

Learning from the 2019 Bloomberg Tax Survey of State Tax Departments

May 10, 2019

**Bloomberg
Tax**

Bloomberg Tax

- Provides in-depth analysis from leading practitioner-experts, practice tools, news, commentary, and primary sources.
- Areas of coverage:
 - Federal, state, and international tax
 - Estate planning
 - Financial accounting
 - Payroll

- René Blocker
 - Managing Editor, Sales, Use, and Property Tax
 - Leads a team of editors for Sales and Use Tax and Property Tax analysis
- Lauren Colandreo
 - Senior State Tax Law Editor
 - Focuses on annual state tax surveys, nexus tools, individual income tax, and estates, gifts, and trusts

- 19th annual survey and report
- Sent to senior state tax department officials in all 50 states, the District of Columbia and New York City
- Responses based on law as of Jan. 1, 2019
- Seeks to clarify grey areas in state taxation
- Updated annually to address current trends and emerging issues
- Survey Coverage
 - Nexus policies and nexus-creating activities
 - Corporate Income Tax
 - State tax addbacks
 - Apportionment & sourcing
 - Combined reporting
 - Reporting federal changes
 - Taxation of Pass-through Entities
 - Sales and Use Tax
 - Sourcing receipts
 - Sharing Economy & Marketplace Facilitator Transactions
 - Refunds, qui tam and class action lawsuits

- Tips and Tricks for using the survey
- States' responses to federal tax reform
- Economic nexus and shifted state responses after *Wayfair*
- Taxation of the sharing economy
- Transactions involving marketplace facilitators

- Learn how state revenue departments are interpreting your state's tax laws
- Identify areas where your state's policy could be developed or clarified
- Determine how other states treat a particular issue about which you are drafting legislation
- Use analysis to gain better insight into state tax trends

State Responses to Federal Tax Reform



- Expanded questions on federal tax reform gauge states' positions on major corporate tax provisions in the 2017 tax act (TCJA)
- States addressed whether they conform to 12 impacted code sections:
 - limited business interest expense deduction
 - expanded bonus depreciation
 - net operating loss limitations
 - increased asset expensing
 - repeal of the domestic production activities deduction
 - inclusion of global intangible low-taxed income (GILTI) in gross income of U.S. shareholders
 - other provisions relating to foreign-earned income

- Majority of states conform to changes made to:
 - I.R.C. § 163(j), limiting business interest expense deduction
 - I.R.C. § 179, increasing asset expensing limitation amounts
 - I.R.C. § 199, repealing the domestic production activities deduction
 - I.R.C. § 951A, enacting inclusion of GILTI in gross income of U.S. shareholders
 - I.R.C. § 965(a), enacting inclusion of certain deferred foreign income
- States least likely to conform to changes made to:
 - I.R.C. § 172, amending NOL deduction
 - I.R.C. § 199A, creating a deduction for qualified business income

- Key Takeaway: State conformity lacks consistency
 - Only 9 states said they conform to all 12 changes
 - Drastic variety noted for the number of sections, and to which specific sections, each state conforms
- Are conformity decisions being made before the impact is known?
 - Only 21 states said they have completed an analysis of the impact federal tax reform will have on their state
 - Last year, 2 states said they had started an analysis but this year said their analysis was not complete
- More guidance is welcome!
 - Just over half the states (29) said they issued guidance regarding their response to tax reform

Economic Nexus:

What's happening after *Wayfair*?

- *South Dakota v. Wayfair, Inc.*
 - U.S. Supreme Court struck down its physical presence nexus standard for sales and use tax
 - *Suggested* South Dakota's "economic nexus" standard would pass constitutional muster
 - In South Dakota, out-of-state sellers with no physical presence must collect sales and use tax when meet certain thresholds:
 - \$100,000 in annual sales;
 - OR
 - 200 separate transactions

Nexus policy based on **physical presence**

28 states

Nexus policy based on **economic presence**

33 states

NOTE: Some states provided more than one "yes" response. D.C. and NYC are treated as states for purposes of this chart. AK, DE, MT, NH, and OR do not impose a sales tax. NYC, OK, and SC did not participate in this portion of the survey. As a result, these 8 states are not included in this chart.

Source: Bloomberg Tax 2019 Survey of State Tax Departments

- We saw a dramatic shift in states' sales tax nexus standards
 - 63% of states responding have a physical presence standard
 - Down from 88% last year
 - 75% have an economic nexus standard
 - Up from 39% last year
 - 9 states changed their responses entirely from last year
 - Previously said "Yes" to physical presence and "No" to economic nexus, now say "No" to physical presence and "Yes" to economic nexus
 - 8 states now say they have both physical presence and economic nexus standards, but last year only had physical presence standard
- What happens next?

