

Sales and Use Tax Simplification Task Force Colorado General Assembly

South Dakota v. Wayfair Update

July 26, 2018

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National Conference of State Legislatures



National Conference of State Legislatures

Since 1975, the National Conference of State Legislatures has been the champion of state legislatures. We have helped states remain strong and independent by providing the tools, information, and resources to craft the best solutions to difficult problems.

NCSL's mission is to:

- **I**mprove the quality and effectiveness of state legislatures.
- **P**romote policy innovation and communication among state legislatures.
- **E**nsure state legislatures a strong, cohesive voice in the federal system.



Washington D.C. NCSL Office

NCSL advocates before Congress, the White House, and federal agencies on behalf of states.

Policy Positions

- Advocates against Unwarranted Federal Preemption and Unfunded Mandates
- Other advocacy is guided by the policy directives and resolutions adopted by NCSL Standing Committees, and then adopted by the full conference at the annual NCSL Legislative Summit Business Meeting. Each policy requires a 3/4 vote of approval of states to become official NCSL policy.

Standing Committees for 2018

- Budgets and Revenue
- Communications, Financial Services, and Interstate Commerce
- Education
- Health and Human Services
- Labor and Economic Development
- Law, Criminal Justice, and Public
- Safety
- Legislative Effectiveness*
- Natural Resources and Infrastructure
- Redistricting and Elections*

The Advent and Growth E-Commerce

For the last six years, e-commerce grew by 15% in each year and now accounts for 11% of all retail sales.

For perspective:

The very first text message was sent in December 1992 in Finland.

August 11, 1994 – First secured internet retail transaction

July 16, 1995 – Amazon sold its first book online



Remote Sales Tax Collection

States Got Tired of Waiting for Congress...





2010 – Colorado’s Reporting Requirement

REQUIRES RETAILERS THAT DO NOT COLLECT SALES OR USE TAXES TO NOTIFY ANY COLORADO CUSTOMER OF THE STATE’S USE TAX PAYMENT REQUIREMENT AND TO REPORT TAX-RELATED INFORMATION TO THOSE CUSTOMERS AND THE COLORADO DEPARTMENT OF REVENUE.

DECEMBER 10, 2016 - *DIRECT MARKETING ASSOCIATION V. BROHL*

THE U.S. SUPREME COURT DECLINED TO REVIEW THE TENTH CIRCUIT’S DECISION UPHOLDING COLORADO’S REPORTING REGIME AGAINST A COMMERCE CLAUSE CHALLENGE.

ANY OUT-OF-STATE BUSINESS SELLING INTO COLORADO WILL BE REQUIRED TO COMPLY WITH THE NEW NOTICE AND REPORTING

DMA v. Brohl

“Given these changes in technology and consumer sophistication, it is unwise to delay any longer a reconsideration of the Court’s holding in *Quill*. A case questionable even when decided, *Quill* now harms States to a degree far greater than could have been anticipated earlier.”

– Justice Kennedy in *DMA v. Brohl*, March 3, 2015



State Legislation: Marketplaces



Online marketplaces are where multiple sellers sell products, sometimes the same products, on a single platform.

- Minnesota enacted legislation in 2017 that extended the duty to collect and remit sales tax to Internet marketplace providers located in the state unless sellers on the marketplace site are already collecting the tax.
- Washington state enacted legislation in 2017 that requires marketplaces to collect retail sales or use tax on taxable retail sales into the state or comply with certain sales and use tax notice and reporting provisions.

States Got Tired of Waiting for Congress...

“If we are going to do it [pass legislation to challenge *Quill* in the states], we need to have a bill ready January 1 and be ready to rock 'n' roll on it because committee hearings start the second week in January.”

– *Senator Deb Peters (S.D.), Nov. 20, 2015*

Jan. 8, 2016 – NCSL Task Force on State and Local Taxation

- Task Force members heard from a Supreme Court expert and discussed a state legislative proposal to collect sales taxes.
- Proposal was sent to legislative leaders and tax chairs across the country.



South Dakota S.B. 106 (2016)

Requires an out-of-state seller to follow all applicable procedures and requirements of law as if the seller had a physical presence in the state, if they:

- 1) Generated more than \$100,000 in revenues from sales into the state the previous calendar year, or
- 2) Had more than 200 separate transactions (sales) into the state the previous calendar year.



South Dakota S.B. 106

- ❖ Notably included legislature’s “findings” in legislation.
- ❖ Directed the state legal system to hear and rule on any case challenging the law “as expeditiously as possible.”
- ❖ Does not apply any provisions of the law retroactively.



