



State & Local Tax Advisor

Provided by the National Tax Office

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Connecticut

Connecticut Issues GILTI Guidance

Connecticut issued guidance on the treatment of global intangible low-taxed income (GILTI). The guidance applies to corporate business taxpayers for tax years beginning after 2017.

How Does Federal Law Treat GILTI?

The Tax Cuts and Jobs Act of 2017 (TCJA) (P.L. 115-97) added IRC Sec. 250 and IRC Sec. 951A to tax U.S. corporations on GILTI and foreign-derived intangible income (FDII).

IRC Sec. 951A requires U.S. shareholders of any controlled foreign corporation (CFC) to include its GILTI in gross income. This provision treats GILTI in a manner similar to Subpart F income.

IRC Sec. 250 allows a corporation with GILTI and FDII to deduct part of that income on its federal return. The deduction reduces the rate of U.S. tax on GILTI and FDII.

Finally, IRC Sec. 959 permits a corporation to exclude previously taxed foreign earnings and profits.

How Does Connecticut Treat GILTI?

A corporation must include GILTI on its corporation business tax return. Connecticut also treats GILTI as dividend income in the same way it treats Subpart F income. So, a corporation can claim a dividends received deduction for 100% of GILTI.

Corporations must reduce the deduction by expenses that relate to the dividend income. The expense addback equals 5% of all dividends received during the tax year.

How Does Connecticut Treat Previously Taxed Foreign Earnings and Profits?

Taxpayers computing Connecticut corporation business tax liability must start with federal taxable income. Connecticut does not require a modification for previously taxed foreign earnings and profits. Taxpayers that exclude previously taxed foreign earnings and profits from federal taxable income can also exclude it from Connecticut taxable income.

How Do Taxpayers Apportion GILTI?

Connecticut does not include dividend income in the apportionment factor calculation. Thus, taxpayers must exclude GILTI from the apportionment factor calculation.

How Do Taxpayers Report GILTI?

The Connecticut Division of Revenue plans to issue guidance on how report GILTI. It will issue the guidance after the IRS issues reporting requirements.

Special Notice 2018(7), Connecticut Department of Revenue Services, July 20, 2018

Idaho

Temporary Rule, Proposed Rule Issued for Treatment of Idaho IRC Sec. 965 Deemed Repatriation Income

Idaho has adopted a temporary rule that addresses Idaho's corporate income tax treatment of IRC Sec. 965 income. An identical permanent rule has also been proposed.

Federal Treatment

Under the federal Tax Cuts and Jobs Act (P.L. 115-97), taxpayers with untaxed foreign earnings must include accumulated post-1986 deferred foreign income (IRC Sec. 965 income) in 2017 tax year income. This income is subject to tax at special effective tax rates. This is referred to as the "repatriation transition tax." Certain taxpayers can elect to defer payment of a portion of their repatriation transition tax. This election, however, does not defer recognition of the IRC Sec. 965 income. Therefore, the IRC Sec. 965 income, in its entirety, is recognized and included on a taxpayer's federal return for its last tax year beginning before 2018.

Idaho Treatment of IRC Sec. 965 Deemed Repatriation Income

Under both the temporary and proposed new rule, Idaho taxpayers must include the IRC Sec. 965 increase in their subpart F income (IRC Sec. 965(a) reduced by IRC Sec. 965(b)), when computing their Idaho taxable income, regardless of how the income is reported on their federal tax return.

Public Hearing and Comment Period for Proposed Rule

A public hearing on the proposed rule will be held if 25 people, a political subdivision, or an agency submit written requests by August 15, 2018.

Additionally, all interested parties are invited to submit written comments concerning the proposed regulation. However, they must be submitted by August 22, 2018. Comments should be sent to Cynthia Adrian, Tax Policy Specialist, State Tax Commission, 800 Park Blvd., Plaza IV, P.O. Box 36, Boise, Idaho, 83722-0410. Ms. Adrian can also be reached by telephone at (208) 334-7670.

Proposed Administrative Rule 35.01.01.017, Idaho State Tax Commission, August 1, 2018; Temporary Administrative Rule 35.01.01.017T, Idaho State Tax Commission, effective January 1, 2018

Illinois

Trade Show Nexus Safe Harbor

Out-of-state businesses that market their products at several trade shows in Illinois each year could have sales tax nexus with Illinois. Beginning July 27, 2018, these companies have a duty to collect tax on all sales into Illinois unless they meet the conditions of the safe harbor test. As reported, Illinois Department of Revenue has issued a regulation on sales tax collection at trade shows and establishing nexus by attending trade shows.

