

# State of Online Sales Tax Collection Five Years After the *Wayfair* Decision

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# Introductions

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**Moderator:** Speaker Pro Temp Brian Kennedy (RI), NCSL President

**Speakers:**

- Craig Johnson - Streamlined Sales Tax Governing Board
- Scott Peterson – Avalara, Inc.
- Commissioner Rebecca Rockwell – Utah State Tax Commission
- Scott Mackey – Leonine Public Affairs

# How and Why Did We Get To Where We Are?

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- Each state “did its own thing” – exercised state sovereignty
- Resulted in many different nuances
  - Same terms – different definitions
- Multistate sellers face complexities
- Growth in e-commerce lead to loss of revenue for states

# How and Why Did We Get To Where We Are?

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- 1967 case of *National Bellas Hess v. Illinois*
- 1992 case of *Quill Corp. v. North Dakota*
- States do not have the authority to require sales tax collection by out-of-state retailers **with no physical presence** in a state
- Burdens imposed by States constituted an “undue burden on interstate commerce” and a violation of the Commerce Clause of U.S. Constitution

# Why Did SST Start? - Simpler System Needed!

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1999: National Governors Association, National Conference of State Legislatures, Federation of Tax Administrators and Multistate Tax Commission requested tax administrators to develop a simpler sales tax system:

- That is less complex
- Addresses unlevel playing field for merchants
- Addresses loss of revenue from states unable to collect taxes already imposed
- Inability of States to administer use tax with purchasers

# What is SST? - Streamlined's Goals

01

Create a simpler system for administering the various state and local sales taxes

02

At least make processes uniform if they cannot be made simple

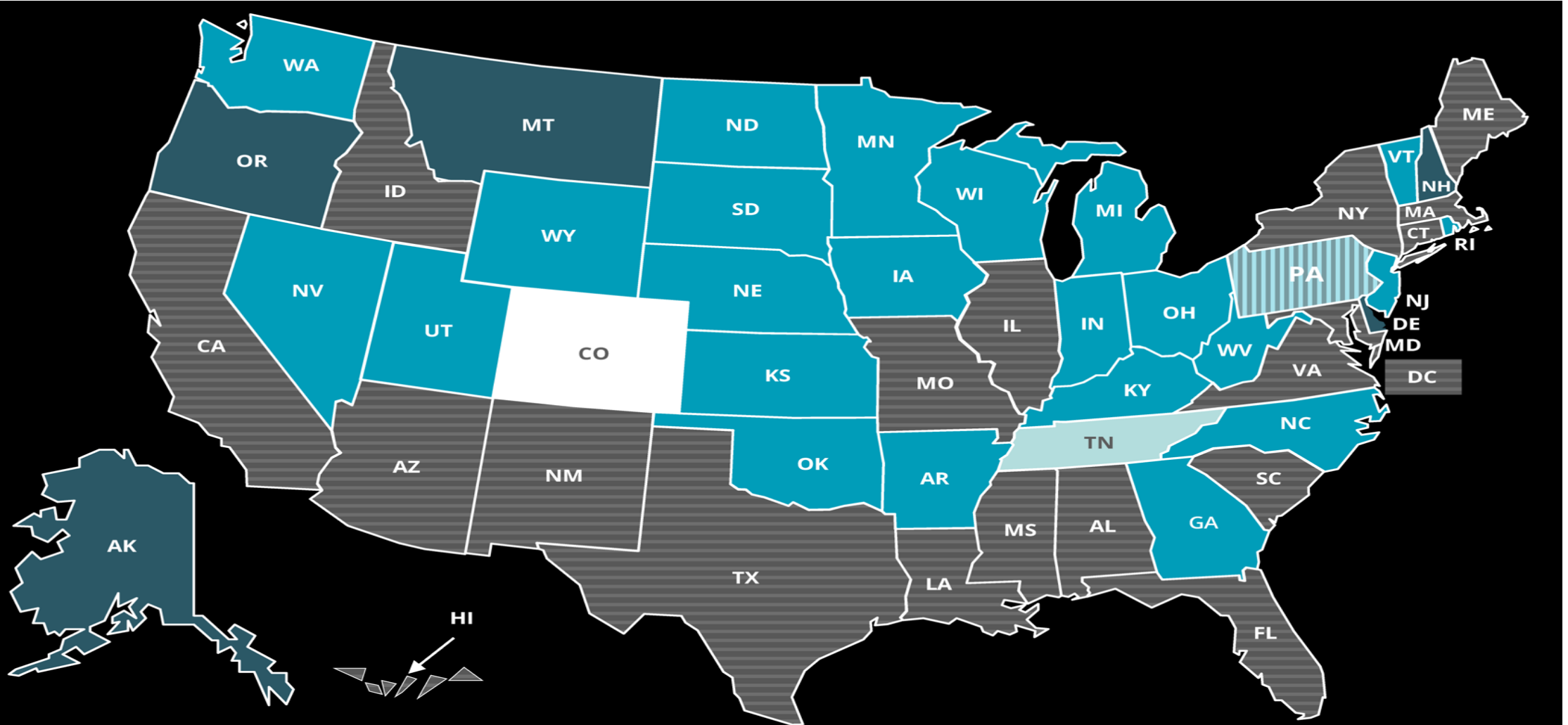
03

Balance the interests of a state's sovereignty with the interests of simplicity and uniformity

04

Leverage the use of technology to ease the retailer's tax collection and reporting

# SST STATE MEMBERSHIP STATUS 11-01-2023



# Federal Legislation

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# Federal Legislation – The Proposals

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Since 2005, the following types of legislative bills have been introduced:

- Main Street Fairness Acts (MSFA)
- Marketplace Equity Act (MEA)
- Marketplace Fairness Acts (MFA)
- Remote Transactions Parity Act (RTPA)
- Online Sales Simplification Act (draft only)
- No Regulation Without Representation Act

# Lack of Congressional Action Lead to South Dakota Law Change and *Wayfair* Litigation

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# *South Dakota Senate Bill 106*

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- Inability to collect sales tax from remote sellers threatens South Dakota's efforts to sustain a broad tax system, which allows South Dakota to keep taxes low.
  - Because South Dakota doesn't have a state income tax, sales and use tax revenue are essential in funding state and local services.
  - The growth of online retail ensures further erosion to SD sales tax base.