S.B. 106: From Pierre to SCOTUS



Jan. 27, 2016

Senator Deb Peters introduced Senate Bill 106.



March 22, 2016

Gov. Dennis Daugaard (R) signed S.B. 106 into law.

March 25, 2016

The S.D. DOR sent notices to 206 sellers it identified as meeting the statutory requirements of S.B. 106.



SOUTH DAKOTA

SOUTH DAKOTA

S.B. 106: From Pierre to SCOTUS

April 28, 2016

The state filed a declaratory judgement action against 4 retailers for not collecting sales taxes per S.B. 106.

Sept. 13, 2017

The S.D. Supreme Court upheld the lower court's ruling that S.B. 106 was unconstitutional.

Jan. 12, 2018

SCOTUS granted South Dakota's petition.

Oct. 2, 2017

South Dakota petitioned the U.S. Supreme Court to hear the case. SLLC submitted an amicus brief.

March 6, 2017

The South Dakota 6th Judicial Circuit ruled that S.B.106 is unconstitutional.



S.B. 106: From Pierre to SCOTUS

April 17, 2018
SCOTUS heard oral
arguments.



SOUTH DAKOTA
SOUTH

Supreme Court Considerations



- ❖ Dormant Commerce clause
- ❖ State sales tax simplification
- ❖ State activity – laws and regulations
- ❖ Retroactivity
- ❖ Advancements in technology
- ❖ Small seller thresholds/exemptions
- ❖ *Quill* will be applied only to traditional mail-order retailers (Solicitor General's argument)
- ❖ *Complete Auto Transit Inc. v. Brady* - Four prong test

S.B. 106: From Pierre to SCOTUS



June 21, 2018

In a 5-4 decision, the Court found that “economic and virtual contacts” are enough to create a “substantial nexus” with the state, allowing the state to require collection.



The Court Gave the States Guidelines

Although the Court eliminated the physical presence standard, it also established guidelines and safeguards that states must follow in order to enforce their sales tax laws on remote sales:

- (1) a safe harbor for small sellers;
- (2) no retroactive tax collection;
- (3) single, state-level administration of sales taxes;
- (4) a simplified tax rate structure; and
- (5) uniform definitions and other rules.

On June 29, the NCSL SALT Task Force Adopted Principles of State Implementation post *South Dakota v. Wayfair*.