Trade Show Safe Harbor Test

An out-of-state company will not have nexus with Illinois due to trade show exhibits or activities if it meets the safe harbor test. The test has three conditions:

- Attending no more than two trade shows a year.
- Spending no more than 8 days total at trade shows.
- Having no more than \$10,000 in receipts from trade shows.

Only Two Trade Shows a Year. To qualify for the safe harbor, a company can attend only 1 or 2 trade shows in a calendar year.

Eight Day Annual Limit. In addition, the company cannot be physically present at trade shows for more than 8 total days in a calendar year. A company is present when a person is acting under its authority at the trade show, including:

- an employee;
- an agent; or
- an independent contractor.

Important to note, a person can be a company's representative even if they:

- sell their own products; or
- also represent other businesses.

A company is present at a trade show no matter how little time it spends at a show on a given day. If the company's representative at the show leaves after one hour, the company was at the show for one day. However, if two employees work at a trade show at different times of the same day, the day is still counted as one day.

Only activities designed to build or maintain a market in Illinois count toward the limit. Time spent setting up and tearing down displays does not count toward the 8 days.

Example:

Manufacturer Did Not Establish Nexus. A Michigan flooring manufacturer exhibits its products at 2 industry trade shows in Illinois each year. Seven of the manufacturer's employees attend both shows. They are present at the shows for a total of 10 days each year. However, they spend 2 of those days setting up and tearing down displays, so only 8 days are spent exhibiting products. The employees do not sell products at either trade show.

The manufacturer meets the three conditions of the safe harbor test. As a result, it does not have nexus with Illinois.

De Minimis Trade Show Receipts. A company will not meet the safe harbor test if its retail sales at the trade show result in more than \$10,000 in receipts.

Example:

Athletic Wear Retailer Establishes Nexus. Each year, a California retailer attends a sports and fitness exposition in Chicago before the Chicago Marathon. The expo runs for two days. At the expo, the retailer:

- displays new merchandise;
- markets its product lines to local stores; and
- distributes promotional materials.

One year, the retailer makes \$20,000 in merchandise sales at the expo. The retailer now has nexus with Illinois.

Determining If a Company Has Nexus

A company making retail sales into Illinois needs to examine its trade show activities in the state if it is not registered to collect sales tax in Illinois. While each threshold in the safe harbor test is low, nexus exists if one of the three thresholds is not met.

86 Ill. Adm. Code 150.802, Illinois Department of Revenue, effective July 27, 2018

Michigan

Taxpayers Warned of Tax Application Scam

The Michigan Attorney General has warned taxpayers of a scam involving a company offering sales tax application processing.

Sales Tax Registration.

An online company, Sales Tax Application Organization, charges \$177 to process Michigan sales tax applications. However, the only ways to register for sales tax in Michigan are:

- Via the Michigan Treasury's web portal, MTO;
- submitting form 518 by mail; or
- the Streamlined Sales Tax Governing Board.

The notice can be viewed on the Attorney General's website at

https://content.govdelivery.com/attachments/MIAG/2018/08/03/file_attachments/1049700/SalesTaxApplicationScamConsumerAlert.pdf

Sales Tax Application Scam, Michigan Attorney General's Office, August 3, 2018

Minnesota

Minnesota Explains Treatment of Deferred Foreign Income, Actual Repatriated Dividends

Certain Minnesota taxpayers may be required to subtract federally reported deferred foreign income (DFI) on their state corporate income tax returns. DFI is part of federal taxable income and added to a U.S. shareholder's subpart F income under IRC Sec. 965. The starting point for computation of the Minnesota corporate income tax is the

taxpayer's federal taxable income. However, Minnesota does not include DFI in net income because they have not conformed to changes made by the Tax Cuts and Jobs Act.

Minnesota has released guidance on how the federal Tax Cuts and Jobs Act (P.L. 115-97) affects tax year 2017 returns.

Federal Treatment

Under TCJA, taxpayers with untaxed foreign earnings must include accumulated post-1986 deferred foreign income (IRC Sec. 965 income) in 2017 tax year income. This income is subject to tax at special effective tax rates, referred to as the "repatriation transition tax." Certain taxpayers can elect to defer payment of a portion of their repatriation transition tax. This election, however, does not defer recognition of the IRC Sec. 965 income. Therefore, the IRC Sec. 965 income, in its entirety, is recognized and included on a taxpayer's federal return for its last tax year beginning before 2018.

Minnesota Treatment of Deferred Foreign Income

The following taxpayers may be required to report DFI:

- domestic C corporations;
- S corporations;
- partnerships;
- trusts; and
- real estate investment trusts (REIT) that own a direct or indirect interest in a foreign corporation.

