



# Wayfair Taxes and Local Impacts

## Executive Summary

Laws that require retailers to have a physical presence in the state as a requirement to collect and remit sales taxes were passed in the 1960s. Remote sales tax collection laws, or Wayfair Laws, refer to the ability of individual states to collect taxes from out-of-state online/remote retailers and does not require a business to be physically present in a state before sales are taxed. Wayfair Laws have been enacted in 29 states and the District of Columbia. In 2021, [SB153](#) was enacted, permitting Missouri and local jurisdictions to collect remote sales taxes effective January 2023.

## Highlights

- Missouri is the only state with a general sales tax and does not require remote retailers to collect tax.
- According to the 2018 State Tax Actions [report](#), states that enacted tax changes requiring collection on remote sales had revenues increase, ranging from about \$7 million to \$190 million for fiscal year 2019.
- Missouri has a complex local tax system and relies on localities for sales tax revenue collections.

## Limitations

- There are no specific provisions facilitating compliance for small businesses that conduct online or remote sales.
- Because each Wayfair Law varies between states, best practice for collecting sales tax revenue on online purchases remains unknown.

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## Research Background

### Wayfair Taxes Overview

Currently, there are over 2.1 million online retailers in the U.S.<sup>1</sup> Prior to the enactment of Wayfair laws, online/remote retailers would not have to collect and remit any sales taxes to the states where the purchases were being made, unless the retailer had a physical presence in the state. In 2016, South Dakota required online/remote retailers that sell more than \$100,000 of goods or services in the state or engage in 200 or more separate transactions for the delivery of goods or services into the state on an annual basis, to collect and remit sales tax on all taxable transactions.<sup>2</sup>

After the law was challenged by Wayfair Inc. in 2018, the U.S. Supreme Court ruled that some of the existing rulings were outdated, as these rulings were enacted as early as the 1960s, and that the seller was no longer required to have an in-state physical presence before it could collect

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sales tax. The [Supreme Court determined](#) that lack of taxation of remote retailers could provide e-commerce and out-of-state retailers an unfair advantage over in-state retailers, which may create market distortions.

## **State Actions on Wayfair Tax Collection**

Until 2021, Missouri was the only state without an active Wayfair Law that required remote sellers to collect taxes. The specifics of these laws vary, but they all have provisions for remote seller guidance, compliance dates and gross revenue sales exceeding a dollar amount over a calendar year.

### Marketplace Facilitator Provisions

Marketplace facilitators are third-party sellers who contract to sell goods and services through a marketplace's platform. Some of the states that implement Wayfair tax collection laws have also enacted provisions for marketplace facilitators on online platforms to collect and remit taxes on goods and services that are sold by their third-party sellers. As of last year, 38 states and the District of Columbia had in place marketplace facilitator collection provisions.

### Missouri

Until the 2021 legislative session, Missouri was the only state that had general sales tax laws, and no laws that required collecting taxes from remote retailers. According to the Department of Revenue's [Simplified Remote Sales Tax Remittance Program](#), Missouri permitted eligible remote sellers to collect and remit a simplified remote sales tax rate of 6.5% for most purchases, with a 3.5% remote sales tax rate for food products sold or delivered into the state. The proceeds were distributed to the localities in a manner determined by the Department of Revenue.<sup>4</sup>

However, in June 2021, the Economic Nexus Law ([SB153](#)) was enacted which requires all online/remote retailers with gross receipts of at least \$100,000 from sales within the state over a period of a year to collect and remit sales taxes to the state, regardless of their in-state physical presence. The law includes provisions for marketplace facilitators who conduct business in Missouri to be liable for the tax due on all sales made through the marketplace, shifting the responsibility away from the smaller sellers who use the third-party platforms.

## **Local Impacts**

### Revenue

Allowing states to have the authority to collect taxes on online/remote sales is an additional revenue source for the state. The estimated revenue reported by states that enacted changes to their Wayfair tax collections have varied. In a 2018 report of Wayfair Tax Collections, the National Conference of State Legislatures and the National Association of Legislative Fiscal Offices estimated that the revenues increased by between \$7 million to \$190 million for fiscal year 2019 across the 50 states and the District of Columbia. These revenues were a result of total sales and use taxes, in addition to states being authorized to expand their tax bases to include online/remote sales.<sup>3</sup>

States with Wayfair tax collections have an opportunity to collect more tax dollars for the entire state. If a state does not have Wayfair laws, businesses with no physical presence in the state (no employees or property within the state) have no requirement to remit sales taxes to the state. Instead, it is the consumer who remains responsible for reporting and self-remitting the sales taxes based on their purchases. To protect the consumer, state governments have decided to require Wayfair laws for out-of-state remote sellers to pay the same sales taxes as the consumers who purchase the products.

### Distribution

Generally, in order for Wayfair tax collections to work efficiently, state-level tax collections need to be enabled instead of reliance on localities for sales tax collections. However, currently, 38 states rely on localities for sales tax revenue and many localities levy different rates than their home state with some responsible for collecting these taxes.<sup>5</sup>

### **Reducing Complexity**

Complexity of local sales taxes may affect the adoption and enforcement of Wayfair laws and therefore reduce revenues.<sup>6</sup>

The three key elements of local sales taxes (LSTs) that need to be evaluated in order to reduce complexity and help effective implementation of Wayfair laws are (1) the discretion of local governments to set rates, (2) the presence of overlapping local jurisdictions, and (3) the differences in the state and local tax bases. The higher the levels of these complexity elements, the more complex the tax rate structure tends to be; Missouri ranks high in complexity for both the local sales tax rate and tax base.<sup>6</sup>

Local governments have discretion in setting the LST rates, which creates variation in the different sales tax rates across a state, increasing complexity. When LSTs are present at multiple, overlapping levels of local government (i.e., a combination of municipalities, counties, and special districts), complexity increases due to the possibility of multiple sales tax rates being present, especially since many municipalities span multiple counties. The largest source of complexity related to LSTs is the diversity in the tax base, which refers to the total amount of income, property, assets, consumption, transactions, or other economic activity subject to taxation by a local authority. This diversity makes it hard to identify the correct tax rate for a given purchaser. Additionally, state and local tax rates may not be applied uniformly to all types of purchases and goods. These differences in tax base can occur between the state and local governments, between certain LST instruments and others, or between different local governments.

To comply with Wayfair laws, states may need to introduce simplified tax rate structures that reduce the levels of rate discretion, simplify overlapping jurisdictions, and account for the diversity of tax bases that exist in local governments. Simplified tax rate structures may also help estimate, compare and evaluate the welfare impacts that introducing Wayfair legislation may have on a state and local level.<sup>6</sup>

## References

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