

## Taxing Canadian Companies' Selling into the U.S.

As companies engage in online sales through both distributors and direct sales, they need to pay attention to the changing tax structures jurisdictions are implementing to tax these sales. Although a company may not have a physical presence in a state or even in the U.S., they may still be required to file taxes if they have large enough sales volumes. Canadian businesses should review their business activities in the U.S. to determine whether their sales in the states listed below exceed the new sales tax nexus thresholds. If so, this could pull your Canadian corporation into U.S. tax filings even if you do not have a U.S. Corporation established. State and local governments are not bound by U.S. treaties or permanent establishment rules and may impose tax filing requirements on any foreign companies doing business within their jurisdictions.

In the aftermath of the U.S. Supreme Court's landmark decision in *South Dakota v. Wayfair, Inc.* which overturned the decades-old physical presence standard for sales tax nexus, many states are moving quickly to enact new sales tax filing requirements similar to those instigated by South Dakota in 2016, requiring "remote sellers" who engaged in more than 200 or more separate transactions or exceeded \$100,000 of annual sales in the state to register and collect sales tax. (A remote seller is *any* business that sells products or services to customers in a state using the internet, mail order, or telephone without having physical presence in that state.)

Over the past two years, several states have already passed legislation comparable to South Dakota's encompassing economic nexus thresholds for sales tax. Since the June 21, 2018 decision, even more states have enacted legislation or have issued new regulations or administrative guidelines, updating their sales tax filing requirements in an effort to compel remote sellers to collect and remit tax on sales to customers in their states.

Even though the U.S. Supreme Court did not explicitly rule on the constitutionality of South Dakota's remote seller law (the Court remanded the case to the South Dakota Supreme Court to decide whether any other Commerce Clause objections may be raised), as of August 10, 2018, the following states have already issued guidance about when their new sales tax filing requirements will become effective. These effective dates are:

<u>July 1, 2018</u>	<u>Sept. 1, 2018</u>	<u>Oct. 1, 2018</u>	<u>Nov. 1, 2018</u>	<u>Dec. 1, 2018</u>	<u>Jan. 1, 2019</u>
Hawaii	Mississippi	Alabama	North Carolina	Connecticut	Georgia
Maine		Illinois			Iowa
Oklahoma		Indiana			Louisiana
Vermont		Kentucky			Nebraska
		Michigan			Utah
		Minnesota			
		New Jersey			
		North Dakota			
		Washington			
		Wisconsin			

Please note that not all of the above states are applying the same economic nexus thresholds for sales tax as South Dakota. Additional information on sales tax filing requirements in these states can be found [here](#).

In addition to these jurisdictions, a host of other states, including Colorado, Massachusetts, Ohio, Pennsylvania, Rhode Island, Tennessee and Wyoming previously enacted expanded sales tax nexus legislation that impacts filing requirements for remote sellers. These policies vary by state, and we are anticipating additional guidance from these states' taxing authorities regarding sales tax collection implications for remote sellers. California, New York, Texas and other states are reviewing the *Wayfair* decision to determine the potential sales tax compliance requirements for remote sellers in their jurisdictions.

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