Individual taxpayers may report DFI as direct shareholders of foreign corporations or from pass-through entities.

Minnesota Treatment of Actual Repatriated Dividends

Taxpayers must report and pay tax on foreign source dividends when they are received and realized. This occurs when an actual distribution in cash or property from the foreign corporation's current or accumulated earnings and profits is received. Taxpayers must report this distribution as taxable dividend income. This must be reported whether or not a Form 1099-DIV is received.

Preparing TY 2017 Minnesota Returns

A table has been provided by the department to help taxpayers determine how to treat deferred foreign income adjustments on their 2017 Minnesota returns. Using the table, taxpayers should subtract the net amount of amount of any DFI included in federal taxable income on their federal return under IRC Sec. 965(a), as reduced by IRC Sec. 965(c). The subtraction should be reduced by any portion of DFI received as an actual repatriated dividend distribution.

Taxpayers should amend previously filed 2017 Minnesota tax returns if they have:

- included DFI in Minnesota net income;
- or did not include actual repatriated dividend income that you received.

Installment Payments of Tax Liability Under IRC Sec. 965(h)

Under IRC Sec 965(h), a U.S. shareholder of a deferred foreign income corporation (DFIC) may elect to pay the transition tax resulting from the mandatory inclusion of deferred foreign income in eight installments. This election is not applicable in Minnesota because deferring the taxpayer's liability has no effect on federal taxable income.

Fact Sheet: Deferred Foreign Income under the Tax Cuts and Jobs Act, Minnesota Department of Revenue, August 10, 2018

New York

Treatment of IRC §965 Repatriation Amounts for 2017 Explained

New York issued notices explaining the treatment of IRC §965 repatriation amounts for tax year 2017.

Taxpayers must use their federal IRC 965 Transition Tax Statement when following the instructions in the notices.

If a taxpayer with IRC §965 amounts already filed its 2017 New York return, it must file an amended return using the new instructions.

C Corporations

Exempt CFC income encompasses the IRC §965(a) inclusion amount. Taxpayers must add back interest deductions attributable to the §965(a) inclusion amount or make the 40% safe harbor election. Taxpayers must also add back IRC §965(c) deductions used to reduce federal taxable income.

Specific Form Instructions. The notices provide specific instructions for reporting §965 amounts on these 2017 forms: CT-3; CT-3-A; CT-3.1; CT-225; CT-225-A; and CT-225-A/B.

Insurance Corporations

Taxpayers use a new subtraction modification for IRC §965(a) inclusion amounts received from foreign corporations not included in a combined report with the taxpayer. Taxpayers must add back the IRC §965(c) deduction, as well as interest and noninterest deductions attributable to the IRC §965(a) inclusion amount.

Captive insurers filing Form CT-33-C and insurers filing non-life Form CT-33-NL make no adjustments for §965 amounts.

Specific Form Instructions. The notices provide specific instructions for reporting §965 amounts on these 2017 forms: CT-33; CT-33-A; CT-33-A/B; CT-225; CT-225-A; and CT-225-A/B.

Exempt Organizations

Taxpayers must include in New York unrelated business taxable income any net IRC §965 amount required to be included in federal unrelated business taxable income. New York has no exemption or deduction for this income for exempt organizations. Also, there are no related income modifications. The notices provide specific instructions for reporting §965 amounts on 2017 Form CT-13.

Pass-Through Entities

Pass-through entities must include their distributive and pro rata shares of any IRC §965 amounts from other pass-through entities when computing their federal IRC 965 Transition Tax Statement.

Specific Form Instructions. The notices provide specific instructions for reporting §965 amounts on these 2017 forms: CT-3-S; IT-204; IT-204-IP; IT-204.1; IT-204-CP; IT-205; IT-205-A; IT-205-C; and IT-205-J.

Important Notices N-18-7 and N-18-8, New York Department of Taxation and Finance, August 2018

North Carolina

North Carolina Changes Intangible Property Sourcing Rules

North Carolina legislation changes the rules for sourcing a corporate income taxpayer's receipts from intangible property.

What Are the Sourcing Rules for Intangible Property?

The legislation adopts current North Carolina Department of Revenue sourcing rules for receipts from intangible property. A taxpayer must source receipts from intangible property to North Carolina if the taxpayer received the receipts from sources in the state. North Carolina law previously required a taxpayer to source these receipts to the state if the taxpayer used the property in the state.

When Do the Sourcing Rules Take Effect?

The change takes effect when S.B. 99 became law on June 12, 2018.

