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## Articles:

### ***Kaestner Family Trust* opinion: Grappling with the patchwork of state laws**

In this installment of *Inside Deloitte*, Michael S. Canfield of Deloitte Tax LLP discusses the US Supreme Court’s June 21 decision in *North Carolina Department of Revenue v. Kaestner Family Trust*.

The US Supreme Court, in *Kaestner Family Trust*, held that a North Carolina statute that imposes income tax on all trusts with a beneficiary who resides in the state, violated the due process clause of the US Constitution as applied.

This article analyzes the Supreme Court’s opinion, discusses its immediate consequences in North Carolina, and explores the extent to which the opinion might extend to other states’ laws regarding the income taxation of trusts.

**URL:** <https://www2.deloitte.com/us/en/pages/tax/articles/kaestner-family-trust-opinion-grappling-with-the-patchwork-of-state-laws.html?id=us:2em:3na:stm:awa:tax:100419&sfid=7011000001xmQ0QAI>

## Corporate Income Tax Nexus:

### **Pennsylvania DOR Releases Bulletin that Adopts Post-*Wayfair* \$500K Annual Gross Receipts Economic Nexus Standard for Corporate Net Income Tax Purposes**

*Corporation Tax Bulletin 2019-04 – Nexus for Corporate Net Income Tax Purposes*, Penn. Dept. of Rev. (9/30/19). In light of the US Supreme Court’s 2018 decision overruling *Quill*’s physical presence nexus standard [see previously issued Multistate Tax Alert for more details on the *Wayfair* case], the Pennsylvania Department of Revenue (Department) has issued a bulletin explaining that the *Wayfair* decision “has made certain that, at least prospectively, no physical presence standard exists for purposes of limiting the ability of a state to impose a net income tax on an out of state taxpayer so long as the constitutional requirements under the Due Process and Commerce Clauses of the United States Constitution are satisfied.” Accordingly, the Department explains that for Pennsylvania corporate net income tax (CNIT) purposes, the decision in *Wayfair* has confirmed that out-of-state corporations are considered to be doing business in Pennsylvania and/or carrying on activities in Pennsylvania to the extent they are “taking advantage of the economic marketplace” of Pennsylvania regardless of whether they are physically present in Pennsylvania. As a result, the Department generally states that it will require such taxpayers to begin filing CNIT returns so long as they meet the minimum thresholds for nexus under the US Constitution. More specifically, the Department explains that while all taxpayers with such nexus should file CNIT returns, starting on or after January 1, 2020, it “will deem there to be a rebuttable presumption that corporations without physical presence in the state, but having \$500,000 or more of direct or indirect gross receipts from any combination of the following, sourced to Pennsylvania per year pursuant to the sales factor rules contained in 72 P.S. § 7401,” have a CNIT filing requirement:

**URL:** [https://www.revenue.pa.gov/GeneralTaxInformation/TaxLawPoliciesBulletinsNotices/TaxBulletins/CT/Documents/ct\\_bulletin\\_2019-04.pdf](https://www.revenue.pa.gov/GeneralTaxInformation/TaxLawPoliciesBulletinsNotices/TaxBulletins/CT/Documents/ct_bulletin_2019-04.pdf)

**URL:** <https://www2.deloitte.com/us/en/pages/tax/articles/us-supreme-court-issues-wayfair-decision.html?id=us:2em:3na:stm:awa:tax:100419&sfid=7011000001xmQ0QAI>

1. Gross receipts from the sale, rental, lease, or licensing of tangible personal property;
2. Gross receipts from the sale of services; and/or
3. Gross receipts from the sale or licensing of intangibles, including franchise agreements.

In interpreting this standard, the Department states that it recognizes that taxpayers with or without physical presence in Pennsylvania can still potentially claim exemption from CNIT imposition under the provisions of P.L. 86-272 – and “to the extent protection under this federal law is claimed, taxpayers should continue to file a Pennsylvania Corporate Tax Report (Form RCT-101) and complete the necessary schedules to claim this exemption from tax.” Please contact us with any questions.

— Kenn Stoops (Philadelphia)  
 Managing Director  
 Deloitte Tax LLP  
 kstoops@deloitte.com

Stacy Ip-Mo (Philadelphia)  
 Senior Manager  
 Deloitte Tax LLP  
 sipmo@deloitte.com

Bob Kovach (Pittsburgh)  
 Senior Manager  
 Deloitte Tax LLP  
 rkovach@deloitte.com

Aaron Leroy (Pittsburgh)  
 Senior Manager  
 Deloitte Tax LLP  
 aarleroy@deloitte.com

## **Corporate Income Tax Nexus: Wisconsin DOR’s Finalized Rule Changes Attempt to Clarify Nexus-Creating Activities and Include a 15-Day Rule**