Timing of Sales Made

- Responses show variety for timeframes used
 - Current or prior calendar year
 - Prior 12 months
 - Prior 4 quarters
 - Other time period
- Most states count sales made in the current or prior calendar year

Types of Transactions

- Sales for resale, tax-exempt sales of TPP, sales of services, and sales of electronically delivered items are generally included
- Fewer states count sales of intangibles
 - Only 14 states said “Yes”

Sharing Economy & Marketplace Facilitator Transactions



Transportation Services (e.g., Uber or Lyft)



Short-Term Accommodations (e.g., Airbnb)

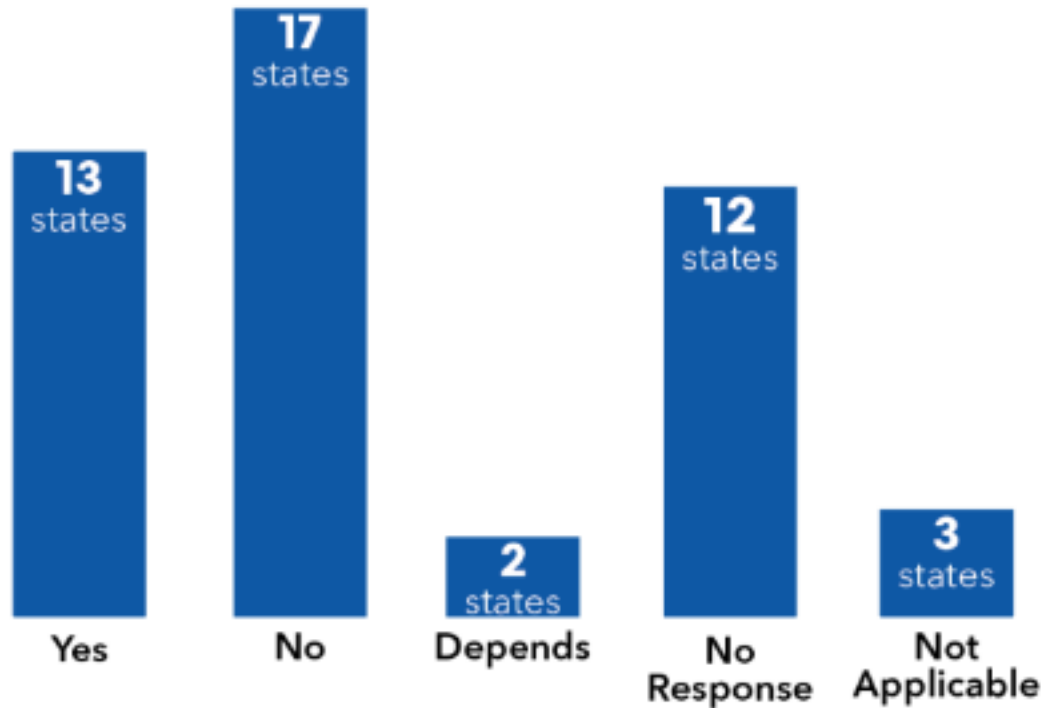


Short-Term Rental of Owners' Vehicle (e.g., Getaround, Turo)



NOTE: Some states provided more than one "yes" response. D.C. and NYC are treated as states for the purposes of this chart. AK, DE, MT, NH, and OR do not impose a sales and use tax. NYC, OK, and SC did not participate in this portion of the survey. As a result, these 8 states are not included in this chart.

Source: Bloomberg Tax 2019 Survey of State Tax Departments



NOTE: DC and NYC are treated as states for purposes of this chart. AK, DE, MT, NH, and OR do not impose a sales tax. As a result, these 5 states are not included in this chart.

Source: Bloomberg BNA 2019 Survey of State Tax

- Marketplace seller is generally relieved of liability for the tax if the third-party marketplace facilitator is required to collect and remit tax on their behalf
 - 9 states said “Yes”
 - 3 states said “No”
- Why is this important?

**For More
Information...**

The screenshot displays the Bloomberg Tax Research Platform interface. At the top, there is a blue navigation bar with the 'Bloomberg Tax' logo and several icons. Below the navigation bar, a 'State' dropdown menu is visible. The main content area is titled 'STATE' and includes a 'Remove as Homepage' link. It is divided into several sections: 'GO TO STATES' with a search bar for selecting a jurisdiction; 'GO TO STATE DOCUMENTS BY CITATION' with a similar search bar; 'EXPERT ANALYSIS' which lists 'STATE-BY-STATE' topics like Corporate Income Tax, Credits and Incentives, Estates, Gifts & Trusts, Excise Tax, Individual Income Tax, Pass-Through Entities, Property Tax, Sales & Use Tax, and Unclaimed Property, as well as 'MULTISTATE' topics like State Tax Portfolios and Sales & Use Tax Portfolios; 'THE WAYFAIR DECISION' section with links to a webinar, the decision itself, a watch page, and a roadmap; and 'CHART BUILDERS' which lists the same state-by-state topics as the Expert Analysis section. A 'Show More' link is located at the bottom right of the Expert Analysis section.