Ch. 2018-97 (S.B. 335), Laws 2018, effective July 1, 2018 and as noted

Pennsylvania

Philadelphia Will Follow State Bonus Depreciation Treatment

Philadelphia informs taxpayers that it will follow the state's income tax treatment of the federal bonus depreciation deduction. Taxpayers will need to addback any bonus depreciation. They will then be allowed to take normal depreciation.

Advisory Notice – Bonus Depreciation Policy Update, City of Philadelphia Department of Revenue, July 31, 2018

Rhode Island

Repatriation Tax Regulations for C Corporations Adopted

Rhode Island adopted regulations concerning the corporate income tax treatment of IRC Sec. 965 income for C corporations.

Federal Treatment

Under the federal Tax Cuts and Jobs Act (P.L. 115-97), taxpayers with untaxed foreign earnings must include accumulated post-1986 deferred foreign income (IRC Sec. 965 income) in 2017 tax year income. This income is subject to tax at special effective tax rates. This is referred to as the "repatriation transition tax." Certain taxpayers can elect to defer payment of a portion of their repatriation transition tax. This election, however, does not defer recognition of the IRC Sec. 965 income. Therefore, the IRC Sec. 965 income, in its entirety, is recognized and included on a taxpayer's federal return for its last tax year beginning before 2018.

Rhode Island Treatment for C Corporations

The regulations require C corporations to include net IRC Sec. 965 income as Rhode Island income. This is only be for the 2017 tax year.

Net IRC Sec. 965 income does not include federal deductions provided under IRC Sec. 965.

In addition, a taxpayer may not defer any payment of the transition tax for Rhode Island purposes. However, a taxpayer may request a payment plan based on its ability to pay the state tax liability.

Additional Regulatory Provisions

The regulations also provide information about:

- combined reporting;
- IRC Sec. 965 income from a pass-through entity;
- state dividends-received deductions against net IRC Sec. 965 income;
- apportionment;
- filing procedures; and
- penalty relief.

280-RICR-20-25-15.1 to 280-RICR-20-25-15.11, Rhode Island Division of Taxation, effective August 22, 2018

Repatriation Tax Filing Guidance Issued

Taxpayers with IRC Sec. 965 income must file Schedule 965 with their 2017 Rhode Island corporate income tax return. The taxpayer's federal "IRC 965 Transition Tax Statement" must also be included with Schedule 965.

These requirements stem from recently adopted regulations requiring corporations to include net IRC Sec. 965 income as Rhode Island income.

IRC Sec. 965 Income

Under IRC Sec. 965, certain taxpayers must include accumulated post-1986 deferred foreign income in federal income for the 2017 tax year. This is referred to as the federal "repatriation transition tax."

Amended Return May Be Required

An amended return that includes Schedule 965 must be filed if the taxpayer already filed a 2017 Rhode Island return.

Advisory for Tax Professionals 2018-32, Rhode Island Department of Revenue, Division of Taxation, August 2, 2018

Utah

Deferred Foreign Income Changes Enacted

Utah modifies its corporate income tax provisions on deferred foreign income to:

- add deferred foreign income to the definition of "unadjusted income"; and
- modify the payment schedule for repatriation tax on deferred foreign income.

The changes are retroactively operative for a corporation's last taxable year beginning on or before December 31, 2017.

"Unadjusted Income"

"Unadjusted income," as amended, specifically includes deferred foreign income described in IRC §965(a).

Payment Schedule

A corporation making installment payments of the state tax owed on deferred foreign income described in IRC §965 must pay:

- the first installment by the due date, including any extension, for its 2017 return; and
- subsequent installments by the due date, including any extension, for its return in each of the following seven years.

(H.B. 2002), Laws 2018, Second Special Session, effective July 21, 2018, and operative as noted

Vermont

State Issues IRC §965 Repatriation Guidance

Vermont has issued guidance on the treatment of IRC §965 repatriation income.

The federal Tax Cuts and Jobs Act requires a one-time inclusion of certain untaxed foreign earnings and profits in a taxpayer's Subpart F income for 2017. Therefore, for affected taxpayers, this income is also part of the Vermont tax base for the 2017 tax year.

Reflecting §965 Income On Vermont Returns

IRS guidance instructs some taxpayers to report repatriation income on the IRC 965 Transition Tax Statement, instead of the primary federal forms. For these taxpayers, the IRC §965 income reported on the statement will not automatically flow through to the appropriate Vermont forms.

Corporate Taxpayers. On Line 1 of Form CO-411, corporate taxpayers are generally instructed to enter the amount from Line 28, less Line 29b, from federal Form 1120. For tax year 2017, however, taxpayers must also include the amount reported on IRC 965 Transition Tax Statement, Line 1, less the deductions reported on Line 3 of the statement.