*Final Amended Tax Regulation section 2.82*, Wis. Dept. of Rev. (eff. 11/1/19). The Wisconsin Department of Revenue has finalized rule amendments that are scheduled to become effective as of November 1, 2019, and attempt to clarify the level of activity and/or types of activities that, when performed by out-of-state businesses, establish nexus in Wisconsin for Wisconsin corporate income and franchise tax purposes. This administrative rule used to provide a listing of activities that constitute nexus for an unlicensed foreign corporation thereby requiring the filing of Wisconsin corporate income or franchise tax returns, employing the terms “usual or frequent” and “regularly” to describe certain activities that create nexus. The finalized rule revisions now attempt to establish a general standard of “regularly” that can be administered “clearly and consistently” – such as defining “regularly” to mean fifteen or more days of activity. The revisions also attempt to clarify that certain ownership of tangible personal property in Wisconsin (e.g., inventory) may establish nexus in Wisconsin for state corporate income and franchise tax purposes. Please contact us with any questions.

**URL:** [http://docs.legis.wisconsin.gov/code/register/2019/765B/register/cr/cr\\_18\\_081\\_rule\\_text/cr\\_18\\_081\\_rule\\_text](http://docs.legis.wisconsin.gov/code/register/2019/765B/register/cr/cr_18_081_rule_text/cr_18_081_rule_text)

— Scott Bender (Milwaukee)  
 Principal  
 Deloitte Tax LLP  
 sbender@deloitte.com

Michael Gordon (Milwaukee)  
 Senior Manager  
 Deloitte Tax LLP  
 michagordon@deloitte.com

Axel F. Candelaria Rivera (Milwaukee)  
 Senior Manager  
 Deloitte Tax LLP  
 acandelariarivera@deloitte.com

## **Income/Franchise: Delaware: Late Filing Penalty May be Waived for Corporate Income Tax Filings Due October 15 if Filed by November 15**

*News Release: Revenue Offers Assistance to Corporate Tax Filers*, Del. Dept. of Fin., Div. of Rev. (9/26/19). The Delaware Department of Finance, Division of Revenue (Division), recently announced that given implementation of the

federal Tax Cuts and Jobs Act of 2017 (*i.e.*, P.L. 115-97) and because it recognizes that some Delaware corporate income taxpayers may have trouble meeting Delaware's October 15 extended filing deadline because the return due date coincides with the extended due date for federal returns, Delaware will be implementing a late-filing penalty "grace period" for state corporate income taxpayers that file on or before November 15. The Division states that while the grace period "should automatically eliminate the late-filing penalty for any Forms 1100 and 1100-S that are submitted on or before November 15, 2019, taxpayers should be aware that if they do receive a notice of assessment," a protest may be filed with the Division's Tax Conferee. Please contact us with any questions.

**URL:** <https://news.delaware.gov/2019/09/26/revenue-offers-assistance-to-corporate-tax-filers/>

— Kenn Stoops (Philadelphia)  
Managing Director  
Deloitte Tax LLP  
kstoops@deloitte.com

Stacy Ip-Mo (Philadelphia)  
Senior Manager  
Deloitte Tax LLP  
sipmo@deloitte.com

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## **Income/Franchise: Florida DOR Files Proposed Administrative Rule that Reflects New Law Addressing GILTI**

*Final Proposed Amended Regs. Sections 12C-1.013, 12C-1.051*, Fla. Dept. of Rev. (9/25/19). Following a related public meeting on September 24, 2019, the Florida Department of Revenue (Department) has filed proposed administrative rule changes incorporating recently enacted legislation [see H.B. 7127, and previously issued Multistate Tax Alert for more details on this new law] that provides a state corporate income tax modification for global intangible low-taxed income (GILTI) effective January 1, 2018 – that is, "so that all amounts included in federal taxable income under s. 951A, I.R.C., can be subtracted from state taxable income." A public hearing on this proposal may be held by the Department on October 16, 2019, if appropriately requested in writing. Please contact us with any related questions.

**URL:** <https://www.flrules.org/Faw/FAWDocuments/FAWVOLUMEFOLDERS2019/45187/45187doc.pdf>

**URL:** <https://www.flsenate.gov/Session/Bill/2019/7127/BillText/er/PDF>

**URL:** <https://www2.deloitte.com/us/en/pages/tax/articles/us-florida-legislative-update.html?id=us:2em:3na:stm:awa:tax:100419&sfid=70110000001xmQ0QAI>

— Chris Snider (Miami)  
Managing Director  
Deloitte Tax LLP  
csnider@deloitte.com

Ian Lasher (Tampa)  
Managing Director  
Deloitte Tax LLP  
ilasher@deloitte.com

Ben Jablow (Tampa)  
Manager  
Deloitte Tax LLP  
bjablow@deloitte.com

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## **Income/Franchise: New Hampshire: New Law Establishes Some BET and BPT Tax Rates, Updates State BPT Conformity to IRC and Addresses GILTI, Includes Market-Based Sourcing Provisions, and Potentially Moves BPT to Single Sales Factor Apportionment**

