

TAX ALERT REGARDING THE UNITED STATES SUPREME COURT DECISION
SOUTH DAKOTA V. WAYFAIR
AND ITS IMPLICATIONS FOR SALE TAX NEXUS

On June 21, 2018, the United State Supreme Court ruled in [South Dakota v. Wayfair](#) that sellers can be required to collect sales taxes in states where the sellers do not have physical presence, overruling the Court's prior decision in *Quill v. North Dakota*. The Maryland General Assembly's Joint Committee on Administrative, Executive, and Legislative Review (AELR) has approved emergency regulations (03.06.01.33) in support of Maryland's implementation of the *Wayfair* decision. *Effective October 1, 2018*, out-of-state vendors must maintain records to determine whether they will be required to remit Maryland sales tax on retail sales for delivery into Maryland. The purpose of this Tax Alert is to provide guidance to out-of-state vendors who sell tangible personal property or taxable services for delivery in Maryland.

Maryland Sales and Use Tax Nexus for Out-of-State Vendors

An out-of-state vendor without a physical presence in Maryland is required to register with the Comptroller of Maryland and to collect and remit Maryland sales tax on retail sales of tangible personal property or taxable services for delivery into Maryland when, during the previous calendar year or the current calendar year, the vendor meets the following criteria:

- Gross revenue from the sale of tangible personal property or taxable services delivered into Maryland exceeds \$100,000; or
- Sales of tangible personal property or taxable services for delivery into Maryland in 200 or more separate transactions.

Therefore, beginning October 1, 2018, out-of-state vendors should begin to track gross revenues and sales delivered into Maryland to determine if either of the above criteria is met. This tracking requirement **does not apply** to sales delivered into Maryland prior to October 1, 2018. For the period of October 1, 2018 through December 31, 2018, an out-of-state vendor meeting either of the criteria during that period is required to register with the Comptroller of Maryland and to remit Maryland sales tax on sales delivered into Maryland as soon as one of the criteria is met. Out-of-state vendors should file according to a monthly filing schedule, but the filing schedule may be adjusted by the Comptroller's office depending on the amount of taxable sales.

Registration with the Comptroller by out-of-state vendors is required by the first day of the following month in which either of the criteria was met. However, out-of-state vendors may choose to voluntarily register and collect Maryland sales tax prior to the effective date.

For the calendar year of 2019 and subsequent years, out-of-state vendors not previously required to register with the Comptroller of Maryland are required to track all sales delivered into Maryland. When either of the criteria is met, at any time during the calendar year, an out-of-state vendor must register with the Comptroller by the first day on the following month and immediately begin collecting Maryland's sales tax on subsequent sales to its customers. Collecting of Maryland sales tax is required where the vendor has met either of the criteria in the previous calendar year or the current calendar year.

Out-of-state vendors required to register with the Comptroller of Maryland and to collect and remit Maryland sales tax under the revised regulation should continue to track sales delivered into Maryland. Out-of-state vendors not meeting the criteria for the previous or current calendar year will no longer have an economic nexus with Maryland and may discontinue collecting Maryland sales tax. Those vendors that discontinue collecting Maryland sales tax should maintain sales and related records that demonstrate that the criteria were not met.

EXAMPLES

In each of the examples below, the assumption is that the out-of-state vendors do not have a physical presence in Maryland. The examples are intended to illustrate the tax collection and remittance obligations under COMAR 03.06.01.33 under various factual circumstances for an out-of-state vendor with no physical presence in Maryland.

In the examples below, the phrases "gross revenue" or "sales transactions" are used.

"Gross revenue" means the gross revenue from the sale of tangible personal property or taxable services delivered into Maryland.

"Sales transactions" means the sale of tangible personal property or taxable services for delivery into Maryland in separate transactions.

"Gross revenue or sales transaction criteria" refers to the gross revenue from the sale of tangible personal property or taxable services for delivery into Maryland that exceeds \$100,000 in the current or previous calendar year or the sale of tangible personal property or taxable services for delivery into Maryland in 200 or more separate transactions.

Example 1: If an out-of-state vendor had gross revenues of \$100,000.01 or 200 or more sales transactions between January 1, 2018 and September 30, 2018, the out-of-state vendor does not have nexus with Maryland because the tax collection and remittance obligation for the out-of-state vendor is not based on sales made prior to October 1, 2018. Therefore, the out-of-state vendor is not required to register and begin collecting and remitting sales tax on that date. The out-of-state vendor must, however, begin tracking gross revenue and sales transactions into Maryland starting on October 1, 2018.

Example 2: If an out-of-state vendor had gross revenues of \$99,999.99 or less or 199 or fewer sales transactions from October 1, 2018 through December 31, 2018, the out-of-state vendor does not have nexus with Maryland in 2018 and is not required to register and begin collecting sales tax on January 1, 2019. The out-of-state vendor must, however, track gross revenue and sales transactions into Maryland during calendar year 2019 to see if it meets the criteria.