# *South Dakota Senate Bill 106 Background*

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Remote Sellers must remit South Dakota sales tax if they meet one of two criteria

- The seller's gross revenue exceeds \$100,000.
  - The sellers made 200 or more separate transactions into South Dakota.
- 
- Any sales tax obligation required by this act cannot be applied to past sales.

# *South Dakota v. Wayfair* – What the Court Held

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U.S. Supreme Court (June 21, 2018)

- Overturned a physical presence requirement for sales/use tax (Bellas Hess (1967) and Quill (1992))
- “Economic and virtual presence” test
- Only addressed the first prong of *Complete Auto’s* (1977) four prong test – requires a taxpayer have “substantial nexus with the taxing state”
- South Dakota’s \$100,000 in sales or 200 transactions held by the Court to be sufficient because “the seller availed itself of the substantial privilege of carrying on a business in South Dakota”

# *South Dakota v. Wayfair* – What the Court Did Not Hold

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The Court did **not** rule on the overall constitutionality of South Dakota's law;

- The Court remanded the case back to South Dakota to address “whether some other principle in the Court's Commerce Clause doctrine might invalidate [South Dakota's law]”
- The Court noted these issues were not litigated or briefed; thus, the Court remanded the case for the lower courts to resolve them
- Case was ultimately settled with no resolution on undue burdens, etc.

# *South Dakota v. Wayfair* - Guidance

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The Court noted three features about South Dakota's law that appeared to be **designed to prevent discrimination against or undue burdens upon interstate commerce:**

- Transactional Safe Harbor;
- No retroactive application; and
- **Membership in the Streamlined Sales and Use Tax Agreement (SSUTA)**

# *South Dakota v. Wayfair* - Guidance

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Specific Items Noted in *Wayfair* Decision Related to Streamlined Sales Tax:

- Standardizes taxes to reduce administrative and compliance costs
- Single state level administration
- Uniform definitions of products and services
- Simplified tax rate structures
- **Other uniform rules**
- Access to sales tax administration software paid for by the state
- Sellers who choose to use such software are immune from audit liability



# Congress Could Still Act

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# Senate Finance Committee Hearing June 2022

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- Examined Impact of *Wayfair* Decision
- Witnesses – GAO, 2 small businesses, one practitioner and SST
- Business Concerns Raised
  - Created burdens and challenges
    - Registration
  - Lack of uniformity
  - Lack of state guidance
  - Cost of compliance

# Highlights from the 2022 GAO Report

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- Congress asked GAO to examine affect of states' expanded authority to collect remote sales tax
  - Current sales tax landscape
  - Number of businesses subject to these requirements
  - Types of cost businesses have incurred
  - Extent to which the remote sales tax system aligns with criteria for a good tax system
    - Equity
    - Economic efficiency
    - Simplicity, transparency and administrability



November 2022

# REMOTE SALES TAX

Federal Legislation  
Could Resolve Some  
Uncertainties and  
Improve Overall  
System

# Highlights from the 2022 GAO Report

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## Current Remote Sales Tax System Raises Concerns

Patchwork of different requirements for remote sellers

- Economic Thresholds
  - Dollar amount of transactions
  - Number of transactions
- Registration Timing
- Local Sales Taxes

# Highlights from the 2022 GAO Report

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## Current Remote Sales Tax System Raises Concerns

### Costs Incurred by Businesses

- Software costs for multistate collection
- Audit and assessment costs due to exposure in more jurisdictions
- Research and liability costs for additional jurisdictions

# Highlights from the 2022 GAO Report

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## Recommendation

- Congress work with states
- Establish nationwide parameters
- Balance state interests and multistate complexities
- Address uncertainties

# Streamlined Response - 2022 GAO Report

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SST is taking the 2022 GAO Recommendations Seriously

- SST members already implemented many of the recommendations
  - Non-SST members in much different position
- Working on Developing Uniform Thresholds (Best Practices)
  - Remove number of transactions
  - Gross, retail, taxable calculation
  - When does remote seller need to register?



# SST Tools to Make Compliance Simpler

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# Streamlined Sales Tax Registration System (SSTRS)

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- **Only request information needed to get a seller registered**
- **No cost to register**
- Identification Number
- Type of Entity
- Legal Name
- Business/Mailing Address
- NAICS Code
- Contact Information

# Certified Service Provider (CSP) Program

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- **Allows sellers to outsource sales tax collection obligations**
- **States compensate CSPs for “CSP-compensated sellers”**
  - Certified Automated System
  - Integrate with seller’s systems
  - Calculate tax at time of sale
  - Prepares and files monthly returns
  - Makes remittances to each state
  - Protects seller’s information
  - Handles audits

# Taxability Matrix – Library of Definitions

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- **Terms defined in SSUTA**

- **Administrative Definitions**

- Sales Price

- **Sales Tax Holidays**

- Clothing

- **Product Definitions**

- Clothing
- Computer Software
- Food

# Taxability Matrix – Tax Administration Practices

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- **Disclose State Treatment - Not SSUTA Requirements**
  - Vouchers
  - Tax Credits
  - Post-transaction Issues
  - Medical Products
  - Remote Sellers – Marketplace Sellers – Marketplace Facilitators
  - Administration of Exemptions

# Streamlined Sales Tax – Rate and Boundary Files

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- **Sellers need to know whose tax to collect and proper rate**
  - Address, 9- digit zip, 5-digit zip
  - FIPS codes
- **Need uniform format for all states**
  - Any differences = increased complexity for sellers
- **Tested and updated quarterly**
- **Lowest combined state and local rate**

# Streamlined Sales Tax – Exemption Administration

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- **Uniform Exemption Certificate**
  - Paper or electronic data elements
    - Minimal information requirements
  - 90 and 120 day rules
    - Liability relief
    - Good faith
  - ID number verification

# SSTGB Form F0003, SSUTA Exemption Certificate



## Streamlined Sales Tax Certificate of Exemption

Do not send this form to the Streamlined Sales Tax Governing Board. Send the completed form to the seller and keep a copy for your records.