*H.B. 4*, signed by gov. 9/26/19. Recently signed legislation in New Hampshire:

**URL:** [http://gencourt.state.nh.us/bill\\_status/bill\\_status.aspx?lsr=1124&sy=2019&txtsessionyear=2019&txtbillnumber=hb4&sortoption=](http://gencourt.state.nh.us/bill_status/bill_status.aspx?lsr=1124&sy=2019&txtsessionyear=2019&txtbillnumber=hb4&sortoption=)

1. Establishes certain applicable tax rates under the state business profits tax (BPT) and the state business enterprise tax (BET) for tax years ending on or after December 31, 2019, as well as repeals certain scheduled BPT and BET tax rate reductions effective in 2021;
2. Updates the BPT's general conformity to the Internal Revenue Code (IRC) for all taxable periods beginning on or after January 1, 2020 to the IRC in effect on December 31, 2018 (previously, December 31, 2016);
3. Includes 50% of IRC section 951A global intangible low-taxed income (GILTI) after taking into account the IRC section 250 deduction in the tax base under the BPT, applicable for taxable periods beginning on or after January 1, 2020;
4. Similar to legislation enacted earlier this year [see S.B. 190 (2019) and *State Tax Matters*, Issue 2019-36, for more details on this bill], revises New Hampshire provisions for some taxpayers in determining when certain sales other than sales of tangible personal property are derived from sources within New Hampshire for apportionment purposes under the BPT and BET – generally moving from a “costs of performance” sourcing method to a market-based sourcing method effective as of January 1, 2021, and applicable for taxable periods ending on or after December 31, 2021 – and includes a sales factor “throw out” rule; and  
[URL: http://gencourt.state.nh.us/bill\\_status/billText.aspx?sy=2019&id=617&txtFormat=pdf&v=current](http://gencourt.state.nh.us/bill_status/billText.aspx?sy=2019&id=617&txtFormat=pdf&v=current)  
[URL: http://newsletters.usdbriefs.com/2019/Tax/STM/190913\\_6.html](http://newsletters.usdbriefs.com/2019/Tax/STM/190913_6.html)
5. Unless subsequently rescinded by a certain committee established under the legislation, implements single sales factor apportionment for BPT purposes (rather than the current three-factor apportionment formula consisting of property, payroll and double-weighted sales) effective as of January 1, 2022.

See forthcoming Multistate Tax Alert for more details on these various law changes, and please contact us with any questions in the meantime.

— Bob Carleo (Boston)  
 Managing Director  
 Deloitte Tax LLP  
 rcarleo@deloitte.com

Liz Jankowski (Boston)  
 Senior Manager  
 Deloitte Tax LLP  
 ejankowski@deloitte.com

## Income/Franchise:

### Texas Comptroller Proposes New Post-Wayfair Economic Nexus Threshold for Franchise Tax Purposes that Includes a \$500K Gross Receipts Threshold

*Proposed Tex. Admin. Code title 34 section 3.586*, Tex. Comptroller (9/27/19). In light of *Wayfair* [note: see Texas Tax Responsibilities and Resources for Sellers After *Wayfair*, and *State Tax Matters*, Issue 2019-27, for more details on the Comptroller's earlier commentary on *Wayfair* and its potential state franchise tax ramifications], the Texas Comptroller has proposed amendments to an administrative rule that would establish an economic nexus threshold of \$500,000 of Texas gross receipts for Texas franchise tax purposes, as well as provide that out-of-state entities with a use tax permit are subject to the Texas franchise tax. More specifically, applicable to state franchise tax reports due on or after January 1, 2020, the proposal states:

[URL: https://www.sos.texas.gov/texreg/pdf/backview/0927/0927is.pdf](https://www.sos.texas.gov/texreg/pdf/backview/0927/0927is.pdf)

[URL: https://comptroller.texas.gov/taxes/sales/remote-sellers.php](https://comptroller.texas.gov/taxes/sales/remote-sellers.php)

[URL: http://newsletters.usdbriefs.com/2019/Tax/STM/190712\\_7.html](http://newsletters.usdbriefs.com/2019/Tax/STM/190712_7.html)

“For federal income tax accounting periods ending in 2019 or later, a foreign taxable entity has nexus in Texas and is subject to Texas franchise tax, even if it has no physical presence in Texas, if during its federal income tax accounting period, it had gross receipts from business done in Texas of \$500,000 or more, as determined under § 3.591 of this title.”

