

Wayfair: We've Got Just What You Need (to Know)

By Kim B. Smith, CPA

On June 21, 2018, the U.S. Supreme Court effectively struck down the physical presence requirement that historically created nexus for sales tax purposes. The ruling in *South Dakota v. Wayfair* has potential ramifications for all retailers.

Prior to *Wayfair*, most states required a retailer to have a physical presence before the retailer had to collect and remit sales tax. If the retailer had a physical location in a state, the retailer was required to collect and remit sales tax. Additionally, if a retailer delivered products in their own truck, made repairs, installed the product or provided training and education, they could also meet the physical presence test. The *Wayfair* decision made it possible for states to enact legislation setting economic nexus thresholds rather than using the physical presence test to determine nexus. In the South Dakota case, the economic nexus thresholds are total sales of \$100,000 annually or 200 transactions.

Alabama enacted an economic nexus rule, which took effect in January 2016, but its validity was in question until the *Wayfair* decision this past summer. Remote sellers with annual Alabama sales of more than \$250,000 should have registered for the Alabama Simplified Sellers Use Tax program and should have started collecting and remitting sales tax by October 2018.

Other states have not wasted any time in enacting economic nexus standard legislation. The Sales Tax Economic Nexus by State chart provided by Alabama CPA firm JamisonMoneyFarmer shows most states have established economic thresholds similar to the ones set forth in *Wayfair*. The thresholds consist of sales volume measured by gross receipts and by the number of

transactions into the state, and in most states, economic nexus applies if a retailer meets either of the thresholds.

See jmf.com/wp-content/uploads/JMF-Sales-Tax-Nexus-by-State-Chart.pdf

Most assume the *Wayfair* decision mostly affects online retailers. However, retailers with physical locations that ship products to their customers or sell products online

via a company website also need to determine if they meet the economic nexus thresholds in the states where their customers receive their products.

What Should Alabama Retailers Be Doing?

Retailers should look back at historical sales data and quantify their sales by state both by total gross receipts into the state as well as the number of transactions annually. After businesses determine the states where they meet the economic

nexus standards, they should take steps to register with those states and begin collecting and remitting sales taxes.

Retailers who meet the economic nexus standards in multiple states need to develop a plan to ensure that they comply. Registrations and return due dates vary from state to state. Sales tax compliance is complicated, and retailers should evaluate whether they need assistance from a CPA or outside consultants and software to ensure that their internal accounting practices and staff can handle multiple monthly filings.

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