This is a multi-state form for use in the states listed. Not all states allow all exemptions listed on this form. The purchaser is responsible for ensuring it is eligible for the exemption in the state it is claiming the tax exemption from. Check with the state for exemption information and requirements. The purchaser is liable for any tax and interest, and possible civil and criminal penalties imposed by the state, if the purchaser is not eligible to claim this exemption.

1.  Check if this certificate is for a single purchase. Enter the related invoice/purchase order # \_\_\_\_\_

2. A. Purchaser's name \_\_\_\_\_

B. Business address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Country \_\_\_\_\_ Zip code \_\_\_\_\_

C. Name of seller from whom you are purchasing, leasing or renting \_\_\_\_\_

D. Seller's address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Country \_\_\_\_\_ Zip code \_\_\_\_\_

3. Purchaser's type of business. Check the number that best describes your business.

<input type="checkbox"/> 01 Accommodation and food services	<input type="checkbox"/> 08 Real estate	<input type="checkbox"/> 15 Professional services
<input type="checkbox"/> 02 Agriculture, forestry, fishing, hunting	<input type="checkbox"/> 09 Rental and leasing	<input type="checkbox"/> 16 Education and health-care services
<input type="checkbox"/> 03 Construction	<input type="checkbox"/> 10 Retail trade	<input type="checkbox"/> 17 Nonprofit organization
<input type="checkbox"/> 04 Finance and insurance	<input type="checkbox"/> 11 Transportation and warehousing	<input type="checkbox"/> 18 Government
<input type="checkbox"/> 05 Information, publishing and communications	<input type="checkbox"/> 12 Utilities	<input type="checkbox"/> 19 Not a business
<input type="checkbox"/> 06 Manufacturing	<input type="checkbox"/> 13 Wholesale trade	<input type="checkbox"/> 20 Other (explain) _____
<input type="checkbox"/> 07 Mining	<input type="checkbox"/> 14 Business services	

4. Reason for exemption. Check the letter that identifies the reason for the exemption.

<input type="checkbox"/> A Federal government (Department) * _____	<input type="checkbox"/> H Agricultural Production *
<input type="checkbox"/> B State or local government (Name) * _____	<input type="checkbox"/> I Industrial production/manufacturing *
<input type="checkbox"/> C Tribal government (Name) * _____	<input type="checkbox"/> J Direct pay permit *
<input type="checkbox"/> D Foreign diplomat # _____	<input type="checkbox"/> K Direct Mail *
<input type="checkbox"/> E Charitable organization *	<input type="checkbox"/> L Other (Explain) _____
<input type="checkbox"/> F Religious organization *	<input type="checkbox"/> M Educational Organization *
<input type="checkbox"/> G Resale *	

\* see Instructions on back (page 2)

5. Identification (ID) number: Enter the ID number as required in the instructions for each state in which you are claiming an exemption. If claiming multiple exemption reasons, enter the letters identifying each reason as listed in Section 4 for each state.

ID number	State/Country	Reason	ID number	State/Country	Reason
AR			NV		
GA			OH		
IA			OK		
IN			RI		
KS			SD		
KY			TN		
MI			UT		
MN			VT		
NC			WA		
ND			WI		
NE			WV		
NJ			WY		

6. I declare that the information on this certificate is correct and complete to the best of my knowledge and belief.

Signature of authorized purchaser \_\_\_\_\_ Print name \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

## Streamlined Sales and Use Tax Exemption Certificate Instructions

Sections 1-6 are required information. A signature is not required if in electronic form.

**Section 1:** Check the box for a single purchase and enter the invoice number. If the box is not checked, this certificate is considered a blanket certificate and remains effective until cancelled by the purchaser if purchases are no more than 12 months apart, unless a longer period is allowed by a state.

**Section 2:** Enter the purchaser's and seller's name, street address, city, state, country and zip code.

**Section 3 Type of Business:** Check the number that best describes the purchaser's business or organization. If none of the categories apply, check 20 and provide a brief description.

**Section 4 Reason for Exemption:** Check the letter that identifies the reason for the exemption. If the exemption you are claiming is not listed, check "L Other" and provide a clear and concise explanation of the exemption claimed. Not all states allow all exemptions listed on this form. The purchaser must check with that state for exemption information and requirements.

**Section 5 Identification ID Number:**

**Purchaser's Instructions:**  
Enter the ID number as required in the instructions below for each state in which you are claiming an exemption. Identify the state or if a foreign ID, the country the ID number is from. If multiple exemption reasons are being claimed enter the letters identifying the reasons for exemption as listed in Section 4 for each state.

**ID Numbers for Exemptions other than resale:** You are responsible for ensuring that you are eligible for the exemption in the state you are claiming the tax exemption. Provide the ID number to claim exemption from sales tax that is required by the taxing state. Check with that state to determine your exemption requirements and status.

Foreign diplomats and consular personnel must enter their individual tax identification number shown on their sales tax exemption card issued by the United States Department of State's Office of Foreign Missions.

**ID Numbers for Resale Purchases (Including Drop Shipments):** If you are claiming a purchase is not subject to tax because it is for resale (Exemption Reason G.) and you are:

- Required to be registered in the state you are claiming the tax exemption:** Provide your sales tax ID number issued by that state. If claiming exemption in OH and registration is not required in the state, enter any tax ID number issued by OH. If claiming exemption in MI and registration is not required in the state, enter "Not Required".
- Not registered in the state you are claiming the tax exemption:** Provide your sales tax ID number issued by any state.
- Not required to register for sales tax and you do not have a sales tax identification number from any state:** Enter -Your FEIN.  
-If you do not have a FEIN, enter a different state-issued business ID number.  
-If you do not have any state-issued business ID number or FEIN, enter your state driver's license number.
- A foreign purchaser and you do not have an ID number described in 1, 2 or 3:** The following states will accept the tax ID number (e.g., VAT number) issued by your country: AR, IN, KS, KY, ND, NJ, OK, RI, SD, TN, UT, WA, WY. All other states require an ID number as listed in 1, 2 or 3.