Additionally, under the proposal, a foreign taxable entity is deemed to begin doing business in Texas for Texas franchise tax purposes on the earliest of:

1. The date the entity has physical nexus;
2. The date the entity obtains a Texas use tax permit; or
3. The first day of the federal income tax accounting period in which the entity had gross receipts from business done in Texas in excess of \$500,000.

Comments on this proposal must be received no later than 30 days from the proposal's September 27 publication date in the Texas Register.

See forthcoming Multistate Tax Alert for more details on this proposal, and please contact us with any questions in the meantime.

— Robert Topp (Houston)  
Managing Director  
Deloitte Tax LLP  
rtopp@deloitte.com

Jacob Aguero (Houston)  
Partner  
Deloitte Tax LLP  
jaguero@deloitte.com

Lauren Bogue Rothman (Houston)  
Senior Manager  
Deloitte Tax LLP  
lrothman@deloitte.com

Grace Taylor (Houston)  
Manager  
Deloitte Tax LLP  
grtaylor@deloitte.com

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## **Sales/Use/Indirect: Illinois Appellate Court Upholds Trial Court Ruling that Chicago's Amusement Taxation of Streaming Services is Valid**

*Case No. 1-18-1379*, Ill. App. Ct. (9/30/19). An Illinois Appellate Court has affirmed a trial court ruling from 2018, which held that a 2015 administrative ruling (Amusement Tax Ruling No. 5) issued by the City of Chicago Department of Finance [see previously issued Multistate Tax Alert for more details on this ruling] that imposes the City of Chicago's 9% amusement tax on certain streaming services did *not* violate the Commerce Clause of the US Constitution, the uniformity clause of the state constitution, or the federal Internet Tax Freedom Act (ITFA). Please contact us with any questions.

**URL:** <https://courts.illinois.gov/Opinions/AppellateCourt/2019/1stDistrict/1181379.pdf>

**URL:** <https://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-chicago-personal-property-lease-transaction-tax-and-amusement-tax-rulings.html?id=us:2em:3na:stm:awa:tax:100419&sfid=7011000001xmQ0QAI>

— Mary Pat Kohberger (Chicago)  
Managing Director  
Deloitte Tax LLP  
mkohberger@deloitte.com

Anna Marie Alberti Hearn (Chicago)  
Senior Manager  
Deloitte Tax LLP  
aalbertihear@deloitte.com

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## **Sales/Use/Indirect: Kansas Attorney General Concludes that DOR's Post-Wayfair Notice Apparently Requiring All Remote Sellers with In-State Sales to Register and Collect is Invalid**

*Attorney General Opinion No. 2019-8*, Kansas Off. of the Attorney Gen. (9/30/19). The Kansas Office of Attorney General (Kansas OAG) has released a lengthy opinion letter addressing the Kansas Department of Revenue's (Department) recently issued notice [see Notice 19-04 and *State Tax Matters*, Issue 2019-31, for more details on this notice] that was "intended to provide guidance to remote sellers doing business in Kansas" in light of *Wayfair* and current statutory law in Kansas – essentially concluding that in failing to require surpassing some kind of "safe harbor" annual dollar sales or transaction amount threshold to trigger Kansas sales and use tax collection and remittance obligations, the Department's policy is "inconsistent with *Wayfair*, has not been lawfully adopted and is invalid." More specifically, the Kansas OAG states that the Department's "new interpretation" of K.S.A. section 79-3702(h)(1)(F) and its associated new enforcement policy, as described in Notice 19-04, "were not a valid exercise by the Department of any authority that may have been delegated to it by the Legislature and thus are a legally insufficient basis to begin requiring collection and remittance of retail sales or compensating use taxes by out-of-state retailers with no physical presence" in Kansas.

**URL:** [https://ag.ks.gov/docs/default-source/ag-opinions/2019/2019-008.pdf?sfvrsn=a589d21a\\_6](https://ag.ks.gov/docs/default-source/ag-opinions/2019/2019-008.pdf?sfvrsn=a589d21a_6)

**URL:** <https://www.ksrevenue.org/taxnotices/notice19-04.pdf>

**URL:** [http://newsletters.usdbriefs.com/2019/Tax/STM/190809\\_6.html](http://newsletters.usdbriefs.com/2019/Tax/STM/190809_6.html)

The Department subsequently issued a response to the Kansas OAG's opinion letter, stating that Notice 19-04 "does not reflect a change in policy, but only restates long-established statutory provisions regarding the duty to collect and remit Kansas taxes." The Department also states that it "cannot select which laws it enforces," that Kansas statutes are presumed to be constitutional, and "unless deemed otherwise by a court of competent jurisdiction, the Department is obligated to enforce the statutes enacted by the Legislature." Please contact us with any questions.

