



State & Local Tax Advisor

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California

Sales and Use Tax New Economic Nexus Requirements for Retailers Announced

Beginning April 1, 2019, out-of-state retailers selling above certain thresholds will be required to collect California use taxes on their sales into California. The recent U.S. Supreme Court decision in *South Dakota v. Wayfair, Inc.* expands the tax collection obligations of certain retailers under California law. In *Wayfair*, the U.S. Supreme Court held that physical presence is no longer required to establish sales and use tax nexus.

Requirements for Certain Out-of-State Retailers

For out-of-state retailers, the new collection requirement applies if, during the preceding or current calendar year:

- the retailer's sales for delivery into California exceed \$100,000; or
- the retailer makes sales for delivery into California in 200 or more separate transactions.

This new use tax collection requirement is not retroactive and applies only to sales made on and after April 1, 2019.

Registration Obligations

Retailers who are already required to be registered to collect California use tax prior to April 1, 2019, will see no change in their registration obligations. Retailers with a physical presence in California are still generally required to be registered with the California Department of Tax and Fee Administration (CDTFA). Retailers may choose to register and collect the tax prior to April 1, 2019. Retailers can register on the CDTFA website at <https://www.cdtfa.ca.gov>.

Impact on District Tax Collection Requirements for Out-of-State and In-State Retailers

Certain retailers selling above these thresholds in a single local jurisdiction (district) will also be responsible for collecting that district's use tax. Beginning April 1, 2019, this responsibility will apply if, during the preceding or current calendar year:

- the retailer's sales into the district exceed \$100,000; or
- the retailer made sales into the district in 200 or more separate transactions.

This requirement is not retroactive and applies equally to in-state and out-of-state retailers beginning April 1, 2019. An out-of-state retailer who reaches either of the above sales thresholds is engaged in business in California.

District taxes are the voter-approved sales and use taxes imposed by cities, counties and other local jurisdictions (districts). These district taxes are added to California's base 7.25% sales and use tax rate to fund local services. Currently, retailers located in a taxing district are engaged in business in that district. A retailer is also engaged in business in a district where they have some form of physical presence under existing law.

Beginning April 1, 2019, any retailer whose sales into a district meet this threshold is:

- considered to be engaged in business in that district; and
- required to collect that district's use tax on sales made for delivery in that district.

Retailers are required to report and pay any district tax to the CDTFA on their sales and use tax return. The CDTFA plans to begin the interested parties process for rulemaking next year.

News Release 18-59, California Department of Tax and Fee Administration, December 11, 2018; *Special Notice L-591*, California Department of Tax and Fee Administration, December 2018; *Special Notice L-565*, California Department of Tax and Fee Administration, December 2018

California

Regulations on Allocation and Apportionment of Partnership Income Amended

California has amended regulations governing the allocation and apportionment of partnership income.

Corporate Interests in Partnerships

The amendments clarify that the rules for computing net income apply not only to partnership interests held directly by taxpayers. They also apply to lower-tier partnership interests held indirectly by taxpayers. Additionally, the determination of whether the distributive share of income from a nonunitary partnership is apportionable business income or allocable nonbusiness income depends on the partnership's activities. It does not depend on the operation of California law on the sourcing of income from intangible property. Further, the regulation now specifies that, for purposes of computing a taxpayer's apportionment factors, a partnership interest is determined by the taxpayer's "interest in the partnership". This is determined by reference to the taxpayer's interest in profits of the partnership. Sales between a unitary partnership and other members of the taxpayer's combined reporting group should not be reflected in the combined reporting group's sales factor.

Individual Interests in Partnerships

The amendments clarify the sourcing of partnership business income. If a partnership and the business activity of a nonresident partner are part of one unitary business, then the apportionment rules for business income of a unitary partnership and corporate partner apply. The apportionment of the partnership business income takes place at the partner level for the unitary partner or partners.

Regs. 25137-1 and 17951-4, California Franchise Tax Board, effective January 1, 2019

California

P.L. 86-272 Protection for Company Vehicle Deliveries Addressed

California issued a technical advice memorandum that addresses Public Law 86-272 income tax protection for the delivery of goods by company owned vehicles.

What Is Public Law 86-272?

Under Public Law 86-272 (P.L. 86-272), California cannot tax income from interstate commerce if:

- the only business activities in the state are the solicitation of orders for the sale of goods; and
- the orders are sent outside the state for approval and filled by shipment or delivery from outside the state.

