence nexus but are purposefully or systematically exploiting the market in the state. Taxable services are included in the threshold.

Treatment of exempt transactions: Exempt sales and exempt services are included in the threshold count

Trigger: Sales **only**

Sales/transactions threshold: \$250,000

Other: Threshold applies to all transactions for the prior 12 months



► NEBRASKA

Effective date: January 1, 2019

Included transactions: Sales of tangible personal property into the state. Awaiting further clarification on the treatment of taxable services.

Treatment of exempt transactions: Awaiting further clarification on the treatment of exempt sales and exempt services

Trigger: Sales **or** transaction volume

Sales/transactions threshold: \$100,000 **or** 200 transactions

Other: Threshold applies to the previous or current calendar year



► [NEW JERSEY](#)

Effective date: October 1, 2018

Included transactions: Sales of tangible personal property, specified digital products, or services delivered into the state

Treatment of exempt transactions: Awaiting further clarification on the treatment of exempt sales and exempt services

Trigger: Sales **or** transactions

Sales/transactions threshold: \$100,000 **or** 200 transactions

Other: Threshold applies to the current or prior calendar year

► [NORTH CAROLINA](#)

Effective date: November 1, 2018

Included transactions: Sales of products or taxable services delivered into the state

Treatment of exempt transactions: Awaiting further clarification on the treatment of exempt sales and exempt services

Trigger: Sales **or** transactions

Sales/transactions threshold: \$100,000 **or** 200 transactions

Other: Threshold applies to the previous or current calendar year

► [NORTH DAKOTA](#)

Effective date: October 1, 2018

Included transactions: Gross sales from the sale of tangible personal property and other taxable items delivered into the state. Awaiting further clarification on the treatment of taxable services

Treatment of exempt transactions: Awaiting further clarification on the treatment of exempt sales and exempt services

Trigger: Sales **or** transaction volume

Sales/transactions threshold: \$100,000 **or** 200 transactions

Other: Threshold applies to the previous or current calendar year

► [SOUTH DAKOTA](#)

Effective date: May 1, 2016 (currently under an injunction pending further action by the state)

Included transactions: Sales of tangible personal property, electronically-delivered products, or services into the state

Treatment of exempt transactions: Exempt sales and exempt services are included in the threshold count

Trigger: Sales **or** transactions

Sales/transactions threshold: \$100,000 **or** 200 transactions

Other: Threshold applies to the previous or current calendar year



► TENNESSEE

Effective date: July 1, 2017 (currently under an injunction until further notice)

Included transactions: Out-of-state retailers must register to report and pay tax on all taxable sales and services into the state

Treatment of exempt transactions: Exempt sales are not included in the threshold count and exempt services are awaiting further clarification

Trigger: Sales **only**

Sales/transactions threshold: \$500,000

Other: Threshold applies to the previous 12-month period, and to out-of-state businesses that regularly or systematically solicit consumers or sales transactions in the state



► UTAH

Effective date: January 1, 2019

Included transactions: Gross revenue from the sales of tangible personal property, any product transferred electronically, or taxable services delivered into the state

Treatment of exempt transactions: Exempt sales and exempt services are included in the threshold count

Trigger: Sales **or** transactions

Sales/transactions threshold: \$100,000 **or** 200 transactions

Other: Threshold applies to the previous or current calendar year



► VERMONT

Effective date: July 1, 2018

Included transactions: Sales to destinations within the state and that are a result of regular, systematic, or seasonal solicitation of sales of tangible personal property. Taxable services are included in the threshold count

Treatment of exempt transactions: Exempt sales and exempt services are not included in the threshold count

Trigger: Sales **or** transactions

Sales/transactions threshold: \$100,000 **or** 200 transactions

Other: Threshold applies to any 12-month period preceding the monthly period



► WASHINGTON (FOR B&O TAX)

Effective date: July 1, 2017

Included transactions: Gross receipts attributed to the state. Taxable services are included in the threshold count

Treatment of exempt transactions: Exempt sales are included but exempt services are not included

Trigger: Sales **or** a percentage of yearly gross receipts

Sales/transactions threshold: Sales of more than \$267,000 yearly gross receipts sourced or attributed to Washington in 2017 (\$285,000 in 2018) **or** at least 25 percent of the total yearly gross receipts sourced or attributed to Washington in 2017 or 2018

Other: B&O threshold applies in the current or prior year



► WASHINGTON (FOR REMOTE TRANSACTIONS)

Effective date: October 1, 2018

Included transactions: Gross retail sales into the state. Taxable services are included in the threshold count.

Treatment of exempt transactions: Exempt sales and exempt services are not included in the threshold count

Trigger: Sales **or** transactions

Sales/transactions threshold: \$100,000 **or** 200 transactions

Other: Threshold applies to the previous or current calendar year



► WISCONSIN

Effective date: October 1, 2018

Included transactions: Sales of taxable products and services into the state

Treatment of exempt transactions: Exempt sales are not included in the threshold count and exempt services are awaiting further clarification

Trigger: Sales **or** transactions

Sales/transactions threshold: \$100,000 **or** 200 transactions

Other: Threshold applies annually



► WYOMING

Effective date: July 1, 2017 (currently under an injunction until further notice)

Included transactions: Sales of tangible personal property, admissions, or taxable services delivered into the state

Treatment of exempt transactions: Exempt sales and exempt services are not included in the threshold count

Trigger: Sales **or** transactions

Sales/transactions threshold: \$100,000 **or** 200 transactions

Other: Threshold applies to the current or immediately preceding calendar year



HOW SHOULD REMOTE SELLERS GO ABOUT DETERMINING WHETHER THEY HAVE NEXUS IN SOUTH DAKOTA AND OTHER STATES?

We recommend that all businesses review their sales and transaction volumes in states where they are doing business but are not registered to collect and remit. We also encourage businesses to work directly with a tax advisor who can provide counsel on nexus-related requirements. Avalara has a Tax Advisory Services team that can help you determine where your company has nexus, as well as partnerships with a number of CPAs who would be happy to work with you. To get in touch with our Tax Advisory Services team, [click here](#). Or, to view a list of our partners, [click here](#).



Avalara is committed to keeping customers updated on the continuing changes that are a result of the

South Dakota v. Wayfair, Inc. ruling.

We encourage you to review the resources on our South Dakota v. Wayfair, Inc. content hub.

[VIEW RESOURCES](#)

NEED HELP KEEPING UP WITH NEXUS?

As nexus laws continue to evolve, it is important to monitor these changes and how they may impact your business. And when it comes to staying up to date with nexus laws and your nexus footprint, the Avalara Tax Advisory Services team has you covered. While you may know Avalara for our software-as-a-service (SaaS) solutions, software isn't all we do. Our Tax Advisory Services team is a group of tax experts that can:

- Help you determine where you have nexus
- Provide ongoing monitoring services to see when your business has established additional nexus obligations
- Help you register in new jurisdictions

Although we hope you'll find the information helpful, this guide does not offer a substitute for professional legal or tax advice. If you have questions about your tax liability or concerns about compliance, please consult your qualified legal, tax, or accounting professional. This document was compiled in September 2018. Because states constantly update and amend their sales and use tax laws, see each state's website for the most up-to-date and comprehensive information.



To learn more about how the Avalara Tax Advisory Services team can help, [click here](#).

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