**URL:** <https://www.ksrevenue.org/press/pr09302019.html>

— Jeff Maxwell (Denver)  
Senior Manager  
Deloitte Tax LLP  
jemaxwell@deloitte.com

Rick Heller (Parsippany)  
Managing Director  
Deloitte Tax LLP  
rickheller@deloitte.com

Collin Koenig (Kansas City)  
Manager  
Deloitte Tax LLP  
cokoenig@deloitte.com

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## **Sales/Use/Indirect: Maine Revenue Services Explains New Law that Adopts Post-Wayfair Marketplace Facilitator Economic Nexus Standard as of October 1**

*Sales, Fuel & Special Tax Division General Information Bulletin No. 109*, Me. Rev. Serv. (9/25/19). Maine Revenue Services has issued a bulletin summarizing new law [see L.D. 1452 / H.P. 1064 (2019), and *State Tax Matters*, Issue 2019-25, for more details on this new law] that requires a defined "marketplace facilitator" meeting certain economic nexus thresholds to collect and remit Maine sales tax on sales of tangible personal property and taxable services facilitated on the marketplace facilitator's marketplace that are delivered into Maine, applicable to sales occurring on or after October 1, 2019. These marketplace facilitators generally must collect and remit Maine sales and use tax if either:

**URL:** <https://www.maine.gov/revenue/salesuse/GIB109092019.pdf>

**URL:** <http://www.mainelegislature.org/LawMakerWeb/summary.asp?ID=280072901>

**URL:** [http://newsletters.usdbriefs.com/2019/Tax/STM/190628\\_15.html](http://newsletters.usdbriefs.com/2019/Tax/STM/190628_15.html)

1. The marketplace facilitator's gross sales from delivery of tangible personal property or taxable services into Maine in the previous calendar year or current calendar year exceeds \$100,000; or
2. The marketplace facilitator sold or facilitated sales of tangible personal property or taxable services for delivery into Maine in at least 200 separate transactions in the previous calendar year or the current calendar year.

For purposes of calculating these economic nexus thresholds, the marketplace facilitator's gross sales and total number of transactions include sales facilitated on behalf of marketplace sellers and any sales of tangible personal property or taxable services made directly by the marketplace facilitator. Additionally, the bulletin explains that marketplace sellers that make sales through a marketplace facilitator will *not* be required to collect and remit sales tax on sales made through the facilitator as long as they receive a written statement from the facilitator that explicitly provides that the facilitator will collect and remit the Maine sales tax on all taxable sales facilitated through the marketplace. The bulletin also explains that Maine's new law "aligns Maine's practice with that of the Streamlined Sales and Use Tax Agreement and codifies Maine's existing delivery rule" regarding sourcing rules for sales of tangible personal property and taxable services delivered into Maine. Please contact us with any questions.

— Jack Lutz (Hartford)  
Managing Director  
Deloitte Tax LLP  
jacklutz@deloitte.com

Ian Gilbert (Boston)  
Senior Manager  
Deloitte Tax LLP  
iagilbert@deloitte.com

## **Sales/Use/Indirect: Maryland Comptroller Reminds that Certain Marketplace Facilitators Must Collect and Remit Taxes Under Post-Wayfair Nexus Standards as of October 1**

*Tax Alert 09-19*, Md. Cmptrlr. (9/25/19). The Maryland Comptroller (Comptroller) has issued guidance pursuant to legislation enacted earlier this year [see H.B. 1301 (2019), and *State Tax Matters*, Issue 2019-22, for more details on this new law] which, applicable as of October 1, 2019, alters the definition of “vendor” for Maryland sales and use tax purposes to include certain defined “marketplace facilitators” and “marketplace sellers,” requiring marketplace facilitators – under specified circumstances – to collect and remit state sales and use tax on certain sales by marketplace sellers to in-state buyers. More specifically, the Comptroller explains that marketplace facilitators and out-of-state vendors that make direct sales are required to register to collect Maryland sales and use tax if they sell tangible personal property or taxable services for delivery in Maryland and satisfy, during the previous calendar year or the current calendar year, either of the following criteria:

**URL:** [https://taxes.marylandtaxes.gov/Resource\\_Library/Tax\\_Publications/Tax\\_Alerts/SUT\\_Tax\\_Alert\\_Sept2019.pdf](https://taxes.marylandtaxes.gov/Resource_Library/Tax_Publications/Tax_Alerts/SUT_Tax_Alert_Sept2019.pdf)

**URL:** <http://mgaleg.maryland.gov/webmga/firmMain.aspx?pid=billpage&stab=03&id=HB1301&tab=subject3&ys=2019RS>

**URL:** [http://newsletters.usdbriefs.com/2019/Tax/STM/190607\\_11.html](http://newsletters.usdbriefs.com/2019/Tax/STM/190607_11.html)

1. Gross revenue from the sale of tangible personal property or taxable services delivered in Maryland exceeds \$100,000; or
2. Tangible personal property or taxable services were sold for delivery into Maryland in 200 or more separate transactions.