Does P.L. 86-272 Protect Company Vehicle Deliveries?

California concluded that P.L. 86-272 protects the delivery of goods by company owned vehicles. But, it does not protect any activity that goes beyond the scope of delivery, like backhauling.

Technical Advice Memorandum 2018-03, California Franchise Tax Board, December 4, 2018

San Francisco Voters Approve Economic Nexus

San Francisco voters at the November 6, 2018 general election approved Proposition D, which adds economic nexus provisions. Beginning January 1, 2019, the city may tax businesses that do not have a local physical presence. The threshold for taxation is \$500,000 in gross receipts in the city annually. These economic nexus provisions apply to all businesses and create nexus for purposes of:

- payroll expense tax;
- gross receipts tax;
- commercial rents tax;
- marijuana business tax; and
- business registration fees.

Proposition D, approved by voters at the November 6, 2018 general election

Colorado

Grace Periods Extended for Economic Nexus and Destination Sourcing Compliance

Retailers will have until June 1, 2019, to follow Colorado's new sales and use tax changes. The grace period will apply to the new economic nexus and destination sourcing laws. Both in-state and out-of-state retailers are eligible for the grace period.

Compliance Grace Period for Economic Nexus and Destination Sourcing

Sellers will receive an automatic waiver from the December 1, 2018, compliance date. The grace period will end May 31, 2019. Previously, the grace period was set to end March 31, 2019.

Economic Nexus and Destination Sourcing Law Details

A previous story discussed Colorado's economic nexus collecting requirements.

Another story detailed Colorado's destination sourcing requirements.

Reporting Requirements Still Enforced

Out-of-state retailers who do not collect during the grace period must still follow Colorado's reporting requirements. The reporting requirements will be strictly enforced against non-collecting retailers during the grace period.

News Release, Colorado Department of Revenue, December 6, 2018; *Sales Tax Changes Grace Period and Key Facts*, Colorado Department of Revenue website, December 6, 2018

Connecticut

Guidance on Marketplace Facilitators and Sellers Provided

Effective December 1, 2018, marketplace facilitators must collect and remit Connecticut sales tax on behalf of their marketplace sellers.

Who is a Marketplace Facilitator?

A "marketplace facilitator" is any person who:

- facilitated retail sales of at least \$250,000 during the prior 12-month period by marketplace sellers by providing a forum that lists or advertises taxable tangible personal property or services, including digital goods, for sale by such marketplace sellers;
- directly or indirectly through agreements or arrangements with third parties, collects receipts from the customer and remits payments to the marketplace sellers; and
- receives compensation or other consideration for its services.

A marketplace facilitator can be located within or outside Connecticut.

Who is a Marketplace Seller?

A "marketplace seller" is any person who has an agreement with a marketplace facilitator regarding retail sales of such person. This is so regardless of whether that seller already has or is required to have a sales and use tax permit.

Are Marketplace Facilitators Required to Register with the Department?

Marketplace facilitators are required to register with the Connecticut Department of Revenue Services. Effective December 1, 2018, marketplace facilitators must file Form REG-1, Business Taxes Registration Application, to register with the department and obtain a Connecticut Sales and Use Tax Permit.

Office of the Commissioner Guidance OCG-8 Regarding Marketplace Facilitators and Marketplace Sellers, Connecticut Department of Revenue Services, November 16, 2018

Connecticut

Pass-Through Entity Tax Payment Recharacterization Due December 31, 2018

For corporate income tax purposes, the Connecticut Department of Revenue Services (department) reminds taxpayers that forms for pass-through entity tax payment recharacterization must be submitted by December 31, 2018. For the purpose of making a recharacterization request, a member must (1) complete Form CT-1065/CT-1120SI RR, *Pass-Through Entity Tax 2018 Income Tax Estimated Payment Recharacterization Request*; and then (2) submit the request form to the member's pass-through entity.

Subsequently, the pass-through entity must (1) gather all recharacterization request forms from its members; and (2) submit the request forms, along with Form CT-1065/CT-1120SI RRS (summary sheet), to the department. Both recharacterization forms must be completed and submitted in paper form and mailed to the department at the address provided. Submissions must be postmarked no later than December 31, 2018.