- Expert Analysis
 - State-by-state coverage of a variety of tax types and topics
- Chart Builders
 - Summary of expert analysis
- *Wayfair* Decision
 - News, analysis

Bloomberg Tax

PRACTICE TOOLS

TAX FORMS

- State Tax Forms (PDF)
- State Tax Forms (Interactive)
- Sales & Use Tax Forms (Interactive)
- Puerto Rico Tax Forms (PDF)

SAMPLE DOCUMENTS AND ILLUSTRATIONS

- Client Letters
- State Tax Diagrams

ADDITIONAL TOOLS

- Sales & Use Tax Rate Finder
- State Income Tax Sourcing Tool

STATE TAX NEXUS TOOLS

- Corporate Income Tax
- Sales & Use Tax

Concise Property
50 State Overview

PRIMARY SOURCES

LAWS, REGULATIONS & AGENCY DOCUMENTS

- Statutes [Archived Versions](#)
- Regulations [Archived Versions](#)
- Constitutions
- Agency Documents
- Streamlined Sales Tax

COURT MATERIALS

- State Tax Cases

NEWS & COMMENTARY

- Daily Tax Report: State
- State Tax Developments Tracker
- 2019 State Tax Reform Legislative Roadmap [Archived Version](#)
- State Tax Department Survey [PDF](#)
- State Tax Special Reports
- Sales & Use Tax Monitor (Archive)

- **State Tax Nexus Tools**
 - Interactive tool that pulls content from the survey as well as our expert analysis and developments tracker
- **News & Commentary**
 - Daily news reporting
 - **State Tax Developments Tacker**
 - Identifies new legislation, regulations, cases, and administrative guidance daily
 - Provides summary of development, link to source document, and references to additional coverage

NEWS & COMMENTARY

Daily Tax Report: State
State Tax Developments Tracker
2019 State Tax Reform Legislative Roadmap Archived Version
State Tax Department Survey NEW
State Tax Special Reports
Sales & Use Tax Monitor (Archive)

CHART BUILDERS

Corporate Income Tax
Credits and Incentives NEW
Estates, Gifts & Trusts
Excise Tax
Individual Income Tax
IRC Conformity
Pass-Through Entities
Property Tax
Sales & Use Tax
Unclaimed Property
50 State Overview

EXPERT ANALYSIS

STATE-BY-STATE

Corporate Income Tax
Credits and Incentives NEW
Estates, Gifts & Trusts
Excise Tax
Individual Income Tax
Pass-Through Entities
Property Tax
Sales & Use Tax
Unclaimed Property

MULTISTATE

State Tax Portfolios
Sales & Use Tax Portfolios Index Topic

Show More

EXPERT ANALYSIS

STATE-BY-STATE

Corporate Income Tax
Credits and Incentives [View](#)
Estates, Gifts & Trusts
Excise Tax
Individual Income Tax
Pass-Through Entities
Property Tax
Sales & Use Tax
Unclaimed Property

MULTISTATE

State Tax Portfolios
Sales & Use Tax Portfolios

THE WAYFAIR DECISION

Access the Day-of-Decision Webinar
Read the Decision
Visit the Wayfair Watch page
Post-Wayfair Roadmap [View](#)

State Sales & Use Tax Navigator

0 selected source(s)

- ☐ 1. Imposition of Tax
- ☐ 2. Interstate Agreements
- ☐ 3. Nexus and Constitutional Issues [Collapse Next Level](#)
 - ☒ 3.1 Nexus [Collapse Next Level](#)
 - 3.1.1 Federal Constitutional Limitations and Legislation
 - ☒ 3.1.2 State and Local Interpretation
 - 3.1.2.1 Standard for Substantial Nexus**
 - 3.1.2.2 Affiliate Nexus
 - 3.1.2.3 Click-Through Nexus
 - 3.1.2.4 Economic Nexus**
 - 3.1.2.5 Marketplace Sales
 - 3.1.2.6 Trailing Nexus
 - 3.1.2.7 Exceptions and Special Situations
 - 3.2 Reporting and Notification Regimes
 - ☐ 4. Jurisdiction and Sourcing Rules

EXPERT ANALYSIS

STATE-BY-STATE

Corporate Income Tax
Credits and Incentives [View](#)
Estates, Gifts & Trusts
Excise Tax
Individual Income Tax
Pass-Through Entities
Property Tax
Sales & Use Tax
Unclaimed Property