**If you do not have any of the ID numbers listed in 1 thru 4:** You are not required to list an ID number for the following states: NE, OH, SD, WI. Enter "Not Required" and the reason for exemption for that state. All other states require an ID number.

**Seller's Instructions**  
The seller is not required to verify the purchaser's ID number or determine the purchaser's registration requirements. (GA requires the seller verify the purchaser's ID number.) The seller is required to maintain proper records of exempt transactions and provide those records to the state when requested in the form in which it is maintained. These certificates may be provided in paper or electronic format.

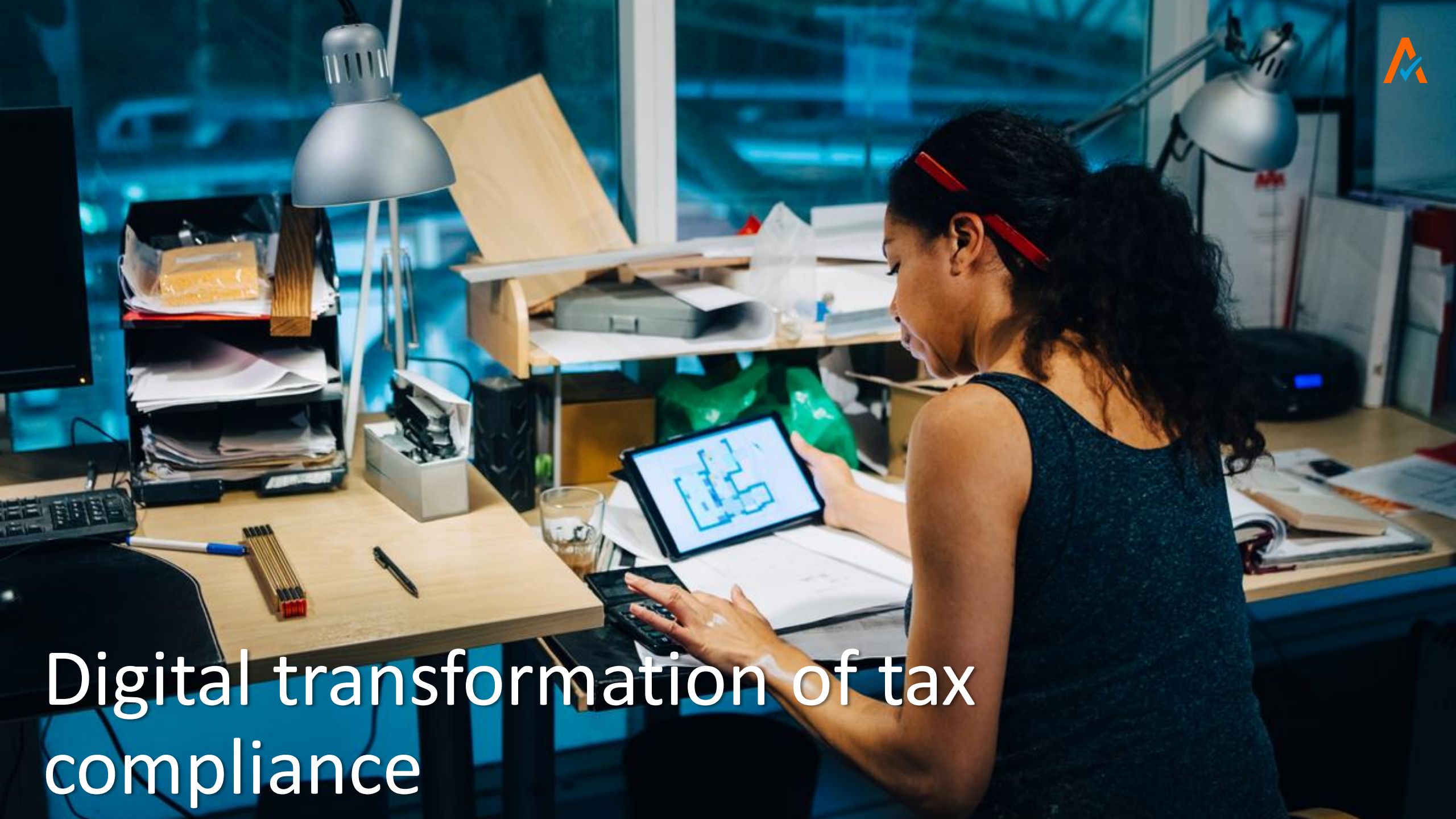
The seller is not liable for any tax, interest, or penalty if the purchaser improperly claims an exemption or provides incorrect information on the certificate, provided all the following conditions are met:

- The fully completed exemption certificate is provided to the seller at the time of sale or within 90 days subsequent to the date of sale;
- The seller did not fraudulently fail to collect the tax due; and
- The seller did not solicit customers to unlawfully claim an exemption.

**Note:** A seller may not accept a certificate of exemption for an entity-based exemption on a sale made at a location operated by the seller within the designated state if the state does not allow such an entity-based exemption.

**Drop Shipper Instructions:** The drop shipper may accept an ID number to claim the resale exemption as provided above in the Purchaser's Instructions. The ID number may include an ID number issued by another state. This may result in the same ID number being used for multiple states to claim the resale exemption (e.g., a retailer or marketplace seller may only be required to register for sales tax in one state).