Release, Connecticut Department of Revenue Services, December 14, 2018

Illinois

Sales and Use Tax Collection Obligation of Facilitator Businesses Discussed

For sales and use tax purposes, the Chicago Department of Finance (department) in a ruling, effective January 1, 2019, has clarified the tax collection obligations of a facilitator business. Some businesses (facilitator businesses) are required to collect and remit tax because they contract with other businesses (clients) that provide taxable services, property, or products to customers. Tax collectors are permitted to contract with other businesses for the purpose of tax collection provided the other business is registered and in good standing with the department. The tax owed by a taxpayer is based on the full amount paid by a customer, which includes all the charges paid incidental to obtaining the taxable service, property, or products, including all service, convenience, facilitation fees, and other charges.

The department further clarified that depending upon whether the facilitator or client or both are registered and are in good standing with the department, they may by mutual agreement decide that both or any one of them would assume the responsibility for the collection and remittance of tax. However, if the client is not registered and in good standing, then the facilitator must collect and remit all taxes owed on all charges paid by the customer. Likewise, if the facilitator is not registered and in good standing, then the client must remit all taxes owed on all charges paid by the customer. The clients and facilitators must both keep books and records to support their tax collection and remittance obligations. Further, facilitators are not permitted to delegate their tax collection and remittance obligations to clients that are individuals and whose taxable charges involve small amounts of money such as individuals engaged in "car sharing" or "house sharing."

Uniform Revenue Procedures Ordinance Ruling #6, City of Chicago, Department of Finance, December 2018

Montana

IRC Sec. 965 Guidance Issued

Corporate taxpayers should attach the IRC 965 Transition Tax Statement to their Montana return and include the total amount of gross income from IRC Sec. 965 dividends as "other additions" on Form CIT. Taxpayers can then deduct certain dividends, as described below.

IRC Sec. 965 Dividends Deduction for Water's Edge Filers

Water's edge filers can deduct 80% of the total amount of gross income from Sec. 965 dividends. If any of the Sec. 965 dividends included in "other additions" are from subsidiaries included in the Montana water's edge filing and incorporated in specified tax haven countries, then the taxpayer should deduct 100% of the total amount of gross income related to those entities.

IRC Sec. 965 Dividends Deduction for Worldwide Filers

Worldwide filers can deduct 100% of the total amount of gross income from Sec. 965 dividends received from unitary subsidiaries included in the Montana worldwide filing. But if any of the Sec. 965 dividends included in "other additions" are from subsidiaries not included in the worldwide filing, then no Montana deduction is allowed related to that income.

IRC Sec. 965 Dividends Deduction for Other Filers

Separate company, domestic, or limited combination filers can deduct 100% of the total amount of gross income from Sec. 965 dividends received from unitary subsidiaries included in their Montana filing. But if any of the Sec. 965 dividends included in "other additions" are from subsidiaries not included in the taxpayer's Montana filing, then no Montana deduction is allowed for that income.

Treatment of IRC Section 965(a) Income, Montana Department of Revenue, November 13, 2018

IRC Sec. 199A Pass-Through Deduction Not Allowed

Montana has adopted a personal income tax rule providing that the IRC Sec. 199A pass-through deduction is not allowed in determining Montana net income.

Rule 42.15.527, Montana Department of Revenue, effective November 17, 2018

New Jersey

Tax Amnesty Period Set

The New Jersey Division of Taxation announced that the 2018 tax amnesty program runs from November 15, 2018, through January 15, 2019.

Application of Tax Amnesty Program

Signed into law in July 2018, the tax amnesty program applies to outstanding tax filings or payments that are due on or after February 1, 2009, and prior to September 1, 2017. Benefits to tax amnesty include:

- waived penalties such as late filing and late payment, and
- one-half of the balance of interest due as of November 1, 2018.

Taxpayers who do not take advantage of the tax amnesty before January 15 will incur a 5% penalty that cannot be waived or abated. This is in addition to all other penalties, interest and other costs authorized by law.

News Release, New Jersey Division of Taxation, November 16, 2018

Income Tax Summary of Major Recent Changes Issued

The New Jersey Division of Taxation has issued a technical bulletin providing a summary of the major corporate income tax changes enacted in 2018 by Ch. 48 and Ch. 131.