Example 3: If an out-of-state vendor has gross revenues of \$100,000.01 or 200 or more sales transactions on December 15, 2018, the out-of-state vendor has nexus with Maryland and is required to register by January 1, 2019 and begin collecting sales tax as of January 1, 2019. The out-of-state vendor must file its first sales and use tax return and remit sales tax collected on February 20, 2019 and must continue collecting, reporting and remitting sales and use tax to Maryland for each month in 2019, unless the Comptroller's Office advises the out-of-state vendor that it may report on a less frequent basis. The out-of-state vendor must also track its gross revenue and sales transactions into Maryland throughout 2019.

Example 4: If an out-of-state vendor did not have nexus with Maryland in 2018 (based on its gross revenue or sales transaction criteria from October through December 2018), but the out-of-state vendor satisfied the gross revenue or sales transaction criteria at a point in 2019, it will have nexus with Maryland and must begin collecting and remitting sales tax in Maryland. For example, if on March 15, 2019, the out-of-state vendor has gross revenues of \$100,000.01, or the out-of-state vendor has 200 or more sales transactions, the out-of-state vendor must register with the Comptroller's office and begin collecting sales tax on April 1, 2019. The out-of-state vendor must file its first sales and use tax return and remit sales tax collected on May 20, 2019.

Example 5: If an out-of-state vendor has nexus with Maryland because it satisfied either the gross revenue or sales transaction criteria by December 31, 2018, the out-of-state vendor must collect and remit sales and use tax in 2019. The out-of-state vendor must also continue to track gross revenue and sales transactions during calendar year 2019. If by December 31, 2019, the out-of-state vendor has gross revenues of \$99,999.99 or less or 199 or fewer sales transactions, then as of January 1, 2020, the out-of-state vendor no longer has nexus with Maryland and may discontinue collecting and remitting sales tax on that date. However, the out-of-state vendor must continue tracking gross revenue and sales transactions during calendar year 2020. If the out-of-state vendor meets any of the gross revenue or sales transaction criteria at any time in 2020, the out-of-state vendor must begin collecting sales and use tax again.

Example 6: If an out-of-state vendor has gross revenues of \$125,000.00 from sales of tangible personal property into Maryland, and those Maryland sales consist of \$75,000.00 in tangible personal property that is not taxable in Maryland and \$50,000.00 in tangible personal property that is taxable in Maryland, the out-of-state vendor has nexus with Maryland when its gross revenue exceeds \$100,000. For purposes of meeting the gross revenue or sales transaction criteria, all gross revenue and sales transactions are considered regardless of whether the gross revenue and sales transactions consist of sales that are subject to Maryland sales and use tax.

Maryland Sales and Use Tax Liability for Out-of-State Vendors

Out-of-state vendors that have nexus with Maryland only because they meet the gross revenues or sales criteria will not be liable for any sales and use tax, interest, or penalties for sales occurring on or before September 30, 2018. However, out-of-state vendors will be liable for tax, interest, or penalties if they had a physical presence in Maryland or were required to collect and/or remit Maryland sales tax under other Maryland laws or regulations prior to October 1, 2018. Out-of-state vendors will be liable for tax, interest, or penalties if they meet the gross revenue or sales criteria discussed herein and fail to collect and/or remit the sales tax to the Comptroller. Out-of-state vendors are subject to audit like any other Maryland business.

Register to Remit Maryland Sales and Use Tax

Out-of-state vendors for Maryland sales and tax purposes are required to register and file sales and use tax returns with the Comptroller of Maryland. To register and obtain a sales and use tax account, out-of-state vendors must complete a [Combined Registration Application](#). The application allows an out-of-state vendor to register for a sales and use tax account and, if applicable, other business tax accounts. A Combined Registration Application can be completed and submitted using the following link:

<https://interactive.marylandtaxes.gov/webapps/comptrollercra/entrance.asp>

Additional Information on Maryland Sales and Use Tax Returns

Out-of-state vendors must report and remit the Maryland sales tax on a Maryland sales and use tax return. For additional information on filing Maryland sales and use tax returns, please see the following link:

<https://www.marylandtaxes.gov/business/sales-use/index.php>

Maryland Businesses Selling Products to Other States

Based on *Wayfair*, vendors with a physical presence in Maryland may have sales tax collection obligations in other states. The Maryland Comptroller's office cannot advise you on the application of other state's sales and use tax laws to your business. If you have questions related to a specific state's sales and use tax laws and registration requirements, please contact that state directly.

Working with the Maryland Comptroller's Office

The Office of the Comptroller's mission is to treat our taxpayers fairly, regardless of where they are located. We understand the impact that the Supreme Court's decision will likely have on your business. To ensure a fair and smooth transition for taxpayers with a new collection responsibility, we are working to provide information and assistance to help your business meet sales and use tax obligations under Maryland law. If you have any questions, please contact the Comptroller's Office at remotesellers@comp.state.md.us.