Fiduciary Taxpayers. A similar addition must be made on Line 1 of Form FIT-161 for certain fiduciary taxpayers required to file the IRC 965 Transition Tax Statement.

S Corporations And Partnerships. S corporations and partnerships must include the amount of IRC §965 income reported on their federal forms on Line 1 of their Vermont Schedule BI-472. For S Corporations, the amount included is the IRC §965 income reported on federal Form 1120S, Schedule K, Line 10. For partnerships, the amount included is the IRC §965 income reported on federal Form 1065, Schedule K, Line 11.

Other Taxpayers. Other taxpayers, including most individuals, do not need to make any adjustment in reporting their federal taxable income on their Vermont forms. These amounts will be automatically reported on Line 1 of their 2017 Vermont income tax returns.

Documentation

All Vermont taxpayers with a federal requirement to file an IRC 965 Transition Tax Statement must submit a copy of the statement with their Vermont tax return.

Installment Payments

Federal law permits a taxpayer receiving IRC §965 income to elect to pay the liability in installments over eight years. But making installment payments has no effect on federal taxable income because the installments occur after tax liability is determined. Vermont law contains no additional provisions allowing taxpayers with IRC §965 income to make an installment election for Vermont purposes. Thus, Vermont law does not allow installments and taxpayers must include all IRC §965 income in tax year 2017.

IRC §965 Repatriation Guidance, Vermont Department of Taxes, August 2018

State Follows GILTI But Not IRC §199A Deduction

Vermont follows the federal treatment of global intangible low-taxed income (GILTI) but not the IRC §199A deduction.

GILTI

Vermont taxable income and net income automatically include GILTI. This is because the Tax Cuts and Jobs Act includes GILTI in federal gross income under IRC §951A(a).

GILTI Deduction. The GILTI deduction under IRC §250 applies to domestic corporations for Vermont corporate income tax purposes.

IRC §199A Deduction

The IRC §199A deduction for qualified business income does not flow through to the Vermont return. This is because the Vermont personal income tax starting point changed to federal adjusted gross income for tax years after 2017.

Publication GB-1186, Vermont Department of Taxes, August 2018

States responses to *Wayfair*

Idaho

Certain Out-of-State Retailers Must Collect and Remit Tax

A new "click-through" nexus law, effective July 1, 2018, requires certain out-of-state retailers to collect Idaho sales tax on their sales to in-state customers.

Nexus Conditions

Out-of-state retailers must collect the tax and forward it to the Idaho State Tax Commission if:

- the out-of-state seller has an agreement with an Idaho retailer to refer potential buyers to the out-of-state seller for a commission that's paid on each resulting sale, and
- total sales to Idaho buyers through these agreements exceed \$10,000 in the preceding 12 months.

Qualifying referrals include:

- website links,
- written or oral presentations, or
- any other similar third-party purchase opportunity.

Impact of *Wayfair* Decision

The Commission is currently working to determine how the U.S. Supreme Court's recent decision in *South Dakota v. Wayfair, Inc.* affects out-of-state retailers making sales to Idaho citizens. The *Wayfair* ruling upholds a South Dakota statute requiring out-of-state retailers to collect and forward the tax to South Dakota if the retailer has an economic connection as opposed to a physical presence in that state.

News Release, Idaho State Tax Commission, August 15, 2018

Kentucky

DOR to Enforce Economic Nexus Thresholds October 1

The Kentucky DOR has updated a release on implementing the sales tax nexus economic thresholds in H.B. 487 and H.B. 366, Laws 2018. The thresholds require no in-state physical presence for nexus and are like those in *South Dakota v. Wayfair, Inc.*, U.S. Supreme Court, Dkt. No. 17-494, June 21, 2018. Namely, a remote seller must collect Kentucky sales and use tax if, in the previous or current calendar year:

- their gross receipts from Kentucky sales exceeded \$100,000; or
- they had at least 200 separate in-state sales transactions of property.

Implementation Date

The Kentucky thresholds technically have an effective date of July 1, 2018. For implementation purposes, the DOR advises unregistered remote sellers meeting either threshold that they must register with Kentucky by October 1, 2018, and start collecting the state's sales and use tax on that date. Remote sellers with concerns about timely compliance with these requirements should e-mail the DOR for assistance at KRS.WebResponseSalesTax@ky.gov.

Impacted remote sellers who would like to register for sales and use tax collection in Kentucky and the other SST states can through <https://www.sstregister.org>.