Tax Years Beginning on or After 2017

Effective for tax years beginning on or after 2017, major changes include:

- the disallowance of any deduction, exemption, or credit for income reported under IRC Sec. 965;
- dividend exclusion amendments; and
- allocation factor relief.

Tax Years Beginning on or After 2018

Among the changes for tax years beginning on and after 2018, are:

- a new surtax on certain corporations;
- the allowance of the IRC Sec. 250 deduction against Global Intangible Low Taxed Income (GILTI) and Foreign Derived Intangible Income (FDII); and
- the disallowance of the IRC Sec. 199A deduction.

Tax Years Ending on or After July 31, 2019

Finally, for tax years ending on or after July 31, 2019, the following provisions take effect:

- market-based sourcing;
- mandatory combined reporting; and

- the transition of New Jersey net operating losses to a post-allocation method.

Further, the temporary suspension of penalties and interest are outlined for certain tax situations resulting from the changes.

Technical Bulletin TB-84, New Jersey Division of Taxation, December 10, 2018

North Dakota

Additional IRC Sec. 965 Guidance Issued

North Dakota's guidance on IRC Sec. 965 has been updated to provide more details on how to report the repatriation income.

Reflecting IRC Sec. 965 Income on North Dakota Returns

All taxpayers must treat the IRC Sec. 965 inclusion amount as Subpart F income. To properly reflect this in North Dakota's starting point, taxpayers must include the net of the Sec. 965 inclusion and Sec. 965 deduction amounts in the federal taxable income amount reported on North Dakota Form 40.

The Form 40 federal taxable income amount must also include IRC Sec. 78 gross-up included in federal taxable income in arriving at the net federal tax liability on Line 5 of the Transition Tax Statement. Taxpayers must treat this the same as other gross-up would be treated.

In addition, taxpayers must include a schedule detailing the computation of Line 5 of the Transition Tax Statement.

Treatment of TCJA International Tax Provisions, North Dakota Office of State Tax Commissioner, November 15, 2018

Wisconsin

Sales and Use Tax Economic Nexus Law Enacted

Wisconsin enacted an economic nexus law requiring remote sellers to collect sales and use tax. The law includes thresholds consistent with the Department of Revenue's economic nexus rule that became effective October 1, 2018.

Nexus Thresholds for Out-of-State Sellers

Remote retailers must register and collect Wisconsin sales or use tax if, in the previous or current year, their:

- annual gross sales into Wisconsin exceed \$100,000; or
- annual number of separate sales transactions into Wisconsin is 200 or more.

"Year" means the retailer's taxable year for federal income tax purposes.

The thresholds are compatible with the U.S. Supreme Court's *Wayfair* decision.

Small Seller Exception

Remote sellers not meeting the nexus thresholds are considered small sellers. They do not have to register or collect Wisconsin sales or use tax.

Annual Amounts

The annual amounts include both taxable and nontaxable sales. In addition, an out-of-state retailer's annual amounts include all sales into Wisconsin by:

- the retailer on behalf of other persons; and
- another person on the retailer's behalf.

Periodic Lease or License Payments

Each required periodic payment of a lease or license is a separate sale transaction.

Advance Deposits

Deposits made in advance of a sale are not sale transactions.

Registration and Collection Dates

Wisconsin previously announced registration and collection dates for remote sellers that have sales and use tax duties beginning October 1, 2018.

Wayfair Guidance

As previously reported, Wisconsin provides guidance for remote sellers regarding the U.S. Supreme Court's *Wayfair* decision. This guidance has recently been updated to answer questions regarding registration requirements for:

- third-party remote sellers making sales through a marketplace; and
- marketplaces making sales on behalf of third-party sellers.

Act 368 (S.B. 883), Laws 2018, effective December 16, 2018; *Remote Sellers - Wayfair Decision*, Wisconsin Department of Revenue, December 2018

State Allows Pass-Throughs to Elect Entity Level Tax

Wisconsin enacted law allows pass-through entities an election to pay an entity level tax at the rate of 7.9% on net income reportable to Wisconsin.

The law provides an adjustment to an individual's federal adjusted gross income for any item of income, loss, or deduction passed through from S corporations and partnerships electing to pay Wisconsin tax at the entity level.

These provisions first apply to taxable years beginning on January 1, 2018, for S corporations and to taxable years beginning on January 1, 2019, for other pass-through entities.

Act 368 (S.B. 883), Laws 2018, effective December 16, 2018

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

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