The Comptroller also explains that for purposes of determining whether the threshold of 200 transactions or \$100,000 of gross revenue has been met, the calculation must include all Maryland sales including tax-exempt transactions and Maryland tax-exempt revenue (e.g. sales for resale, sales to tax exempt entities, and sales of exempt items). Among other implementation issues and examples, the Comptroller notes that marketplace facilitators must report state sales and use tax collected from direct sales separately from the tax it collects when acting as a marketplace facilitator. Please contact us with any questions.

— Joe Carr (McLean)  
Managing Director  
Deloitte Tax LLP  
josecarr@deloitte.com

Rick Heller (Parsippany)  
Managing Director  
Deloitte Tax LLP  
rickheller@deloitte.com

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## **Sales/Use/Indirect: Minnesota DOR Issues Guidance on Physical Presence Nexus for Retailers and Marketplace Providers**

*Revenue Notice # 19-03: Sales and Use Tax – Physical Presence Nexus Standards*, Minn. Dept. of Rev. (9/30/19). The Minnesota Department of Revenue (Department) has issued a notice setting forth its position on criteria for determining when a retailer or marketplace provider is a “retailer maintaining a place of business in this state” or a “marketplace provider maintaining a place of business in this state” and therefore has physical presence nexus in Minnesota, such that the retailer or marketplace provider must register, collect, and remit Minnesota sales or use tax on all taxable retail sales made or facilitated into Minnesota. In doing so, the Department notes that this guidance does *not* apply for purposes of determining when a retailer or marketplace provider is not maintaining a place of business in Minnesota but may have economic nexus with Minnesota such that the retailer or marketplace provider must also register, collect, and remit Minnesota sales or use tax on all taxable retail sales made or facilitated into Minnesota [see H.F. 5 (2019), and previously issued Multistate Tax Alert for more details on Minnesota’s sales and use tax economic nexus provisions]. The notice generally explains that a retailer or marketplace provider is maintaining a place of business in Minnesota and has sufficient physical presence nexus in Minnesota to be required to collect Minnesota sales or use tax when it conducts “business activity in Minnesota” on at least four days during a twelve-month period. Please contact us with any questions.

**URL:** [https://mn.gov/admin/assets/SR44\\_14%20-%20Accessible\\_tcm36-404187.pdf](https://mn.gov/admin/assets/SR44_14%20-%20Accessible_tcm36-404187.pdf)

**URL:** <https://www.revisor.mn.gov/bills/bill.php?b=House&f=HF0005&ssn=1&y=2019>

**URL:** <https://www2.deloitte.com/us/en/pages/tax/articles/minnesota-enacts-broad-tax-changes-including-retroactive-irc-conformity.html?id=us:2em:3na:stm:awa:tax:100419&sfid=7011000001xmQQAI>

— Ray Goertz (Minneapolis)  
Managing Director  
Deloitte Tax LLP  
rgoertz@deloitte.com

Samantha Gerber (Minneapolis)  
Manager  
Deloitte Tax LLP  
sagerber@deloitte.com

Rick Heller (Parsippany)  
Managing Director  
Deloitte Tax LLP  
rickheller@deloitte.com

David Welliver (Minneapolis)  
Tax Senior Manager  
Deloitte Tax LLP  
dwelliver@deloitte.com

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## **Sales/Use/Indirect:**

### **North Dakota: Administrative Guidance Reminds that New Law Requires Marketplace Facilitators Meeting \$100K Annual Sales Threshold to Collect and Remit Taxes Beginning October 1**

*Marketplace Facilitators*, N.D. Off. of State Tax Comm. (9/19). The North Dakota Office of State Tax Commissioner (Commissioner) reminds that pursuant to legislation enacted earlier this year [see S.B. 2338 (2019) and *State Tax Matters*, Issue 2019-13, for more details on this new law], beginning as of October 1, 2019, an out-of-state marketplace facilitator that makes or facilitates sales of tangible personal property or other taxable products or services is deemed a “retailer” subject to North Dakota’s sales and use tax collection, remittance, and other requirements if the marketplace facilitator makes or facilitates sales through the marketplace that, when the sales are combined, exceed the \$100,000 threshold amount in the previous or current calendar year. The Commissioner notes that a marketplace facilitator does *not* include a payment processor business appointed by a seller to handle payment transactions from various channels, such as credit or debit cards, and whose sole activity with the marketplace sales is to handle payment transactions between the seller and the purchaser. Please contact us with any questions.

