

Understanding Economic Nexus

What the new breed of nexus laws may mean for your business





Understanding where your company has nexus is an integral part of your sales tax compliance strategy because nexus dictates where your business is required to collect and remit tax. And there are a lot of activities that cause businesses to have nexus. Let's dive into one of the most debated and confusing nexus triggers: **economic nexus**.

WHAT IS NEXUS?

Sales tax nexus is the connection between a seller and a state that requires the seller to collect and remit tax on sales made in that state. If you have sales tax nexus in California and Texas, for example, you must collect and remit sales tax in California and Texas. Unfortunately, you can't just figure out where you have nexus today and forget about it – you have to closely monitor nexus on an ongoing basis because it is constantly changing.





WHY ARE STATES LOOKING TO EXPAND WHAT CREATES NEXUS?

Nexus has historically been linked to physical presence. In 1992, the Supreme Court of the United States (SCOTUS) ruled in *Quill Corp. v. North Dakota* (Quill) that a state could not force a business to collect sales tax unless it had a physical presence in the state.

But the rise of online sales has driven many states to expand the definition of physical presence beyond brick-and-mortar locations in an effort to recoup lost sales and use tax revenue. States are basing nexus on a variety of criteria, from relationships to in-state affiliates to the presence of web cookies on in-state computers, and one of the most confounding nexus triggers, to economic or sales activity alone. With the explosion of ecommerce and remote sellers, economic nexus is at the forefront of sales tax legislation, including attention from the Supreme Court.

In April 2018, SCOTUS heard arguments in *South Dakota v. Wayfair, Inc.* This important case – a challenge to the high court’s 1992 decision in *Quill Corp. v. North Dakota* – could potentially bring about sweeping change to the way ecommerce and remote sellers handle sales tax. Until a ruling is announced, states with economic nexus laws are in a bit of a tricky situation, as many economic nexus laws are on hold, unenforceable, or delayed.

SO, WHAT EXACTLY DOES ECONOMIC NEXUS MEAN?

Economic nexus, which bases a tax collection obligation on economic activity, has become a hot item these days in response to the rapid growth of ecommerce. Its goal is to level the playing field between non-collecting out-of-state sellers and the brick-and-mortar businesses that have to collect tax.

In many states with economic nexus regulations, economic activity alone triggers nexus – no physical presence is needed. In others, it’s combined with certain other activities. Like all sales tax laws, economic nexus criteria vary by state. And economic nexus laws have an extra layer of difficulty: While they are seemingly unenforceable until Quill is overturned, that has not stopped individual states from moving forward and passing economic nexus regulations.



IMPORTANT NOTE

At this time, economic nexus laws are seemingly unenforceable until the physical presence statute of Quill is overturned. The Supreme Court is currently hearing a case (*South Dakota v. Wayfair, Inc.*) that could overturn the long-standing Quill precedent that has historically defined nexus.

However, being seemingly unenforceable has not stopped states from moving forward with economic nexus regulations. Consequently, it is important to understand these laws so you are ready when or if they change.

To help our customers gain a better understanding of economic nexus and how individual states are addressing it through legislation, we’ll review the states that have defined their stance on economic nexus.



STATES WITH ECONOMIC NEXUS THRESHOLDS AND TRANSACTION TRIGGERS

This information was current as of April 1, 2018.

TIP: To find more detailed information on individual state laws, including changes or updates to economic nexus, click on the state name and you will be directed to the state taxing authority's website.



▶ [ALABAMA](#)

Statutory start date: January 1, 2016

Included transactions: Retail sales of tangible personal property

Trigger: Sales only¹

Sales/transactions threshold: \$250,000



▶ [INDIANA](#)

Statutory start date: Enforcement currently delayed pending outcome of South Dakota v. Wayfair, Inc.

Included transactions: Sales of tangible personal property²

Trigger: Sales or transaction volume

Sales/transactions threshold: \$100,000 or 200 transactions



▶ [MAINE](#)

Statutory start date: November 1, 2017

Included transactions: Sales of tangible personal property, products transferred digitally, and taxable services delivered into the state³

Trigger: Sales or transaction volume

Sales/transactions threshold: \$100,000 or 200 transactions



▶ [MASSACHUSETTS](#)

Statutory start date: Enforcement currently delayed pending outcome of South Dakota v. Wayfair, Inc.

Included transactions: Only applies to internet vendor transactions for tangible personal property or taxable services⁴

Trigger: Sales and transaction volume

Sales/transactions threshold: \$500,000 and 100 transactions



▶ [MISSISSIPPI](#)

Statutory start date: December 1, 2017

Included transactions: Applies to remote sellers conducting specific activities targeting Mississippi buyers and sales into the state⁵

Trigger: Sales only, all transactions

Sales/transactions threshold: \$250,000



▶ [NORTH DAKOTA](#)

Statutory start date: Effective date is contingent pending the outcome of South Dakota v. Wayfair, Inc.

