

In *South Dakota v. Wayfair*, the Supreme Court determined that a State could require out-of-state sellers of goods to collect and remit taxes if they perform a significant quantity of business in that State. In doing so, the Court overruled two of its precedents establishing the pre-*Wayfair* “physical-presence rule.” Under the pre-*Wayfair* regime, states could require out-of-state sellers to collect and remit taxes to the State only if the seller maintained a physical presence within the State’s borders. After *Wayfair*, states may require remote sellers to collect and remit taxes if the seller has a “substantial nexus with the taxing State[.]” which need not be a physical presence within the State.

An alarming trend following *Wayfair* is the lack of business awareness about the decision, its consequences, and its wide-ranging applicability. A 2020 survey of businesses revealed that over 40% of respondents were completely unaware of *Wayfair* and its impact on sales tax collection.<sup>1</sup> Small businesses unaware of the post-*Wayfair* regime and compliance rules are subject to foreign state tax assessments if they transact business across state lines. In a post-COVID-19 world where states may be seeking to increase their revenues, small businesses out of compliance with their remote seller obligations are convenient targets.

The following chart should help small businesses begin to navigate their post-*Wayfair* tax obligations.

**NFIB’s Small Business Legal Center strongly recommends small businesses work with a CPA or tax professional in navigating their post-*Wayfair* sales tax obligations.**

STATE	SALES TAX (%)	COVERED ITEMS	REFERENCE PERIOD	REMOTE SELLER THRESHOLDS <sup>2</sup>	STATE CONTACT INFORMATION
Alabama	4	Gross proceeds of all retail sales from tangible personal property	Previous Calendar Year	> \$250,000	<a href="#">Alabama Department of Revenue</a>
Alaska <sup>3</sup>	0	Gross sales from property, products, or services delivered into Alaska	Previous or Current Calendar Year	\$100,000; or 200 transactions	<a href="#">Alaska Remote Seller Sales Tax Commission</a>

<sup>1</sup> Gail Cole, *Wayfair Turns 2, But Survey Shows Many Businesses Still Unaware of Economic Nexus*, AVALARA, (June 1, 2020), <https://www.avalara.com/blog/en/north-america/2020/06/wayfair-turns-2-but-many-businesses-still-unaware-of-economic-nexus.html>.

<sup>2</sup> These thresholds reference the amount of activity into the specified state, not overall business activity. For example, if the threshold is \$100,000 of gross receipts from sales of tangible personal property, then a business would only look to see whether it had \$100,000 of gross receipts of tangible personal property into that specific state.

<sup>3</sup> While Alaska does not have a state sales tax, these thresholds are used by local jurisdictions for taxing out-of-state sellers with an economic nexus.



# OUT-OF-STATE TAX REQUIREMENTS

STATE	SALES TAX	COVERED ITEMS	REFERENCE PERIOD	REMOTE SELLER THRESHOLDS <sup>2</sup>	STATE CONTACT INFORMATION
Arizona	5.6	Gross proceeds of sales of tangible personal property or gross income from sales of tangible personal property or services into the State	Previous or Current Calendar Year	> \$200,000 (2019) > \$150,000 (2020) > \$100,000 (2021+)	<a href="#">Arizona Department of Revenue E-Commerce Compliance and Outreach Team</a>
Arkansas	6.5	Sales of tangible personal property, taxable services, digital code, or certain digital products delivered into the State	Previous or Current Calendar Year	> \$100,000; or 200 transactions	<a href="#">Arkansas Department of Finance and Administration</a>
California	7.25	Total combined sales of tangible personal property delivered into California by the retailer and all persons related to the retailer, as set forth in 26 U.S.C 267(b)	Preceding or Current Calendar Year	> \$500,000	<a href="#">California Department of Tax and Fee Administration</a>
Colorado	2.9	Retail sales of tangible personal property, commodities, and/or services	Previous or Current Calendar Year	> \$100,000; 200 transactions (Prior to April 14, 2019) > \$100,000 (After April 14, 2019)	<a href="#">Colorado Department of Revenue Tax Division</a>
Connecticut	6.35	Retail sales of tangible personal property or services set forth in § 12-407	Oct. 1 – Sept. 30 immediately preceding month/quarter of tax liability determination	200 transactions AND \$100,000	<a href="#">Connecticut Department of Revenue Services</a>
Delaware <sup>4</sup>	0	Total receipts of a business received from goods sold and services rendered into Delaware	N/A	N/A	<a href="#">Delaware Division of Revenue</a>
District of Columbia	6	Total gross receipts from retail sales delivered into D.C. or retail sale transactions	Previous or Current Calendar Year	> \$100,000; or > 200 transactions	<a href="#">District of Columbia Office of Tax and Revenue</a>
Florida	6	Sale of tangible personal property	Previous Calendar Year	>\$100,000	<a href="#">Florida Department of Revenue</a>

<sup>4</sup> Delaware imposes a gross receipts tax, which comprises “the total receipts of a business received from goods sold and services rendered in the State.” This tax usually ranges from .0945% - 1.9914%.

