



Sales Tax Nexus

Responding to the *Wayfair* Decision

10 Steps for Tax Compliance with the *Wayfair* Decision

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Identify new sales tax collection or reporting requirements

- Identify the states where you currently collect sales tax and which additional states are now imposing collection responsibilities on remote sellers to determine where you need to collect sales tax. There are many charts and tools available to get updated state-by-state information.
- It is important to note that foreign-based businesses are not immune from sales tax collection responsibilities under an economic nexus test.

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Determine whether your products and services are subject to sales tax

- To determine if sales tax collection is required, you need to know if your goods and services are subject to sales tax in the states imposing a new nexus test. Many companies maintain a tax matrix to document their taxability research, so the matrix will need to be updated to include the additional states.
- As part of this research, you will want to determine whether the additional states have any sales tax exemptions, special tax rates, or limits that apply to your goods and services.

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Quantify the sales and transactions, apply nexus thresholds, and register if necessary

- Using sales data, determine the sales amount and transaction count for each additional state where you currently are not reporting sales taxes. If you exceed the state's economic nexus threshold, you are required to register with the state and begin collecting the tax by the enforcement date.
- Pay special attention to each state's particular measurement when determining if the state's threshold has been exceeded. Many states measure the sales and transactions for the prior 12-month period, whereas other states use a calendar year basis. Also, the sales amount basis can vary from state to state. For example, some states use *gross receipts* in the state, whereas other states use only *retail sales* in the state.
- If tax has not been collected in states where it should have, a Voluntary Disclosure Agreement could minimize tax liability, penalties, and interest for prior periods.

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Contact customers and obtain exemption certificates

- Once you've determined which additional states require tax collection, contact your customers to inform them you will be collecting sales tax on their purchases delivered in those states unless the customer's purchases are exempt. For example, the customer may be an exempt nonprofit organization, or the customer may be purchasing items for resale or using them for activities that are exempt from sales tax.
- Obtain exemption certificates from customers prior to charging sales tax to avoid accounting complications of reversing sales tax charges after the invoice is issued.

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Determine the software needed to correctly charge and remit sales tax

- Sales tax collection and reporting is a complicated process, and automation improves accuracy and helps avoid tax underpayment plus penalties and interest.
- The right software tools will automate the process required to determine the taxability of the goods and services sold, the correct rate of tax based on their delivery location, and whether there is a valid exemption.

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Identify impact of remitting sales tax to additional jurisdictions

- Consider how adding additional sales tax returns to your compliance calendar impacts your tax department's time and resources. Does sufficient capacity exist to get all the returns prepared by the deadlines? If not, consider outsourcing the sales tax compliance function.

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Respond to state tax notices and audits

- While the *Wayfair* case was only applicable to South Dakota, other states are viewing it as an opportunity to significantly increase revenue and will contact sellers they believe should be collecting and remitting sales tax. Be prepared to respond to state inquiries by knowing the state's authority for applying an economic nexus test, updating your tax matrix, completing an economic nexus threshold analysis, and obtaining customers' exemption certificates.
- If a state sales tax audit covers periods before and after the state's economic nexus effective date, consider whether this has an impact on the audit sampling plan.

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Monitor sales tax charged by vendors

- Vendors may begin charging sales tax without prior notification when they determine they are required to collect the tax. Purchasers should be vigilant about ensuring they are not overpaying sales tax if the goods and services are exempt from tax.
- Purchasers may consider obtaining and using a state's direct pay permit. Direct pay permits allow the purchaser to take more control over taxability decisions by remitting use tax rather than paying sales tax to vendors.
- Consider using software applications to validate sales taxes charged by vendors.

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Understand *Wayfair's* impact is not limited to sales tax

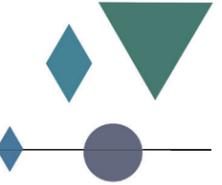
- The *Wayfair* decision provides for a broader definition of "substantial nexus," requiring only the exploitation of the marketplace. This broader definition is not limited to sales and use tax but can apply to all taxes covered by the Commerce Clause, including income tax, franchise tax, licensing requirements, and other obligations. However, do note that Public Law 86-272 protections still apply to income taxes.

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Be aware everything might change—for better or worse

- Many taxpayers and some elected officials believe the *Wayfair* decision creates too large a burden on remote business sellers to require them to collect other states' taxes. Discussions are currently taking place to determine if there should be a different solution, and several proposals are being considered. However, if Congress does not act soon, more states will pass legislation in early 2019 to add an economic nexus provision. Some states may even be emboldened to make certain services subject to sales tax.



Ryan's Solution

For businesses with remote customers who need help navigating their way through *Wayfair*, Ryan offers specialized end-to-end services, including research on taxable goods and services, sales tax software for calculating and reporting the tax liability, and outsourced compliance solutions. As each state has its own authority on how to impose taxes, Ryan's tax experts have the extensive knowledge and bandwidth to help you explore all options in each jurisdiction and avoid the consequences of noncompliance.

For more information or to speak with a Ryan tax expert, visit ryan.com/wayfair.

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