**URL:** <https://www.nd.gov/tax/user/businesses/formspublications/sales-use-tax/streamlined-sales--use/marketplace-facilitator>

**URL:** <https://www.legis.nd.gov/assembly/66-2019/documents/19-8165-02000.pdf>

**URL:** [http://newsletters.usdbriefs.com/2019/Tax/STM/190405\\_9.html](http://newsletters.usdbriefs.com/2019/Tax/STM/190405_9.html)

— Ray Goertz (Minneapolis)  
Managing Director  
Deloitte Tax LLP  
rgoertz@deloitte.com

Samantha Gerber (Minneapolis)  
Manager  
Deloitte Tax LLP  
sagerber@deloitte.com

Rick Heller (Parsippany)  
Managing Director  
Deloitte Tax LLP  
rickheller@deloitte.com

David Welliver (Minneapolis)  
Senior Manager  
Deloitte Tax LLP  
dwelliver@deloitte.com

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## **Sales/Use/Indirect:**

### **Texas Comptroller Discusses Post-Wayfair Remote Seller/Marketplace Provider Collection and Remittance as of October 1 and Single Local Use Tax Rate Option**

*September Fiscal Notes*, Tex. Comptroller (9/19). The Texas Comptroller (Comptroller) summarizes current state sales and use tax law in light of:

**URL:** <https://comptroller.texas.gov/economy/fiscal-notes/docs/fn.pdf>

1. The US Supreme Court’s 2018 decision in *Wayfair*,
2. A post-Wayfair Texas administrative rule [see Amended 34 Tex. Admin. Code Section 3.286, and *State Tax Matters*, Issue 2018-51, for more details on this rule] that establishes an economic nexus “safe harbor” for remote sellers whose total Texas revenue in the preceding twelve calendar months is less than \$500,000,

[URL: https://www.sos.state.tx.us/texreg/pdf/backview/1214/1214is.pdf](https://www.sos.state.tx.us/texreg/pdf/backview/1214/1214is.pdf)

[URL: http://newsletters.usdbriefs.com/2018/Tax/STM/181221\\_9.html](http://newsletters.usdbriefs.com/2018/Tax/STM/181221_9.html)

3. Recently enacted legislation addressing marketplace provider obligations [see H.B. 1525 (2019), and *State Tax Matters*, Issue 2019-22, for more details on this new law], and

[URL: https://capitol.texas.gov/BillLookup/Actions.aspx?LegSess=86R&Bill=HB1525](https://capitol.texas.gov/BillLookup/Actions.aspx?LegSess=86R&Bill=HB1525)

[URL: http://newsletters.usdbriefs.com/2019/Tax/STM/190607\\_14.html](http://newsletters.usdbriefs.com/2019/Tax/STM/190607_14.html)

4. Recently enacted legislation addressing a new Texas single local use tax rate option for remote sellers [see H.B. 2153 (2019), and *State Tax Matters*, Issue 2019-20, for more details on this new law].

[URL: https://capitol.texas.gov/BillLookup/Actions.aspx?LegSess=86R&Bill=HB2153](https://capitol.texas.gov/BillLookup/Actions.aspx?LegSess=86R&Bill=HB2153)

[URL: http://newsletters.usdbriefs.com/2019/Tax/STM/190524\\_10.html](http://newsletters.usdbriefs.com/2019/Tax/STM/190524_10.html)

In doing so, the Comptroller explains that sellers and facilitators outside of Texas that were previously not required to collect and remit Texas sales and use tax may have to begin collecting Texas tax on their sales into Texas beginning on October 1, 2019. The Comptroller additionally comments on the status of similar law in other states, and notes that “differences among state tax laws and the sheer number of remote sellers mean that states must work together with taxpayers to bring order and predictability to sales tax collection.” To this end, the Comptroller explains that it will “continue to develop best practices in conjunction with the Multistate Tax Commission (MTC), an intergovernmental state tax agency, and monitor other efforts at uniformity, such as the Streamlined Sales Tax Project (SSTP), a tax simplification agreement among 24 states.” According to the Comptroller, while the SSTP website “offers sellers an easy way to register and collect taxes among member states,” Texas currently is *not* a member of the SSTP; however, “the Comptroller’s office has considered using its registration portal” and will “remain open to new ideas and concerns” in this post-*Wayfair* environment. Please contact us with any questions.

— Robin Robinson (Austin)  
Senior Manager  
Deloitte Tax LLP  
rorobinson@deloitte.com

Brandon Hayes (Dallas)  
Senior Manager  
Deloitte Tax LLP  
brhayes@deloitte.com

Rick Heller (Parsippany)  
Managing Director  
Deloitte Tax LLP  
rickheller@deloitte.com

Chris Blackwell (Austin)  
Manager  
Deloitte Tax LLP  
cblackwell@deloitte.com

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## **Sales/Use/Indirect: Wisconsin DOR Releases Proposed Guidance to Implement New Law Requiring Marketplace Providers Meeting Economic Nexus Thresholds to Collect Tax Beginning October 1**