STATE	SALES TAX	COVERED ITEMS	REFERENCE PERIOD	REMOTE SELLER THRESHOLDS <sup>2</sup>	STATE CONTACT INFORMATION
Georgia	4	Sales of tangible personal property	Previous or Current Calendar Year	> \$250,000; or 200 transactions (prior to Jan. 1, 2020) > \$100,000; or 200 transactions (after Jan. 1, 2020)	<a href="#">Georgia Department of Revenue</a>
Hawaii <sup>5</sup>	0	Gross receipts from selling retail goods and services	Preceding or Current Calendar Year	\$100,000; or 200 transactions	<a href="#">Hawaii Department of Taxation</a>
Idaho	6	Cumulative gross receipts from sales delivered into Idaho	Previous or Current Calendar Year	> \$100,000	<a href="#">Idaho State Tax Commission</a>
Illinois	6.25	Sale of tangible personal property	Preceding 12-Month Period	\$100,000; or 200 transactions	<a href="#">Illinois Department of Revenue</a>
Indiana	7	Sales of tangible personal property, products transferred electronically, and services	Previous or Current Calendar Year	> \$100,000; or 200 transactions	<a href="#">Indiana Department of Revenue</a>
Iowa	6	Sales of tangible personal property, services, or certain digital products	Preceding or Current Calendar Year	\$100,000; or 200 transactions (prior to July 1, 2019) \$100,000 (after July 1, 2019)	<a href="#">Iowa Department of Revenue</a>
Kansas	6.5	Cumulative gross receipts from sales to customers in the State	Preceding or Current Calendar Year	> \$100,000	<a href="#">Kansas Department of Revenue</a>
Kentucky	6	Sales of tangible personal property or digital property	Previous or Current Calendar Year	\$100,000; or 200 transactions	<a href="#">Kentucky Department of Revenue Division of Sales and Use Tax</a>
Louisiana	4.45	Sales of tangible personal property, products delivered electronically, or services for delivery in Louisiana	Previous or Current Calendar Year	> \$100,000; or 200 transactions	<a href="#">Louisiana Sales and Use Tax Commission for Remote Sellers</a>

<sup>5</sup> Hawaii imposes a 4 or 4.5%, depending on location within the State, general excise tax on businesses.



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Maine	5.5	Sales of tangible personal property, products transferred electronically, or taxable services for delivery	Previous or Current Calendar Year	> \$100,000; or 200 transactions	<a href="#">Maine Revenue Services</a>
Maryland	6	Sales of tangible personal property or taxable services	Previous or Current Calendar Year	> \$100,000; or 200 transactions	<a href="#">Comptroller of Maryland Sales and Use Tax</a>
Massachusetts	6.25	Sales of tangible personal property or services	Previous or Current Calendar Year	>\$100,000	<a href="#">Massachusetts Department of Revenue</a>
Michigan	6	Tangible personal property	Previous Calendar Year	> \$100,000; or > 200 transactions	<a href="#">Michigan Department of Treasury</a>
Minnesota	6.875	Sales of tangible personal property or taxable services	Prior 12-month period	> \$100,000; or 200 transactions	<a href="#">Minnesota Department of Revenue</a>
Mississippi	7	Gross proceeds or gross income from sales of tangible personal property or taxable services	Prior 12 months	> \$250,000	<a href="#">Mississippi Department of Revenue</a>
Missouri	4.225	Sales of tangible personal property or taxable services	Current or Previous Calendar Year (determined quarterly)	\$100,000	<a href="#">Missouri Department of Revenue</a>
Montana	0	N/A	N/A	N/A	<a href="#">Montana Department of Revenue</a>
Nebraska	5.5	Total retail sales	Previous or Current Calendar Year	> \$100,000; or 200 transactions	<a href="#">Nebraska Department of Revenue Taxpayer Assistance</a>
Nevada	4.6	Retail sales of all tangible personal property	Previous or Current Calendar Year	> \$100,000; or 200 transactions	<a href="#">Nevada Department of Taxation</a>
New Hampshire	0	N/A	N/A	N/A	<a href="#">New Hampshire Department of Revenue</a>