Release, Kentucky Department of Revenue, July 30, 2018

Louisiana

Remote Sellers Must Collect in 2019

Louisiana will collect sales and use tax from remote sellers beginning January 1, 2019. The impact of *South Dakota v. Wayfair, Inc., et al.* (U.S. Supreme Court, No. 17-494, June 21, 2018) and Louisiana law are summarized in a bulletin. *Wayfair* struck down the requirement that a vendor must be physically present in a state to be subject to sales and use tax in that state.

Collection Requirements

Remote sellers must collect Louisiana sales and use tax if during the current or previous calendar year they have:

- gross revenue of more than \$100,000 from products and services delivered into the state; or
- 200 or more transactions of products or services delivered into the state.

Remote sellers that do not meet this criteria can voluntarily register and collect.

However, if remote sellers do not meet collection thresholds and do not voluntarily collect they must tell purchasers that use tax may be owed.

Louisiana's Commission for Remote Sellers

The Louisiana Sales and Use Tax Commission for Remote Sellers was created in 2017. The commission was created to:

- simplify compliance;
- serve as the single Louisiana entity for remote sellers to collect and remit tax on sales sourced to Louisiana, and
- provide administration, collection, and payment requirements required by federal law.

After *Wayfair*, the commission can serve to administer and collect tax on remote sales.

In addition, the Louisiana Uniform Local Sales Tax Board is telling local tax collectors that *Wayfair* should not be applied retroactively.

Remote Sellers Information Bulletin No. 18-001, Louisiana Department of Revenue, August 10, 2018

Maine

Sales and Use Tax Remote Sellers Law Being Enforced

Maine's remote sellers sales tax law is enforced for sales after July 1, 2018. The remote sellers statute was enacted prior to *South Dakota v. Wayfair, Inc., et al.* (U.S. Supreme Court, No. 17-494, June 21, 2018). *Wayfair* struck down the requirement that a vendor must be physically present in a state to be subject to sales and use tax in that state.

Remote Seller Collection Threshold

Remote sellers must collect and remit Maine sales tax if during the current or previous calendar year they have:

- at least 200 separate transactions of property or services delivered into the state; or
- gross revenues from Maine sales of property or services exceed \$100,000.

Maine Tax Alert, Vol. 28, No. 6, Maine Revenue Services, August 2018

Michigan

Sales and Use Tax Economic Nexus Threshold Guidelines Issued

In light of the U.S. Supreme Court's decision in *South Dakota v. Wayfair*, the Michigan Department of Treasury has issued sales and use tax guidance on economic nexus standards for remote sellers.

Economic Nexus

After September 30, 2018, a remote seller with sales into Michigan exceeding \$100,000 (taxable and non-taxable) or 200 or more transactions (taxable or non-taxable) in the previous calendar year, is required to remit sales or use tax. If a seller has nexus due to economic presence, it must remit tax until a calendar year goes by in which it does not meet one of these economic nexus thresholds.

Penalty Waiver

Sellers that only have nexus due to economic thresholds are not liable for tax, penalty, or interest for transactions occurring on or before September 30, 2018. Furthermore, the department will waive failure to file and deficiency penalties for returns and payments due prior to December 31, 2018 as long as the taxpayer only has nexus based on one of the economic thresholds. However, interest will not be waived. Additional information can be found on the department's website at

https://www.michigan.gov/documents/treasury/South_Dakota_v_Wayfair_629239_7.pdf

Revenue Administrative Bulletin 2018-16, Michigan Department of Treasury, August 1, 2018

Mississippi

Sales and Use Tax Guidance Issued for Online Sellers

The Mississippi Department of Revenue has issued sales tax guidance for online sellers in the wake of the U.S. Supreme Court's decision in *South Dakota v. Wayfair, Inc.*

Wayfair Decision

The *Wayfair* decision, issued on June 21, 2018, struck down the requirement that a vendor must have "physical presence" in a state to be subject to state sales and use tax collection requirements.

Economic Presence Rule

While the Department recently enacted a rule, effective December 1, 2017, that addresses Mississippi's definition of economic presence nexus, it was not enforcing the rule prior to the *Wayfair* decision. However, the Department will allow online sellers to begin collection of Mississippi use tax for sales made on or after September 1, 2018, when such sellers register to collect Mississippi tax by August 31, 2018.

Compliance

Remote sellers with annual sales in the state exceeding \$250,000 should register for a Mississippi Use Tax Account and begin collecting tax no later than September 1, 2018. All online or remote sellers seeking to comply are advised to visit <https://tap.dor.ms.gov/> to register with the Department.