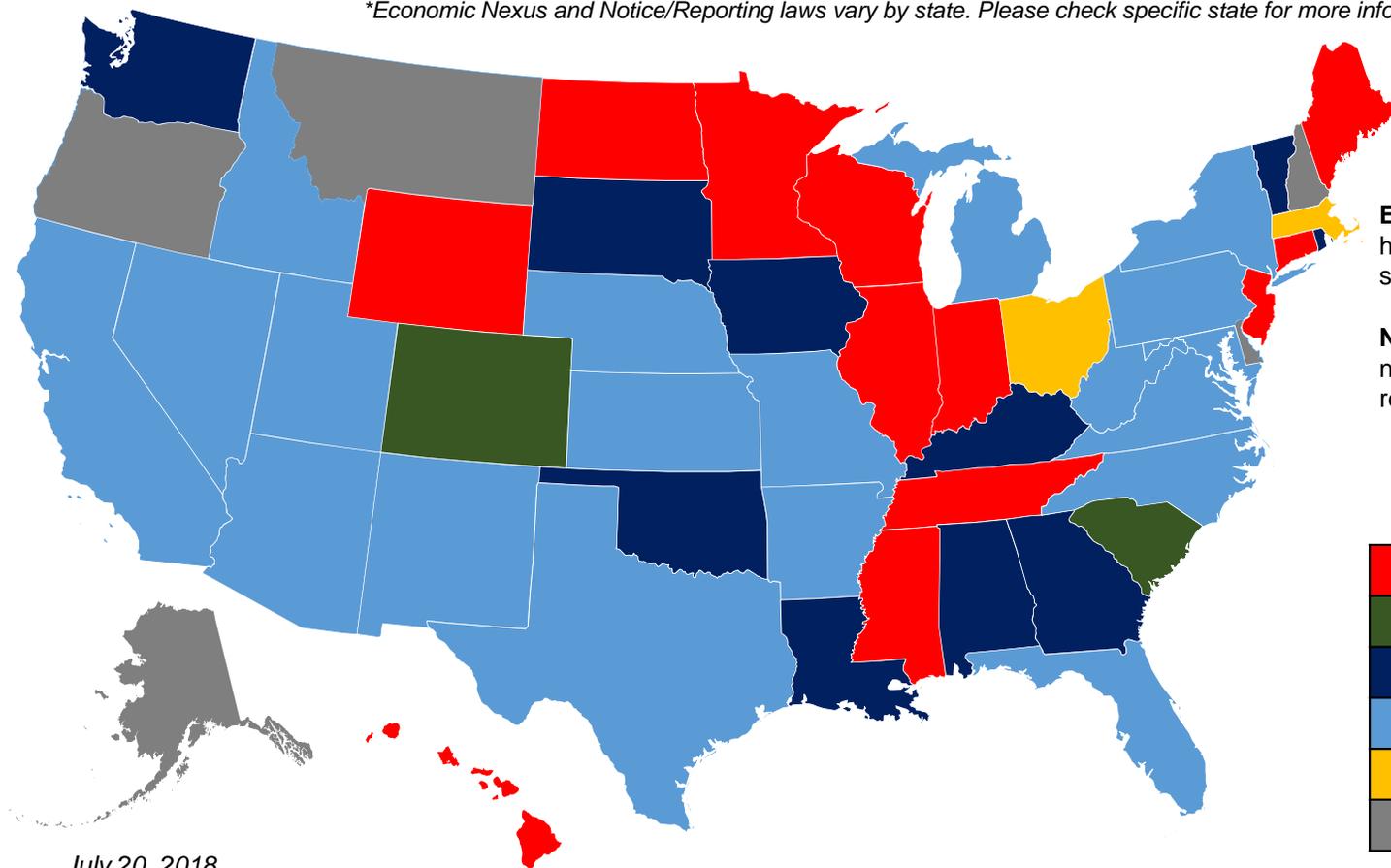


State Economic Nexus and Notice/Reporting Laws

On June 21, 2018, the U.S. Supreme Court, in *South Dakota v. Wayfair*, ruled that states can require remote sellers to collect and remit applicable sales tax. This map provides an overview of “economic nexus” and “notice/reporting” laws across the country.



**Economic Nexus and Notice/Reporting laws vary by state. Please check specific state for more information.*



July 20, 2018

Economic Nexus laws generally require businesses that have a certain amount of economic activity, such as sales volume, to collect and remit applicable sales taxes.

Notice and Reporting Laws generally impose notification and reporting requirements on out-of-state retailers that do not collect sales tax in the state.

Legend

	Economic Nexus
	Notice/Reporting
	Both Economic Nexus and Notice/Reporting
	Neither Economic Nexus or Notice/Reporting
	Software Nexus
	Non-Sales Tax States