Included transactions: Gross sales from the sale of tangible personal property and other taxable items delivered into the state⁶

Trigger: Sales or transaction volume

Sales/transactions threshold: \$100,000 or 200 transactions



▶ [OHIO](#)

Statutory start date: Delayed due to litigation

Included transactions: Applies to out-of-state sellers that place applications or software on in-state devices. Sale of tangible personal property for storage, use, or consumption in-state or from providing taxable services in the state⁷

Trigger: Sales only

Sales/transactions threshold: \$500,000



▶ [PENNSYLVANIA](#)

Statutory start date: April 1, 2018

Included transactions: Sales of products and services other than digital products and related services⁸

Trigger: Sales only

Sales/transactions threshold: \$10,000



▶ [RHODE ISLAND](#)

Statutory start date: August 17, 2017

Included transactions: Sale of taxable goods or services, including prewritten computer software delivered electronically or by load and leave⁹

Trigger: Sales or transactions

Sales/transactions threshold: \$100,000 or 200 transactions



▶ [SOUTH DAKOTA](#)

Statutory start date: Delayed due to litigation¹⁰

Included transactions: Sale of tangible personal property, electronically delivered products, or services delivered into the state

Trigger: Sales or transactions

Sales/transactions threshold: \$100,000 or 200 transactions



▶ [TENNESSEE](#)

Statutory start date: On hold due to litigation

Included transactions: Out-of-state retailers must register to report and pay tax on all taxable sales¹¹

Trigger: Sales, along with regular or systematic solicitation of consumers or sales transactions

Sales/transactions threshold: \$500,000



▶ [VERMONT](#)

Statutory start date: Enforcement currently delayed pending the outcome of South Dakota v. Wayfair, Inc. and final approval by the Vermont Legislature.

Included transactions: Sales that are a result of regular, systematic, or seasonal solicitation of sales of tangible personal property¹²

Trigger: Sales or transactions

Sales/transactions threshold: \$100,000 or 200 transactions



▶ [WASHINGTON](#)

Statutory start date: January 1, 2018

Included transactions: Retail sales to Washington purchasers¹³

Trigger: Sales only

Sales/transactions threshold: \$10,000 or more



▶ [WYOMING](#)

Statutory start date: Enforcement currently delayed pending the outcome of South Dakota v. Wayfair, Inc.

Included transactions: Sale of tangible personal property, admissions, or services¹⁴

Trigger: Sales or transactions

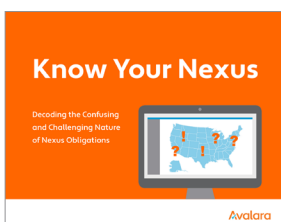
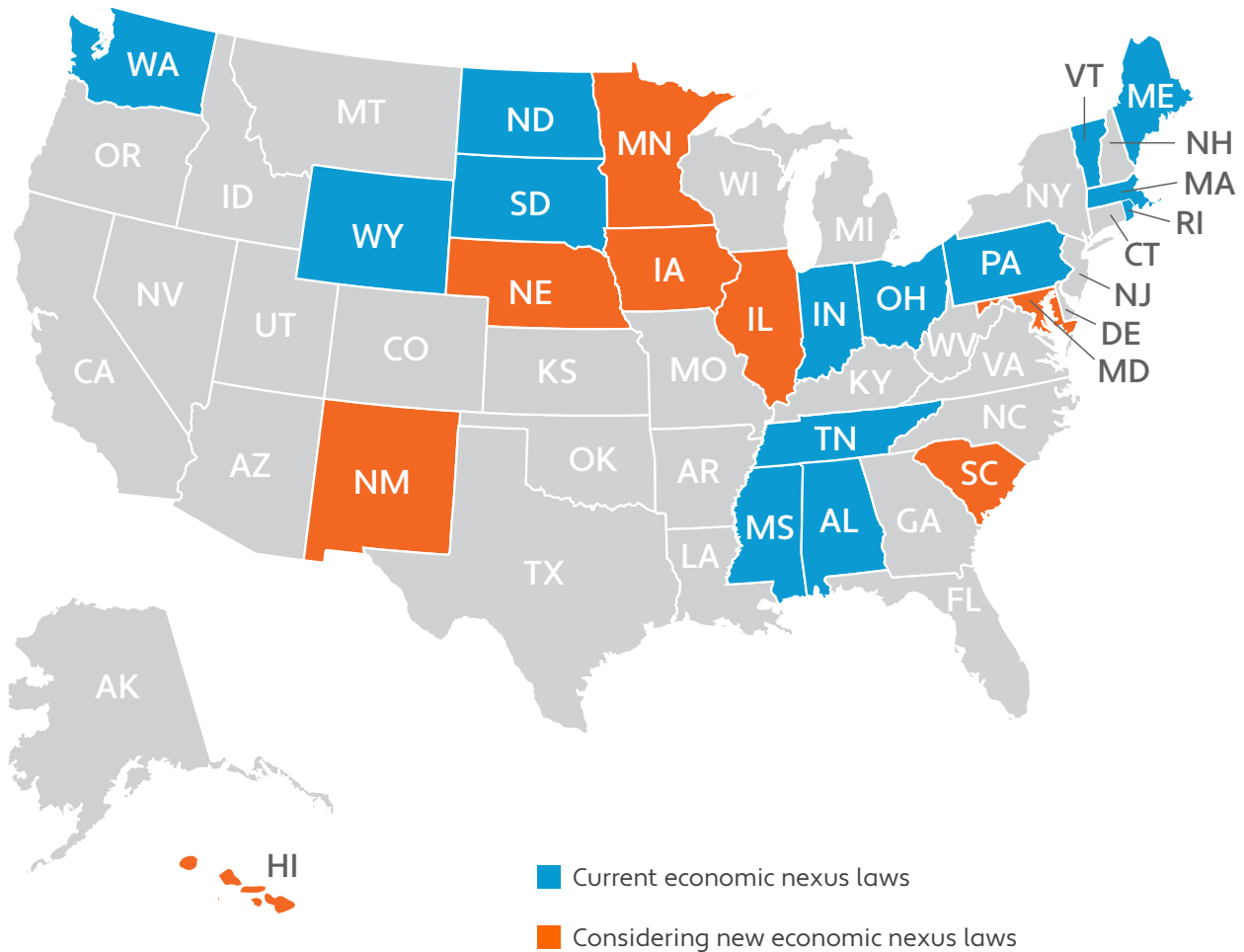
Sales/transactions threshold: \$100,000 or 200 transactions



