



## ***Wayfair* and Economic Nexus – Recommendations for Moving Forward**

On June 21, 2018, the U.S Supreme Court issued an opinion in *South Dakota v. Wayfair* (U.S., No. 17-494), which eliminated the decades-old “physical presence” requirement in favor of economic nexus rules for sales and use taxes. Our previous article entitled “Physical Presence Requirement Overturned by Supreme Court,” published on this website, discussed the background and potential ramifications of that case.

Economic nexus rules impose sales tax collection or reporting and notification responsibilities on certain remote sellers, generally based on either the dollar amount or number of sales into the state. At this point, over 30 states have adopted economic nexus rules. Although some states’ rules are already in effect, a significant number of states’ provisions are effective on October 1, 2018 or shortly thereafter.

### **How does economic nexus affect your business, and what do you need to do?**

#### *Initial Assessment*

First, you will need to understand the economic nexus rules and reporting and filing requirements of the states into which your business delivers products and services. Then, assess the types of products and services you deliver, whether they are subject to sales tax in each state, and whether your sales exceed the dollar amount or number of sales thresholds established by that state. Note that, under a particular state’s rules, both the dollar and volume thresholds may include both taxable and nontaxable sales.

#### *Review Processes and Systems*

After you have a preliminary sense of the impact of the economic nexus rules, it’s important to take a detailed look at your business’s processes and systems to evaluate what has changed, what may need to be done differently in the future, and what additional resources will be needed. Consider the following questions:

- What processes and systems does our business currently have in place to support sales tax collection and reporting?
- Is the required customer data available to source sales to the proper state?
- How do our contracting and invoicing procedures need to change to show taxable and nontaxable items separately?
- Do we have effective and efficient technology, as well as adequate personnel, for calculating, invoicing, collecting, and remitting sales taxes under the new rules?
- Do we need to consider expanded or new technology options, hiring and training additional employees, or third-party service providers?
- Do our existing systems need modifications to meet notification requirements in situations where sales tax collection may not be necessary?



- Do we have the proper resources for increased sales tax-related analysis, compliance, record retention, and audit activity?
- How will we monitor the increased volume of sales tax changes, such as tax rates, new laws, and new procedural requirements?

## *Implement Necessary Changes and Become Compliant*

Finally, your business will need to become compliant with the economic nexus rules and publicize the changes by doing the following:

- Register with the appropriate state and local taxing jurisdictions for return and notification filings and electronic payments
- Implement necessary technology solutions on a timeline designed to mitigate exposure to penalties and interest on any late return filings
- Train the business's operations, sales, and customer relations teams on changes and new procedures
- Inform affected customers
- Expand the gathering of customer exemption certificates

## **How Can Windham Brannon Help You?**

Windham Brannon's **NexusClear** service is designed to help you and your business address the challenges of the economic nexus rules. We can provide a wide range of services to help guide you through this complex law change including assistance in identifying the states in which your business may be required to collect and remit sales tax, analyzing the taxability of the business's sales, understanding any potential exposures that may already exist, and mitigating identified exposures. For more information on this service and how Windham Brannon can help you navigate the new rules, please contact:

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