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STATE	SALES TAX	COVERED ITEMS	REFERENCE PERIOD	REMOTE SELLER THRESHOLDS <sup>2</sup>	STATE CONTACT INFORMATION
New Jersey	6.625	Tangible personal property, specified digital products, or taxable services	Prior or Current Calendar Year	> \$100,000; or 200 transactions	<a href="#">New Jersey Division of Taxation</a>
New Mexico	5.125	Gross receipts from sales pursuant to Section 7-1-14 NMSA 1978	Previous Calendar Year	\$100,000	<a href="#">New Mexico Department of Taxation &amp; Revenue</a>
New York	4	Sales of tangible personal property	Preceding 4 sales tax quarters (3/1-5/31, 6/1-8/31, 9/1-11/30, 12/1-2/28 or 29)	> \$500,000 AND > 100 transactions	<a href="#">New York Department of Taxation and Finance</a>
North Carolina	4.75	Sales of tangible personal property, certain digital property, and taxable services	Previous or Current Calendar Year	> \$100,000; or 200 transactions	<a href="#">North Carolina Department of Revenue</a>
North Dakota	5	Taxable sales of tangible personal property and some specified services	Previous or Current Calendar Year	> \$100,000; or 200 transactions (Prior to July 1, 2019) > \$100,000 (After July 1, 2019)	<a href="#">North Dakota Office of Tax Commissioner</a>
Ohio	5.75	Sales of all tangible property and taxable services	Previous or Current Calendar Year	> \$100,000; or 200 transactions	<a href="#">Ohio Department of Taxation</a>
Oklahoma	4.5	Aggregate sales of tangible personal property	Previous or Current Calendar Year	> \$100,000	<a href="#">Oklahoma Tax Commission</a>
Oregon	0	N/A	N/A	N/A	<a href="#">Oregon Department of Revenue</a>
Pennsylvania	6	Taxable sales of tangible personal property and services	Previous 12 Calendar Months	> \$100,000	<a href="#">Pennsylvania Department of Revenue</a>
Rhode Island	7	Sales of tangible personal property, prewritten computer software delivered electronically or by load and leave, and taxable services	Previous Calendar Year	\$100,000; or 200 transactions	<a href="#">Rhode Island Department of Revenue Division of Taxation</a>



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STATE	SALES TAX	COVERED ITEMS	REFERENCE PERIOD	REMOTE SELLER THRESHOLDS <sup>2</sup>	STATE CONTACT INFORMATION
South Carolina	6	Gross revenue from sales of tangible personal property, products transferred electronically, and services delivered into South Carolina	Previous or Current Calendar Year	> \$100,000	<a href="#">South Carolina Department of Revenue</a>
South Dakota	4.5	Tangible personal property, products transferred electronically, or services delivered into the State	Previous or Current Calendar Year	> \$100,000; or 200 transactions	<a href="#">South Dakota Department of Revenue</a>
Tennessee	7	All retail sales, excluding resale sales	Previous 12-Month Period	> \$500,000 (Prior to 10/1, 2020) > \$100,000 (After 10/1, 2020)	<a href="#">Tennessee Department of Revenue</a>
Texas	6.25	Gross revenue from taxable and nontaxable sales of tangible personal property and services	Preceding 12 Calendar Months	\$500,000	<a href="#">Texas Comptroller</a>
Utah	6.10	Sales of tangible personal property, products transferred electronically, or services	Previous or Current Calendar Year	> \$100,000; or 200 transactions	<a href="#">Utah State Tax Commission</a>
Vermont	6	Sales of taxable and nontaxable tangible personal property, products transferred electronically, or services	Any preceding 12-Month Period	\$100,000; or 200 transactions	<a href="#">Vermont Agency of Administration Department of Taxes</a>
Virginia	5.3	Retail sales of tangible personal property and certain taxable services	Previous or Current Calendar Year	> \$100,000; or 200 transactions	<a href="#">Virginia Department of Taxation</a>
Washington	6.5	Gross receipts applying to all Washington income, including retailing, wholesaling, service, other apportionable activities, and all retail sales	Previous or Current Calendar Year	> \$100,000	<a href="#">Washington Department of Revenue</a>



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West Virginia	6	Gross sales of tangible personal property and/or services	Previous or Current Calendar Year	> \$100,000; or 200 transactions	<a href="#">West Virginia State Tax Department</a>
Wisconsin	5	Gross sales of tangible personal property, specified digital goods, and taxable services	Previous or Current Calendar Year	> \$100,000; or 200 transactions (Prior to 2/20/21) > \$100,000 (2/20/21 – Present)	<a href="#">Wisconsin Department of Revenue</a>
Wyoming	4	Gross revenue of tangible personal property, admissions, or services	Immediately Preceding or Current Calendar Year	> \$100,000; or 200 transactions	<a href="#">Wyoming Department of Revenue</a>