Digital transformation of tax compliance

## E-invoicing requirements spread globally

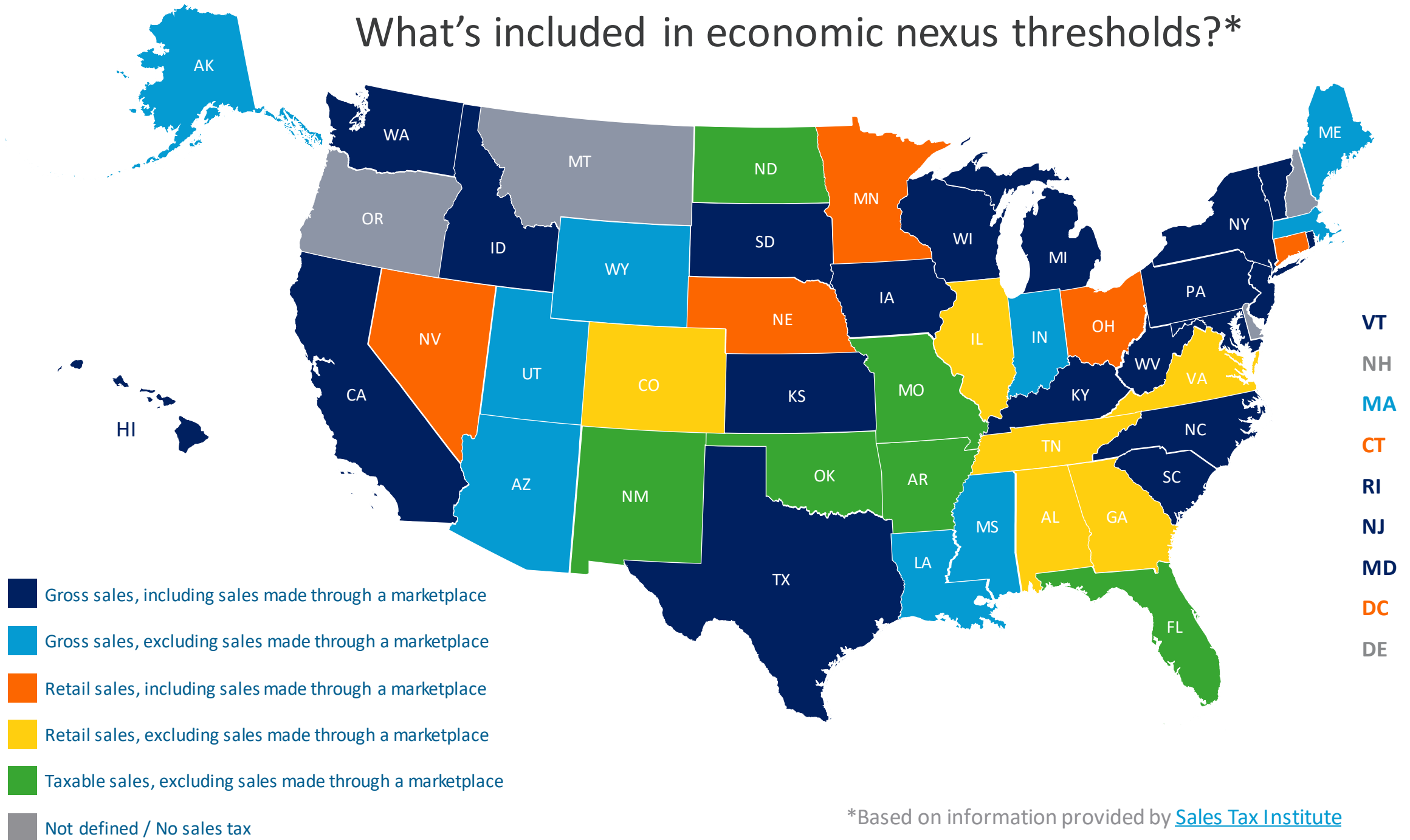
- › E-invoicing streamlines the exchange of invoice data between business partners and enables tax authorities to retrieve relevant VAT information in real time.
- › Not a change in policy, but in mechanism.
- › Portugal, Serbia, Japan, Poland, Spain, and France have recently or will soon implement e-invoicing-related policies.

## E-invoicing for U.S. businesses

- › U.S. businesses selling globally need to comply with each country's e-invoicing rules.
- › The Digital Business Networks Alliance was launched in 2023 as a voluntary framework for U.S. businesses to connect and exchange e-invoices with each other.



# What's included in economic nexus thresholds?\*



\*Based on information provided by [Sales Tax Institute](#)



## MARKETPLACE FACILITATOR LAWS

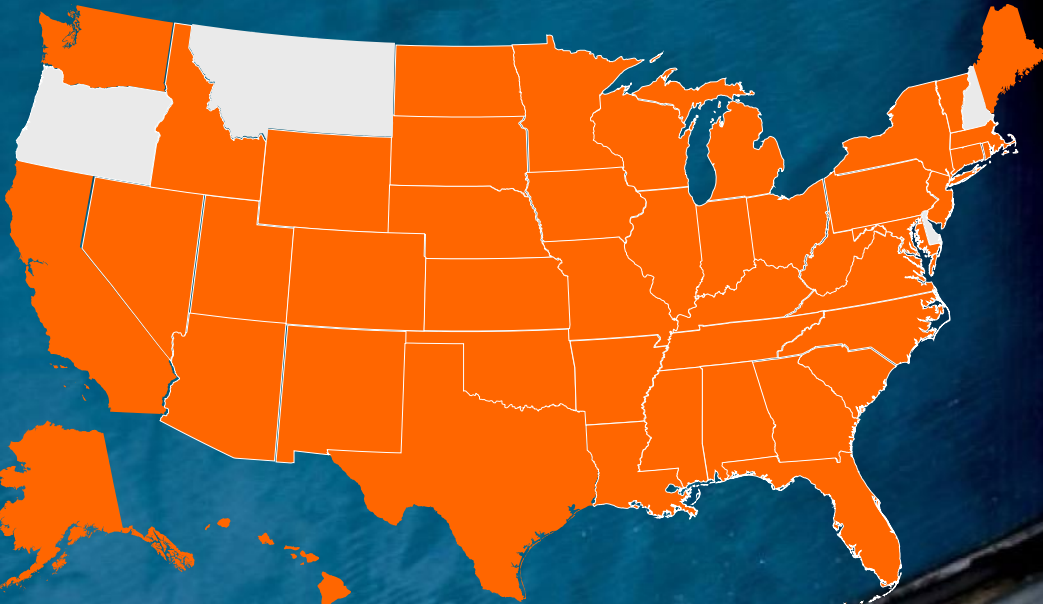
# The responsibility to collect and remit sales tax lies with facilitators

**45 states**, plus Washington, D.C., Puerto Rico, and some localities in Alaska have adopted marketplace facilitator laws.

