



November 2019

New York Issues Sales Tax Guidance for Businesses With No Physical Presence in the State

In *South Dakota v. Wayfair, Inc., et al.*, 138 S. Ct. 2080 (decided June 21, 2018), the Supreme Court of the United States held that physical presence in a state was not necessary for retailers to be required to collect and remit state sales and use tax. Many states, including New York, have passed statutes implementing that decision. On Nov. 5, 2019, the New York State Department of Taxation and Finance issued **TSB-M-19(4)S**, providing guidance for businesses making sales of tangible personal property delivered in New York.

The Department had previously issued Important Notice N-19-1 for such businesses, but on June 24, 2019, the Tax Law was amended, and new guidance was needed to reflect the amendment.

The amendment, which is retroactive to the date the *Wayfair* decision was issued (June 21, 2018), provides that those making sales of tangible personal property are required to file sales tax returns if the dollar value of their sales delivered in New York exceeds \$500,000 in a year (an increase from the initial \$300,000 threshold). It also adds a requirement that there be at least 100 sales delivered in New York before a retailer is required to register for authorization to collect and file sales tax returns.

This is substantially different and more taxpayer friendly than several other states, including South Dakota that generated the *Wayfair* litigation. The *Wayfair* court upheld the South Dakota requirement that vendors collect and remit sales tax if there were \$100,000 of sales in the state OR there were more than 200 transactions. The lower-dollar threshold with an alternative of 200 transactions could require a

vendor selling sundries for \$10 each to be subject to sales tax even though their gross sales totaled only \$2,000. The *Wayfair* court also noted that South Dakota was a member of the Streamlined Sales Tax program that 23 states (plus one associate member) have joined. That program simplifies rules and reduces administrative burdens of sales tax – New York is not a participant in that program.

Nevertheless, New York’s law requires registration and authorization of those selling tangible personal property delivered in New York to collect sales tax and file returns even if the sales are non-taxable. This will be a burden on wholesalers who make exempt sales for resale and those selling goods to governmental or other exempt organizations since they will have to collect resale and exemption certificates from their customers and could be subject to audits.

GT is monitoring the legislative and administrative reactions of the states as well as any federal legislation. Businesses must plan for the various proposals and enactments requiring filing returns and collecting tax in multiple jurisdictions.

For additional GT Insights on *South Dakota v. Wayfair*, click [here](#).

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