*Proposed Guidance: Marketplace Provider & Seller Common Questions*, Wis. Dept. of Rev. (9/24/19); *Proposed Guidance: Marketplace Providers and Sellers-Provisions That Take Effect on January 1, 2020*, Wis. Dept. of Rev. (9/24/19). Following its earlier released guidance [see *State Tax Matters*, Issue 2019-33, for more details on this earlier guidance], the Wisconsin Department of Revenue (Department) has posted proposed administrative guidance that reflects and attempts to implement legislation enacted earlier this year [see A.B. 251/Act 10 (2019), and previously issued Multistate Tax Alert for more details on this new law] that requires some defined “marketplace providers” to collect and remit Wisconsin sales or use tax on the entire amount charged to a purchaser for all sales of taxable products and services in Wisconsin that the marketplace provider facilitates on behalf of a defined “marketplace seller” beginning October 1, 2019. The proposal includes a process for certain qualified marketplace facilitators to request a waiver from collecting and remitting Wisconsin sales and use tax.

[URL: https://www.revenue.wi.gov/Pages/FAQS/ise-marketplace-providers-sellers.aspx](https://www.revenue.wi.gov/Pages/FAQS/ise-marketplace-providers-sellers.aspx)

[URL: https://www.revenue.wi.gov/Pages/Businesses/marketplace-providers-sellers.aspx](https://www.revenue.wi.gov/Pages/Businesses/marketplace-providers-sellers.aspx)

[URL: http://newsletters.usdbriefs.com/2019/Tax/STM/190823\\_11.html](http://newsletters.usdbriefs.com/2019/Tax/STM/190823_11.html)

[URL: https://docs.legis.wisconsin.gov/2019/proposals/reg/asm/bill/ab251](https://docs.legis.wisconsin.gov/2019/proposals/reg/asm/bill/ab251)

[URL: https://www2.deloitte.com/us/en/pages/tax/articles/new-wisconsin-law-requires-marketplace-providers-meeting-economic-nexus-thresholds-to-collect-tax-beginning.html?id=us:2em:3na:stm:awa:tax:100419&sfid=70110000001xmQ0QAI](https://www2.deloitte.com/us/en/pages/tax/articles/new-wisconsin-law-requires-marketplace-providers-meeting-economic-nexus-thresholds-to-collect-tax-beginning.html?id=us:2em:3na:stm:awa:tax:100419&sfid=70110000001xmQ0QAI)

Additionally, under the proposed guidance, a marketplace provider may claim a bad debt deduction on a sales transaction if it collects and remits Wisconsin sales or use tax on behalf of the marketplace seller, and either the marketplace provider or marketplace seller is eligible to claim the deduction under Internal Revenue Code section 166 for the worthless amount of the transaction. More specifically, a marketplace provider “shall claim the bad debt deduction on its Wisconsin sales and use tax return for the period in which the marketplace provider or marketplace seller writes off the amount as uncollectible in its books and records and such amount is eligible to be deducted as a bad debt for federal income tax purposes.” The proposed guidance also explains that a marketplace provider that is collecting and remitting Wisconsin sales or use tax is allowed the Wisconsin’s retailer’s discount as provided in Wis. Stats. section 77.61(4)(c); and to claim the retailer’s discount, the return for the reporting period must be timely filed and paid by the marketplace provider. Please contact us with any questions.

— Linda Joers (Milwaukee)  
Managing Director  
Deloitte Tax LLP  
ljoers@deloitte.com

Jeremy Blodgett (Milwaukee)  
Senior Manager  
Deloitte Tax LLP  
jblodgett@deloitte.com

Rick Heller (Parsippany)  
Managing Director  
Deloitte Tax LLP  
rickheller@deloitte.com

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## Multistate Tax Alerts

Throughout the week, we highlight selected developments involving state tax legislative, judicial, and administrative matters. The alerts provide a brief summary of specific multistate developments relevant to taxpayers, tax professionals, and other interested persons. Read the recent alerts below or visit the [archive](#).

**Archive:** <http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-archive0.html?id=us:2em:3na:stm:awa:tax>

### New Mexico Enacts Sweeping Tax Legislation

On April 4th, 2019, New Mexico’s Governor, Michelle Lujan Grisham, signed House Bill 6 (H.B. 6), which implements significant reforms to the state’s tax code. This legislation makes a number of changes to the income tax provisions, such as mandating combined reporting and adopting market sourcing, modifying certain personal income tax provisions and updating New Mexico’s gross receipts tax provisions on internet sales to establish an economic nexus standard. Certain key changes, as well as effective dates, are summarized in this Multistate Tax Alert.

[Issued September 25, 2019]

**URL:** <https://www2.deloitte.com/us/en/pages/tax/articles/new-mexico-enacts-sweeping-tax-legislation.html?id=us:2em:3na:stm:awa:tax:100419&sfid=7011000001xmQ0QAI>

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