In addition to the states listed above, other states are considering economic nexus laws as well.

ECONOMIC NEXUS STATES

(As of April 1, 2018)



The above lists are always subject to change. And it should be noted that economic nexus policies aren't the only way states are striving to capture tax revenue from remote sellers.

For more information on the many forms of nexus, read our [Know Your Nexus eBook](#).



HOW IS THE SUPREME COURT INVOLVED IN ECONOMIC NEXUS?

The issue of economic nexus has moved beyond the states with a case that gives the court an opportunity to reconsider the physical presence standard it upheld in Quill. Wayfair et al argue the state's economic nexus law violates Quill's physical presence standard; South Dakota argues the physical presence standard is now causing greater harm to the state because of internet retail.



For more details on how the ruling in *South Dakota v. Wayfair, Inc.* may impact nexus regulations, review our infographic *Will South Dakota v. Wayfair end "tax-free" shopping?*

[DOWNLOAD](#)

No matter how the Supreme Court rules, the decision is likely to impact sales tax across the country.

NEED HELP KEEPING UP WITH ECONOMIC NEXUS?

As nexus laws continue to evolve, particularly those surrounding economic nexus, Avalara has you covered.

When it comes to staying up to date with economic nexus and your associated requirements, the Avalara Tax Advisory Services team is here to help. While you may know Avalara for our software as a service (SaaS) solutions, software isn't all we do. Our Tax Advisory Services team is a group of tax experts that can:

- Help you determine where you have nexus
- Provide ongoing monitoring services to see when new nexus is established
- Help you register in new jurisdictions
- Navigate the tasks related to establishing new nexus



To learn more about how the Avalara Tax Advisory Services team can help, [click here](#) or contact your Avalara account manager.

Although we hope you'll find the information helpful, this guide does not offer a substitute for professional legal or tax advice. If you have questions about your tax liability or concerns about compliance, please consult your qualified legal, tax, or accounting professional. This document was compiled in April 2018. Because states constantly update and amend their sales and use tax laws, visit each state's website for the most up-to-date and comprehensive information.



1. Evaluation period is on sales from the previous calendar year and applies to economic sales threshold PLUS other activities.
2. For all transactions in the current or previous calendar year.
3. Various tax codes to be identified and applies to previous calendar year or current calendar year.
4. For all transactions within the Oct. 1, 2017 to Dec. 31, 2017 time frame, reference the preceding twelve months. For each calendar year beginning Jan. 1, 2018, reference the preceding calendar year.
5. For all transactions beginning 12 months ago.
6. Various tax codes to be identified and applies to sales in the current or previous calendar year.
7. Various tax codes to be identified and applies to the prior 12 months of transactions on or after Jan. 1, 2018.
8. Various tax codes to be identified and applies to the prior 12 months of transactions on or after Apr. 1, 2018. As of Apr. 1, 2019, digital products and services will be included.
9. Various tax codes to be identified and applies to the immediately preceding calendar year.
10. The law is in litigation in South Dakota v. Wayfair, Inc; it's now under review by the U.S. Supreme Court, and a decision is expected in late June 2018.
11. For all transactions during the previous 12 months.
12. For all transactions during the previous 12 months.
13. For all transactions in 2017 or if threshold is met for the first time in the current year (2018), seller begins collecting on the first day of the month at least 30 days after the date they met the threshold.
14. For all transactions if conditions are met in the current or previous calendar year.