Sellers can determine whether the \$250,000 small seller exception is met based on their total sales into the state for the past 12 months. "Total sales" include all sales into Mississippi, including those sales:

- at wholesale;
- taxable under the state's sales and use tax statutes; and
- subject to any statutory exemption.

Sales and Use Tax Guidance for Online Sellers, Mississippi Department of Revenue, August 6, 2018

Nebraska

Sales and Use Tax Nexus Guidance Issued for Remote Sellers

In light of the U.S. Supreme decision in *South Dakota v. Wayfair*, the Nebraska Department of Revenue has issued guidance on the collection of sales tax by certain remote sellers.

Remote Sellers

Remote sellers that engage in business in Nebraska as defined by statute, are required to obtain a sales tax permit and start collecting sales tax by January 1, 2019. A small seller exception will apply to those with sales of \$100,000 or less or fewer than 200 separate transactions in the state annually. The department will not pursue sales tax collection retroactively from sellers that did not have a physical presence in Nebraska for sales made to customers prior to January 1, 2019.

Registration

Remote sellers may register directly with the department. In addition, they may register with Nebraska and the other 23 Streamlined Sales Tax states via the Streamlined Sales Tax Registration System (SSTRS) registration form.

The notice can be viewed on the department's website at http://www.revenue.nebraska.gov/news_rel/jul_18/wayfair.pdf.

News Release, Nebraska Department of Revenue, July 27, 2018

New Jersey

New Jersey Adopts Economic Nexus for Remote Sellers

Effective October 1, 2018, certain remote sellers will be required to register, collect, and remit New Jersey sales tax.

Sales/Economic Thresholds

The Division of Taxation announced that sales tax collection will be required in New Jersey if, during the current or prior calendar year, a remote seller exceeds either:

- \$100,000 in gross revenue from sales in New Jersey; or
- 200 or more separate transactions in New Jersey.

A remote seller is a business that sells products online, by mail order, or by telephone to a customer located in a state in which the seller has no physical presence.

Prospective Application

The economic nexus provision takes effect October 1, 2018. It was prompted by the U.S. Supreme Court's decision in *South Dakota v. Wayfair, Inc.* This prospective treatment does not apply if the seller has a physical presence in New Jersey, or is otherwise legally obligated to collect and remit New Jersey sales and use tax. Sellers, including remote sellers that are currently collecting and remitting New Jersey sales or use tax should continue to do so.

The notice can be viewed on the Division of Taxation's website at <https://www.state.nj.us/treasury/taxation/remotesellers.shtml>.

Notice, New Jersey Division of Taxation, August 14, 2018

North Carolina

Sales and Use Tax Economic Nexus Threshold Issued Post-Wayfair

The North Carolina Department of Revenue provides sales and use tax guidance in the wake of the decision in *Wayfair v. South Dakota*. The department will require remote sellers to collect and remit the applicable sales and use tax on taxable retail sales sourced to North Carolina.

Prospective Remote Seller Liability

The department will apply the Court's ruling in the *Wayfair* decision on a prospective basis for unregistered remote sellers that do not have a physical presence in North Carolina. This prospective treatment does not apply if a person has a physical presence or other legal obligation to collect and remit North Carolina sales and use tax.

Economic Nexus

A remote seller is required to register, and collect and remit North Carolina sales and use tax if, in the previous or current calendar year:

- the remote seller has gross sales in excess of \$100,000 sourced to North Carolina; or
- the remote seller has 200 or more separate transactions sourced to North Carolina ("threshold").

This provision is effective November 1, 2018, or 60 days after a remote seller meets the threshold, whichever is later.

Voluntary Collection and Remittance

Remote sellers may voluntarily begin collecting and remitting sales and use tax any time prior to November 1, 2018. A remote seller that does not meet the threshold may voluntarily register with the department to collect and remit sales and use tax. Retailers and remote sellers that currently collect and remit North Carolina sales and use tax should continue to do so.

State Law Regarding Remote Sales Subject to Tax

State law provides, in part, that a retailer who makes a remote sale is engaged in business in North Carolina and is subject to sales and use tax provided at least one of the following conditions is met:

- the retailer purposefully or systematically exploits the North Carolina market by any media-assisted, media-facilitated, or media-solicited means, including direct mail advertising, distribution of catalogs, computer-assisted shopping, television, radio or other electronic media, telephone solicitation, magazine or newspaper advertisements, or other media; or
- the retailer consents, expressly or by implication, to the imposition of the tax.

Evidence that a retailer engaged in the activity described above is prima facie evidence that the retailer consents to the imposition of the sales and use tax. A "remote seller" is a seller that does not have an in-state physical presence, does not have any other legal requirement to register, but sells products for delivery into North Carolina.