These laws require marketplace facilitators to collect and remit sales tax on behalf of their third-party sellers.

Recent audits raise the question of who has liability when effective dates of economic nexus and marketplace facilitator laws differ.

● States with marketplace facilitator laws

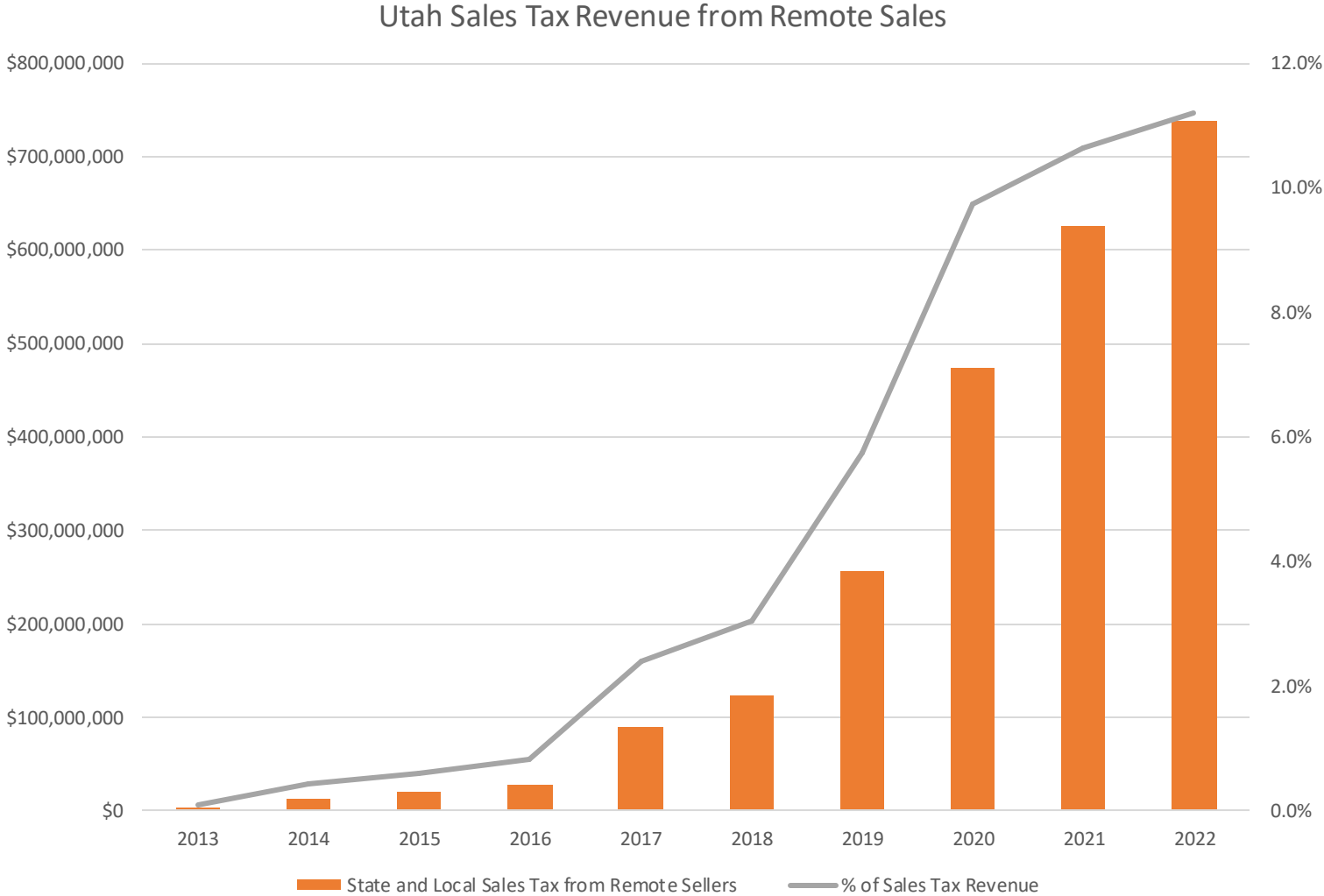


# Retail delivery fees

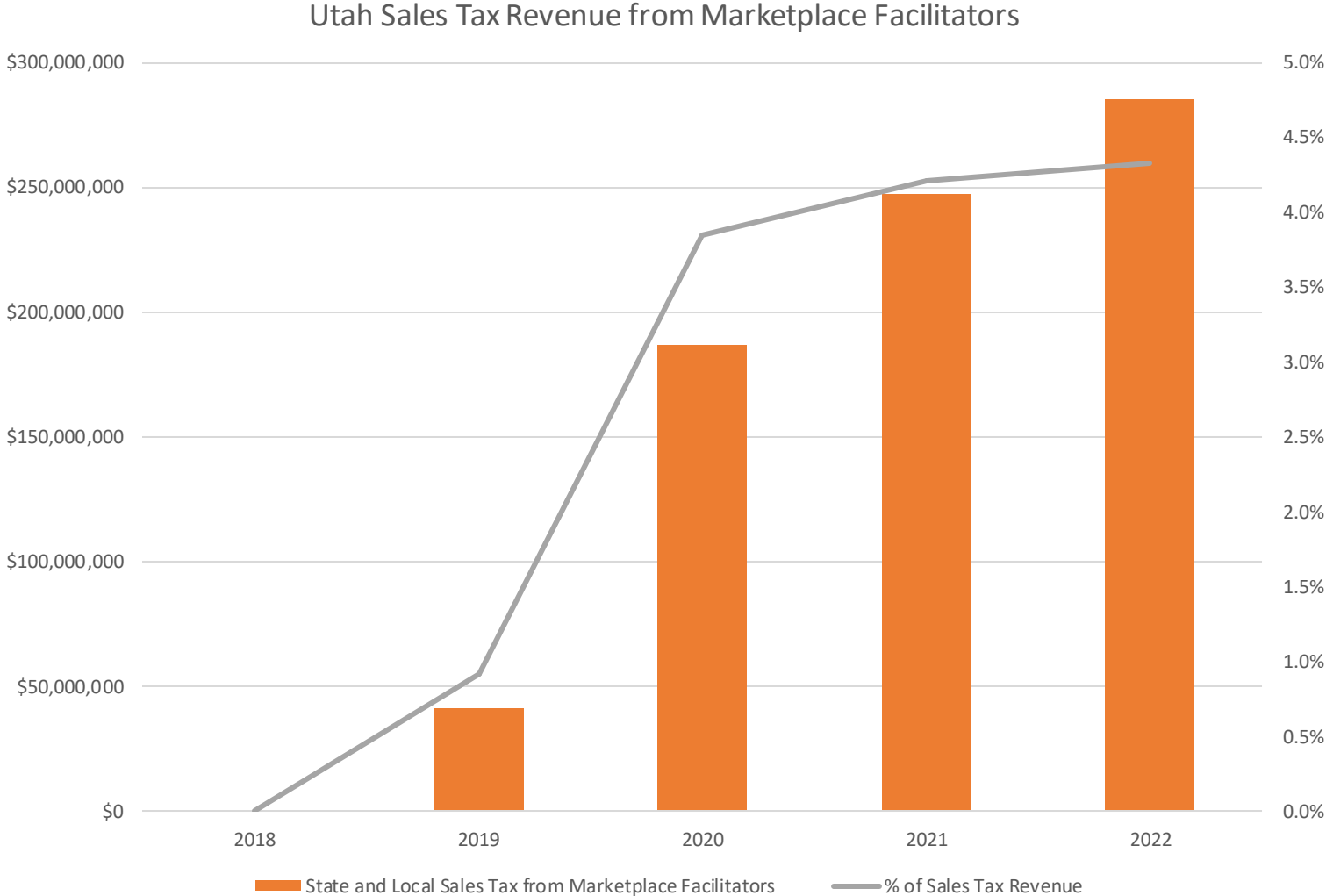
- **Colorado** simplified the requirements of its retail delivery fee, waiving the fee for qualifying new businesses and businesses with less than \$500,000 in sales during previous year.
- **Minnesota** will impose a 50-cent fee on retail deliveries of orders totaling \$100 or more, effective July 1, 2024.
  - May be imposed on delivery of clothing, even though clothing isn't taxable in Minnesota



