

6 QUESTIONS TO MEASURE YOUR WAYFAIR TAX AND COMPLIANCE RISK

What to expect with the new Guidance?

On June 21, the U.S. Supreme Court issued its widely anticipated decision in *South Dakota v. Wayfair*. The Court held that states may require a business to collect and remit sales and use taxes even if the business has no in-state physical presence.

The *Wayfair* decision means that states are now free to subject businesses to state taxes based on an “economic” presence within their state.

Overnight, remote sellers, licensors of software, and other businesses that provide services or deliver their products to customers from an out-of-state location may have to start complying with state and local taxes. The *Wayfair* decision also supports states that subject out-of-state businesses to income taxes based on economic “factor-presence” nexus statutes that some states have enacted in recent years.

States’ Economic Nexus Statutes

While some states’ economic nexus statutes have been in place since 2016 and are effective now, others are effective in Q3 of this year, and some don’t apply until 2019. Thus, enforcement will be uneven across states, pending further administrative guidance. The number of states that adopt economic nexus statutes is expected to grow quickly in the months to come.

Measuring Your Tax Risk Related To Wayfair

Wayfair has widespread implications, from state and local tax consulting and compliance matters and tax provision and accruals (ASC 450 and ASC 740), to increased exposure for businesses involved in M&A transactions. *Wayfair* also provides an opportunity for companies to use their data more effectively and modify their ERP systems to properly report their state taxes.

1. Does your company make sales into states in which you are not registered or filing sales/use tax returns?
2. Does your company ship goods or provide services to customers located in states where you have little or no in-state physical presence?
3. Does your company make retail sales of tangible goods?
4. Does your company provide online services or make sales of digital goods?
5. Does your company file sales/use tax returns in every state where you ship or deliver goods or services?
6. Has your company received a “nexus questionnaire” or received audit or tax notices from any state where you are not currently registered for sales/use taxes?

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If the answer is “yes” to any of these questions, your company is likely impacted by *Wayfair* and you should be taking steps to minimize potential exposures from tax, interest, and penalties that are arising now from *Wayfair*, and plan around the very fluid state changes that are happening and will occur in the near future.

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