Registration

Remote sellers who want to comply with the laws of multiple states, including North Carolina, can register with the Streamlined Sales Tax Registration System at <http://www.sstregister.org/>.

Remote sellers who wish to register only with North Carolina may do so by:

- using the department's online business registration portal at <https://www.ncdor.gov/taxes-forms/business-registration/online-business-registration>; or
- submitting a completed Form NC-BR, Business Registration Application, on the department's website at <http://www.ncdor.gov>.

There is no fee to apply for a certificate of registration in North Carolina.

Directive No. SD-18-6, North Carolina Department of Revenue, August 7, 2018

Rhode Island

Wayfair Has No Effect on Remote Sellers

Rhode Island announced that tax collection obligations of remote sellers are not affected by the *Wayfair* decision. Rhode Island has issued more guidance for remote sellers on *South Dakota v. Wayfair, Inc.*, et al. (U.S. Supreme Court, No. 17-494, June 21, 2018) in response to taxpayer questions. *Wayfair* struck down the requirement that a vendor must be physically present in a state to be subject to sales and use tax in that state.

In addition, FAQs previously issued by Rhode Island were revised to reflect this position.

Rhode Island Collection Obligations

Non-collecting retailers are retailers that aren't required to collect sales tax. Under the law, non-collecting retailers are sellers that:

- use in-state software to make retail sales of goods or services;
- sell, lease, or deliver taxable goods or services or take part in any related activity (including using a referrer, retail sale facilitator, or third party for direct marketing);
- use a sales process to list, brand, sell, solicit, process, fulfill, or exchange;
- offer goods or services for retail sale through facilitators; or
- are related to a person with physical presence in Rhode Island.

Rhode Island's non-collecting retailer law went into effect August 17, 2017.

Under the law, non-collecting retailers must collect sales tax if they had, in the preceding calendar year:

- \$100,000 in gross revenue of sales delivered in Rhode Island; or
- 200 or more transactions delivered in Rhode Island.

As a result of the 2017, law non-collecting retailers had to:

- register with the Division of Taxation and collect/remit sales and use tax; or
- notify consumers of their tax obligation.

Taxpayers that fail to comply are subject to penalties.

Registration Options and the Streamlined Sales and Use Tax Agreement

Rhode Island adopted the Streamlined Sales and Use Tax Agreement in 2006.

Non-collecting retailers can register and begin to collect Rhode Island sales taxes by:

- completing the [Streamlined Sales and Use Tax registration form](#);
- completing [Rhode Island's registration form](#); or
- using a [certified service provider](#).

Advisory 2018-29, Rhode Island Division of Taxation, July 23, 2018

Washington

Sales and Use Tax Remote Seller Nexus Guidelines Updated

In light of the U.S. Supreme Court's decision in *South Dakota v. Wayfair*, the Washington Department of Revenue has updated sales tax guidelines for remote sellers.

Sales Tax Thresholds

Beginning October 1, 2018, remote businesses with at least \$100,000 in gross retail sales or 200 retail transactions in Washington in the current or prior calendar year, must register and collect sales tax on those sales. As of January 1, 2018, remote sellers and marketplace facilitators with \$10,000 or more in retail sales to Washington consumers have a choice to register and collect sales tax or follow certain use tax notice and reporting requirements. However, once a business exceeds \$100,000 in retail sales or 200 transactions, as of October 1, 2018, it no longer has a choice and must collect and remit sales tax.

Additional information on *Wayfair's* impact on the Marketplace Fairness Act can be found on the department's website at <https://dor.wa.gov/find-taxes-rates/retail-sales-tax/marketplace-fairness-leveling-playing-field/wayfairs-impact-marketplace-fairness-act-and-requirement-make-retail-sales-tax-choice>.

Marketplace Fairness-Leveling the Playing Field, Washington Department of Revenue, August 6, 2018

Wyoming

Sales and Use Tax Guidance for Remote Sellers Provided

Despite the U.S. Supreme Court's decision in *South Dakota v. Wayfair*, the Wyoming Department of Revenue does not currently require remote sellers to license with the state and collect sales tax. However, remote businesses may voluntarily license with the state.

Remote Seller Registration

Remote sellers may register using the Wyoming Electronic Filing System (WYIFS) or the Streamlined Sales Tax Registration system. Sales tax returns may be electronically filed using WYIFS. Licenses are active until the taxpayer requests cancellation.

Remote Sellers, Wyoming Department of Revenue, August 7, 2018

If you have any questions, please contact your tax advisor or:

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