

On June 21, 2018, the U.S. Supreme Court decided in *South Dakota v. Wayfair* that the physical presence standard which has limited the collection of sales taxes from online sellers is “unsound and incorrect.” The Court discussed at length that the previous standard “creates, rather than resolves market distortions” and called it effectively a “judicially created tax shelter for businesses that limit their physical presence in a state but sell their goods and services to the State’s consumers, something that has become easier and more prevalent as technology has advanced.”

This decision provides the states and brick-and-mortar merchants with a long-awaited pathway to a level playing field. For many years, brick-and-mortar sellers have been required to collect sales taxes while their online competition has been allowed to avoid collecting sales taxes.

The Supreme Court provided clear direction to the states for implementing the ruling. The Tax Foundation in their written testimony submitted to the House Judiciary Committee on July 24, 2018 provided the following recommendations for the states as they undertake implementation of the new *Wayfair* standard:

- **Safe harbor:** exclude “those who transact only limited business” in the state. (South Dakota’s is \$100,000 in sales or 200 transactions.)
- **No retroactive collection.**
- **Single state-level administration** of all sales taxes in the state.
- **Uniform definitions** of products and services.
- **Rates:** Simplified tax rate structure. (South Dakota requires the same tax base between state and local sales tax, has only three sales tax rates, and limited exemptions from the tax.)
- **Software:** Access to sales tax administration software provided by the state.
- **Immunity:** Sellers who use the software are not liable for errors derived from relying on it.

While the states are approaching implementation of remote sales tax collection responsibly, there has been a significant misinformation campaign undertaken by groups opposed to the *Wayfair* ruling to scare many online business owners about potential difficulties of working under the new standard. Many of these concerns are speculative and unfounded.

Since the Supreme Court decision was handed down several states have issued notice regarding remote sales tax collection for their state. Keep in mind that most state legislatures have adjourned for the year and additional legislative activity in these states is unlikely until 2019. Links to the releases from states that we have either received or found to date:

[https://www.streamlinedsalestax.org/index.php?page=state-contact-information.](https://www.streamlinedsalestax.org/index.php?page=state-contact-information)

In order to help businesses comply, there are 7 software providers available to help with the collection of remote sales, should a business trigger the substantial economic nexus in a state. In many cases, the software may be free to the online seller and take-on the audit liability for the seller. The software works as a plug-in with the business’s existing inventory and shopping cart software. For additional information on those companies, please visit

[https://www.streamlinedsalestax.org/index.php?page=Certified-Service-Providers.](https://www.streamlinedsalestax.org/index.php?page=Certified-Service-Providers)

The Marketplace Fairness Coalition is comprised of businesses of every size, sector, and channel of product distribution, located in every state throughout the country.