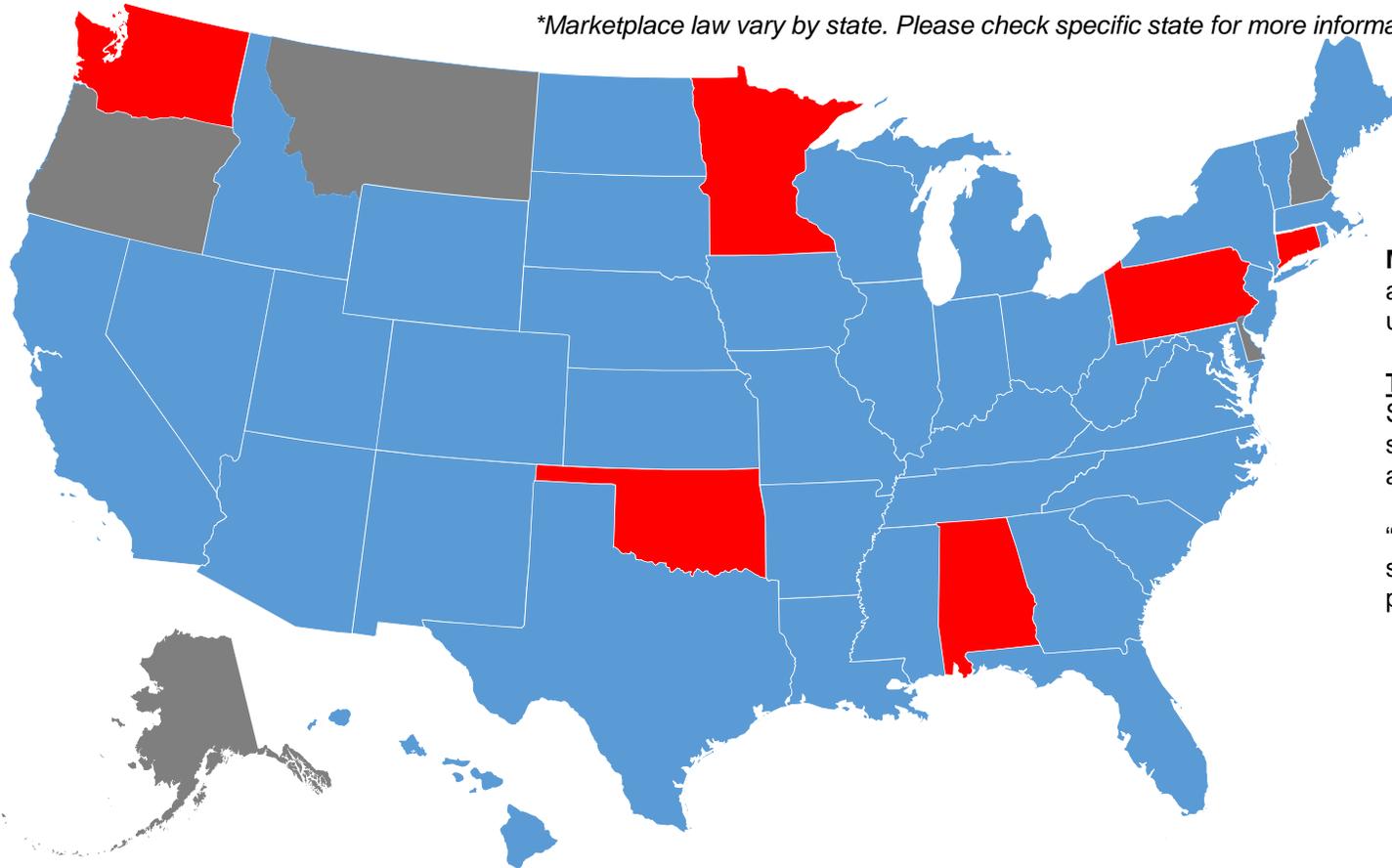
July 13, 2018

State Marketplace Laws

On June 21, 2018, the U.S. Supreme Court, in *South Dakota v. Wayfair*, ruled that states can require remote sellers to collect and remit applicable sales tax. This map provides an overview of “marketplace” laws across the country.



**Marketplace law vary by state. Please check specific state for more information.*



Marketplace collection provisions aim to require online and other marketplaces to collect and remit sales and use tax if a retailer sells products on the marketplace.

Types of Marketplaces

Standard” or “traditional” marketplaces where multiple sellers sell products, sometimes the same products, on a single platform.

“Referral” marketplaces are where customers may search for products and are then referred to a place to purchase those products.

