



Dave Hardy
Secretary of Revenue

Dale W. Steager
State Tax Commissioner

STATE TAX DEPARTMENT

ADMINISTRATIVE NOTICE 2018-18

2018 OCT - 3 4 10-03

Re: Collection of State and Municipal Sales and Use Taxes by Certain Out-of-State Retailers

In *South Dakota v. Wayfair, Inc., et al*, 585 U.S. ___ (June 21, 2018), the United States Supreme Court concluded that "the physical presence rule of *Quill* is unsound and incorrect. The Court's decisions in *Quill Corp. v. North Dakota*, 504 U. S. 298 (1992), and *National Bellas Hess, Inc. v. Department of Revenue of Ill.*, 386 U. S. 753 (1967), should be, and now are, overruled." Slip opinion at page 22. The Court additionally found that "the nexus [here] is clearly sufficient based on both the economic and virtual contacts respondents have with the State. The Act applies only to sellers that deliver more than \$100,000 of goods or services into South Dakota or engage in 200 or more separate transactions for the delivery of goods and services into the State on an annual basis. S. B. 106, §1. This quantity of business could not have occurred unless the seller availed itself of the substantial privilege of carrying on business in South Dakota. And respondents are large, national companies that undoubtedly maintain an extensive virtual presence. Thus, the substantial nexus requirement of Complete Auto is satisfied in this case." Slip opinion at pages 22 – 23.

Out-of-state vendors with a physical presence in West Virginia are and have been collecting West Virginia's state and municipal sales and use taxes. Additionally, some out-of-state vendors without a physical presence in West Virginia are voluntarily collecting and remitting West Virginia state and municipal sales and use taxes. In light of the United States Supreme Court's decision in *Wayfair*, other out-of-state vendors without a physical presence in West Virginia may wish to voluntarily begin collecting and remitting West Virginia state and municipal sales and use taxes and we encourage them to do so. However, all out-of-state vendors without a physical presence in West Virginia that meet certain requirements set forth below will be required to collect and remit West Virginia state and municipal sales and use taxes on all sales made to West Virginia customers on and after January 1, 2019 that are delivered into West Virginia.

NOTICE

Notice is hereby given that beginning January 1, 2019, any out-of-state vendor who as of July 1, 2018, is not required to collect and remit West Virginia state and municipal sales and use taxes, either because they do not have physical presence in West Virginia or they have not voluntarily agreed to collect and remit the tax, who delivers more than \$100,000 of goods or services into West Virginia, or engages in 200 or more

separate transactions for the delivery of goods and services into West Virginia, during calendar year 2018, will be required to collect and remit West Virginia state and municipal sales and use taxes on all sales made on and after January 1, 2019 that are delivered into West Virginia.

This new collection requirement applies to out-of-state vendors that currently do not collect West Virginia state and municipal sales and use taxes but meet either the \$100,000 threshold, or the 200 transactions threshold, during calendar year 2018. Vendor responsibility for collection and remittance of these taxes, as provided in this Administrative Notice, will be determined annually each year thereafter. The requirement will be imposed for a given calendar year based on the vendor's attainment of either of the stated thresholds in the immediately preceding calendar year.

West Virginia is a member of the Streamlined Sales and Use Tax Governing Board, Inc. Provisions of the Streamlined Sales and Use Tax Agreement are codified in W. Va. Code § 11-15B-1 *et seq.* West Virginia has adopted destination sourcing. See W. Va. Code § 11-15B-14 - § 11-15B-15. The State Tax Commissioner administers, collects, and enforces municipal sales and use taxes. State and municipal sales and use taxes collected are reported on a single combined return which is due on the 20th day of the month after the close of the reporting period. Tax payments are due on that same date. Depending upon the amount of taxes remitted, the vendor may be required to file returns and pay taxes electronically. This may be done using the West Virginia State Tax Department's MyTaxes website. Considerable information about West Virginia state and municipal sales and use taxes and electronic filing and paying requirements may be found at the Department's website:

<https://tax.wv.gov/Business/SalesAndUseTax/Pages/SalesAndUseTax.aspx>

For additional information, please contact our Taxpayer Services Division at (304) 558-3333 or toll free at 1-800-982-8297.

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