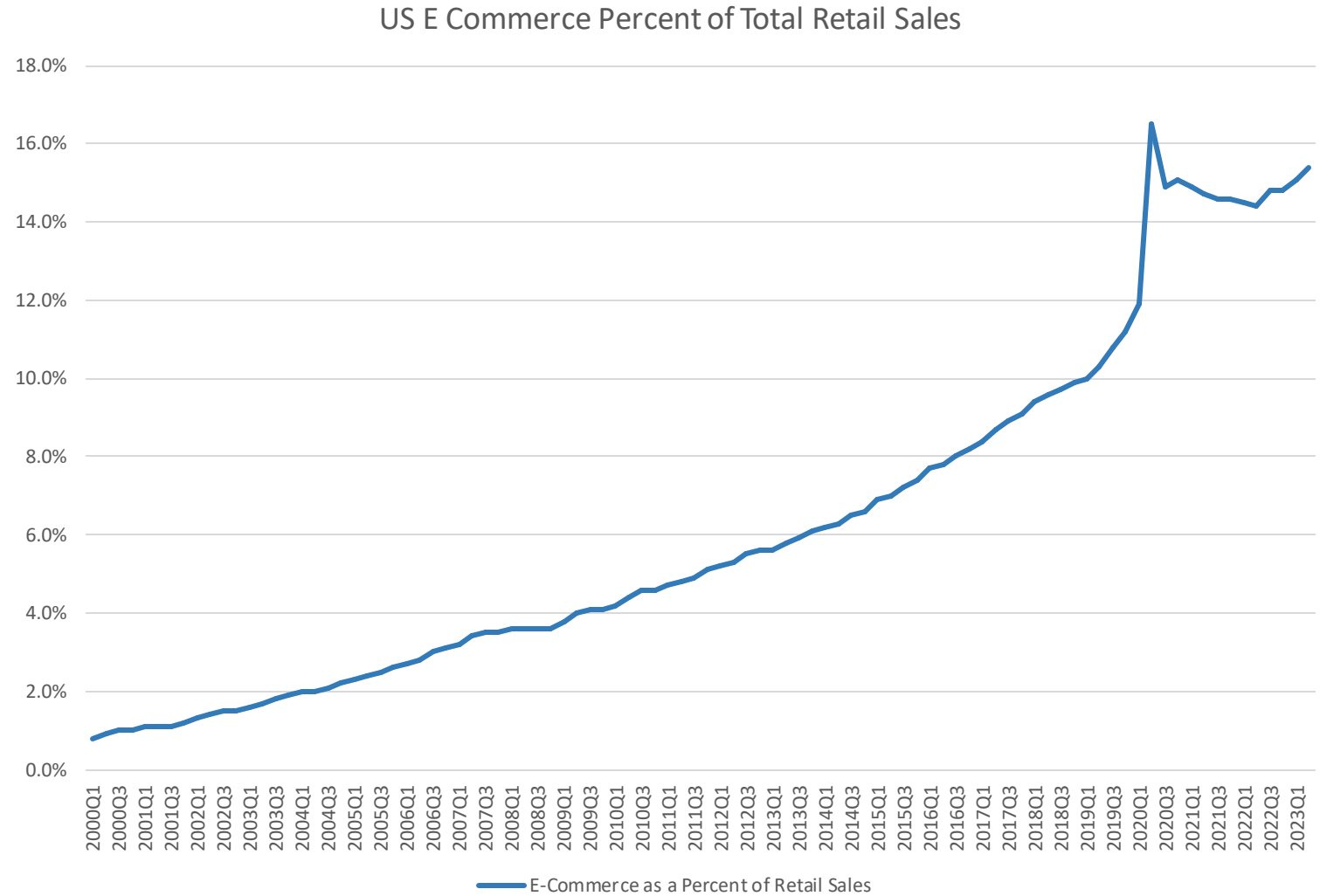
# Utah Remote Sales Tax Revenue



# Utah Marketplace Facilitators Sales Tax Revenue



# National Data- E-commerce



Source: US Census Seasonally Adjusted Quarterly US Retail Sales



# National Data – GAO Survey

- About 1/3 of state tax collections comes from sales tax
- In 2021, 33 states reported \$23 billion in remote sales tax revenue

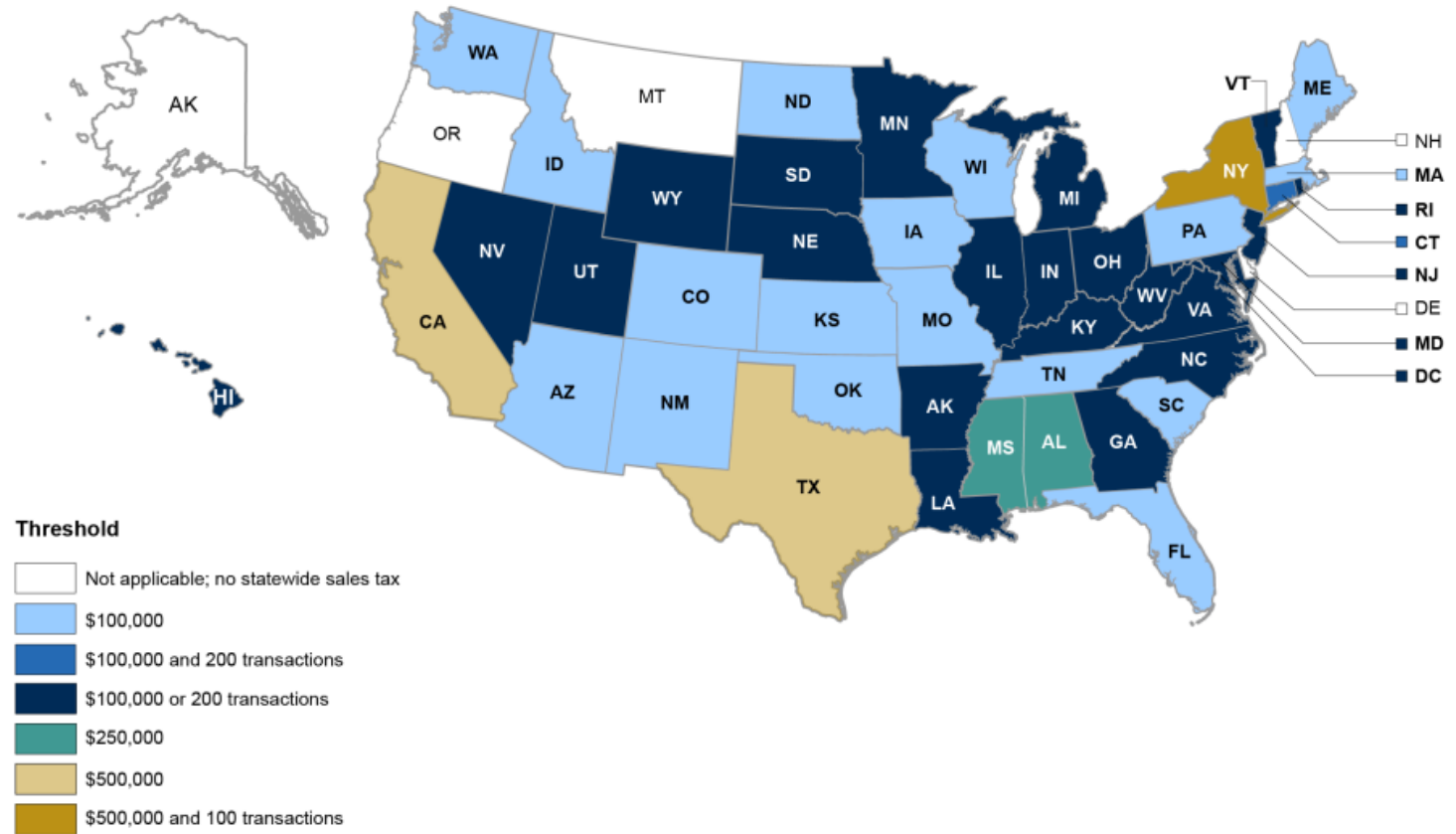
Year	Revenue from all remote sales (in millions)	Number of states reporting	Revenue from remote sales via marketplaces (in millions)	Number of states reporting
2018	\$3,200	21	\$344	5
2019	\$6,735	28	\$1,276	12
2020	\$16,328	31	\$6,529	20
2021	\$23,104	33	\$9,539	20

Source GAO Report GAO-22-10616 **Remote Sales Tax: Initial Observations on Effects of States' Expanded Authority**

# National Data- GAO Remote Sales Report

## State remote sales tax requirements vary

Figure 1: Sales Tax Economic Nexus Thresholds for Remote Sellers, as of April 2022



Source: GAO analysis of state laws. | GAO-22-106016

# Undue Burden: Common Legislative Proposals

- Differences between state sales tax base and local sales tax base
- Introducing multiple sales and use tax rates in a single jurisdiction
- Applying caps or thresholds on exempt transactions
- Using nonuniform definitions
- Sales tax holidays
- Providing inadequate notice to sellers of sales tax changes, including boundary changes

# Questions

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