MULTISTATE

State Tax Portfolios
Sales & Use Tax Portfolios [Index](#) [Toggle](#)

Show More

- ☒ Sales & Use Tax Portfolios [Expand](#)
 - ☐ Portfolio 1270-1st: Sales and Use Taxes: Information Services
 - ☐ Portfolio 1300-2nd: Sales and Use Taxes: The Machinery and Equipment Exemption
 - ☐ Portfolio Description
 - ☐ Detailed Analysis
 - ☐ Working Papers
 - ☒ Portfolio 1320-3rd: Sales and Use Taxes: Information Services
 - ☒ Portfolio 1330-3rd: Sales and Use Taxes: The Machinery and Equipment Exemption
 - ☒ Portfolio 1340-2nd: Sales and Use Taxes: Deep Shipment Transactions
 - ☒ Portfolio 1350-3rd: Sales and Use Taxes: Communications Services and Electronic Commerce
 - ☒ Portfolio 1360-2nd: Sales and Use Taxes: Retail Sales Issues
 - ☒ Portfolio 1370-2nd: Sales and Use Taxes: Mergers and Acquisitions
 - ☒ Portfolio 1380-1st: Sales and Use Taxes: Cloud Computing
 - ☒ Portfolio 1420-2nd: Limitations on States' Jurisdiction to Impose Sales and Use Taxes

EXPERT ANALYSIS

STATE-BY-STATE

Corporate Income Tax
Credits and Incentives [View](#)
Estate, Gifts & Trusts
Excise Tax
Individual Income Tax
Pass-Through Entities
Property Tax
Sales & Use Tax
Unclaimed Property

MULTISTATE

State Tax Portfolios
Sales & Use Tax Portfolios

NEWS & COMMENTARY

Daily Tax Report: State
State Tax Developments Tracker
2019 State Tax Reform Legislative Roadmap [Archived Version](#)
State Tax Department Survey [View](#)
State Tax Special Reports
Sales & Use Tax Monitor (Archive)

State Sales & Use Tax Navigator

0 selected source(s)

- ☐ 1. Imposition of Tax
- ☐ 2. Interstate Agreements
- ☐ 3. Nexus and Constitutional Issues [Collapse Next Level](#)
 - ☒ 3.1 Nexus [Collapse Next Level](#)
 - 3.1.1 Federal Constitutional Limitations and Legislation
 - ☒ 3.1.2 State and Local Interpretation
 - 3.1.2.1 Standard for Substantial Nexus
 - 3.1.2.2 Affiliate Nexus
 - 3.1.2.3 Click-Through Nexus
 - ☒ 3.1.2.4 Economic Nexus
 - 3.1.2.5 Marketplace Sales**
 - 3.1.2.6 Trailing Nexus
 - 3.1.2.7 Exceptions and Special Situations
 - 3.1.2.6 Trailing Nexus
 - 3.1.2.7 Exceptions and Special Situations
 - 3.2 Reporting and Notification Regimes
 - ☐ 4. Jurisdiction and Sourcing Rules

EXPERT ANALYSIS

STATE-BY-STATE

Corporate Income Tax
Credits and Incentives [View](#)
Estate, Gifts & Trusts
Excise Tax
Individual Income Tax
Pass-Through Entities
Property Tax
Sales & Use Tax
Unclaimed Property

MULTISTATE

State Tax Portfolios
Sales & Use Tax Portfolios [Index](#) [Tagged](#)

Show More

- ☐ Sales & Use Tax Portfolios [Expand Next Level](#)
 - ☐ Portfolio 1270-1st: Sales and Use Taxes: Str
 - ☐ Portfolio 1300-2nd: Sales and Use Taxes: Ge
 - ☐ Portfolio Description
 - ☐ Detailed Analysis
 - ☐ Working Papers
 - ☐ Portfolio 1320-3rd: Sales and Use Taxes: Information Services
 - ☐ Portfolio 1330-3rd: Sales and Use Taxes: The Machinery and Equipment Exemption
 - ☐ Portfolio 1340-2nd: Sales and Use Taxes: Drop Shipment Transactions
 - ☒ Portfolio 1350-3rd: Sales and Use Taxes: Communications Services and Electronic Commerce
 - ☐ Portfolio 1360-2nd: Sales and Use Taxes: Retail Sales Issues
 - ☐ Portfolio 1370-2nd: Sales and Use Taxes: Mergers and Acquisitions
 - ☐ Portfolio 1380-1st: Sales and Use Taxes: Cloud Computing
 - ☒ Portfolio 1420-2nd: Limitations on States' Jurisdiction to Impose Sales and Use Taxes

Questions?

René Blocker
rblocker@bloombergtax.com

Lauren Colandreo
lcolandreo@bloombergtax.com