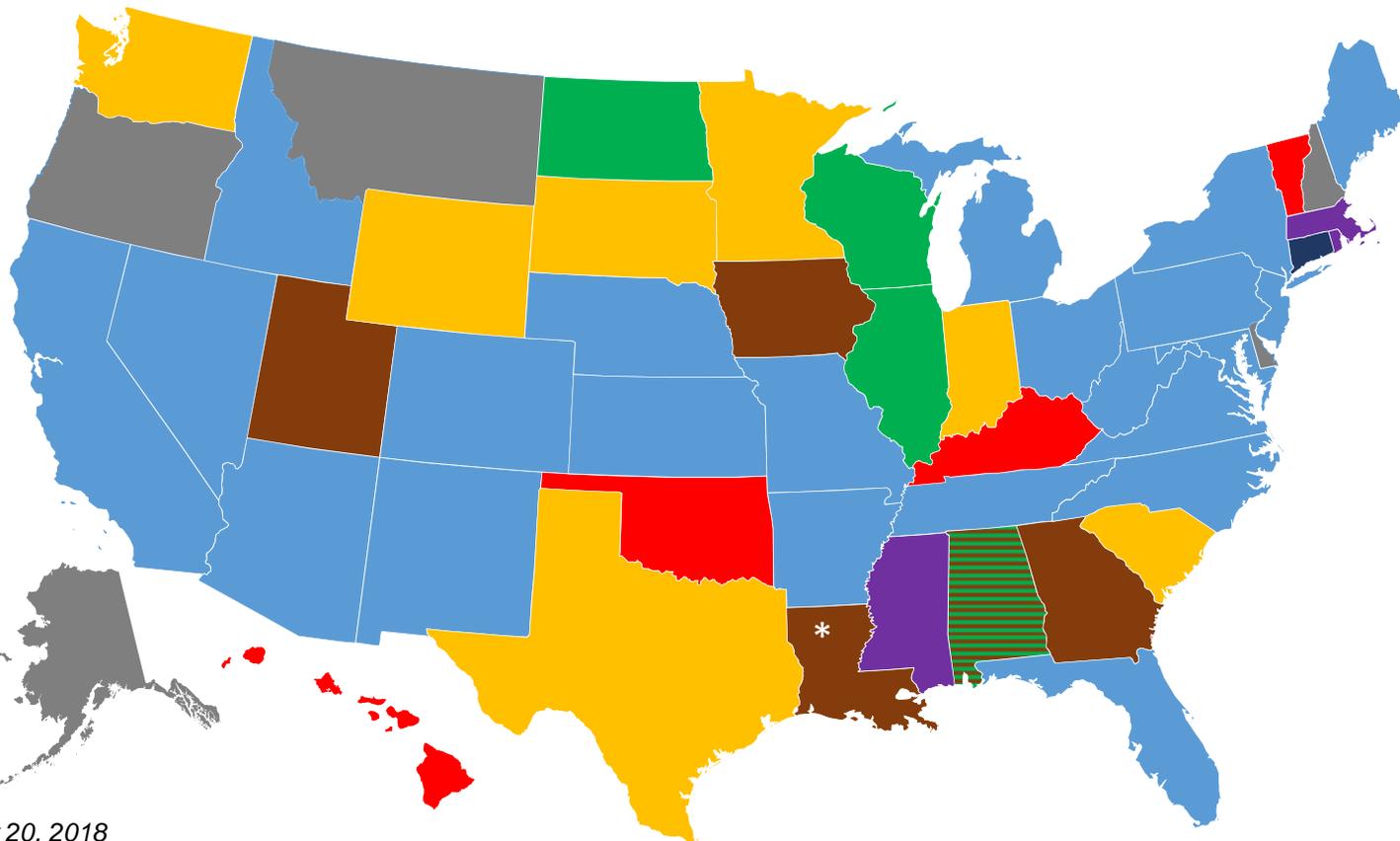
Legend

	Enacted Marketplace Law
	No Enacted Marketplace Law
	Non-Sales Tax States

July 20, 2018

Remote Sales Tax Enforcement Dates

On June 21, 2018, the U.S. Supreme Court, in *South Dakota v. Wayfair*, ruled that states can require remote sellers to collect and remit applicable sales tax. This map provides an overview of when each state will begin enforcing their sales tax laws on remote sellers. Please check with individual states for specifics.



Implementation Dates

	June 21, 2018
	July 1, 2018
	Oct. 1, 2018
	Dec. 1, 2018
	Jan. 1, 2019
	State Commented/TBD
	Non-Sales Tax States
	No State Action

**Tentative Date*

July 20, 2018

The ←
“Sharing”
→ Economy

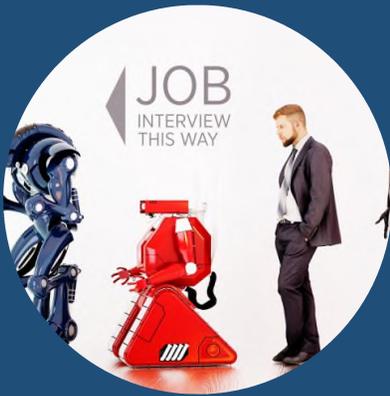
Issues Facing Platforms,
Participants, and Regulators

Over-the-Top Taxes

- Taxation of Digital Services and Products is all-but Inevitable

The Netflix logo, featuring the word "NETFLIX" in white, bold, sans-serif capital letters with a slight 3D effect, set against a solid red rectangular background.The Hulu logo, featuring the word "hulu" in a lowercase, rounded, green sans-serif font, set against a solid black rectangular background.The PlayStation Vue logo, featuring a blue television set with the PlayStation logo on its screen, set against a dark blue rectangular background. Below the television is the PlayStation logo and the text "PlayStation.Vue" in white.The Amazon Prime Video logo, featuring the word "amazon" in black lowercase letters with a curved arrow underneath, followed by "prime video" in black lowercase letters, set against a white background.

Workforce – The Problem of the Future



Will robots really steal our jobs? An international analysis of the potential long term impact of automation
-PWC (Feb. 2018 Report)

- **38% of jobs** are at risk of automation by 2030

Jobs Lost, Jobs Gained: Workforce Transitions In A Time Of Automation

-McKinsey Global Institute (Dec. 2017 Report)

- **Up to 33% of the 2030 workforce in America** may need to switch occupational groups, which is **73 million American jobs**
- **Less than 5%** of jobs consist of activities that can be fully automated.
- **For 60% of jobs**, at least one-third of the work could be automated
- **Jobs in unpredictable environments**—occupations such as gardeners, plumbers, or providers of child- and eldercare—**will generally see less automation by 2030**



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