

Online Sales Taxes: What's Ahead for States



July 31, 2018



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The Advent and Growth E-Commerce

For the last six years, e-commerce grew by 15% in each year and now accounts for 11% of all retail sales.

For perspective:

The very first text message was sent in December 1992 in Finland.

August 11, 1994 – First secured internet retail transaction

July 16, 1995 – Amazon sold its first book online



The Multistate Tax Commission

- An intergovernmental state tax agency (an instrumentality of the states).
- Has a uniformity committee in which all states may participate.
- Uniformity committee studies and proposes uniform tax statutes and regulations. (For example, in 2016, the Commission adopted a uniform “doing business” or sales tax nexus statute with the participation of a number of states, including Streamlined states.)
- The Commission regularly works with other state tax organizations as well as NCSL, NGA, practitioners and taxpayers.








Multistate Tax Commission Member States

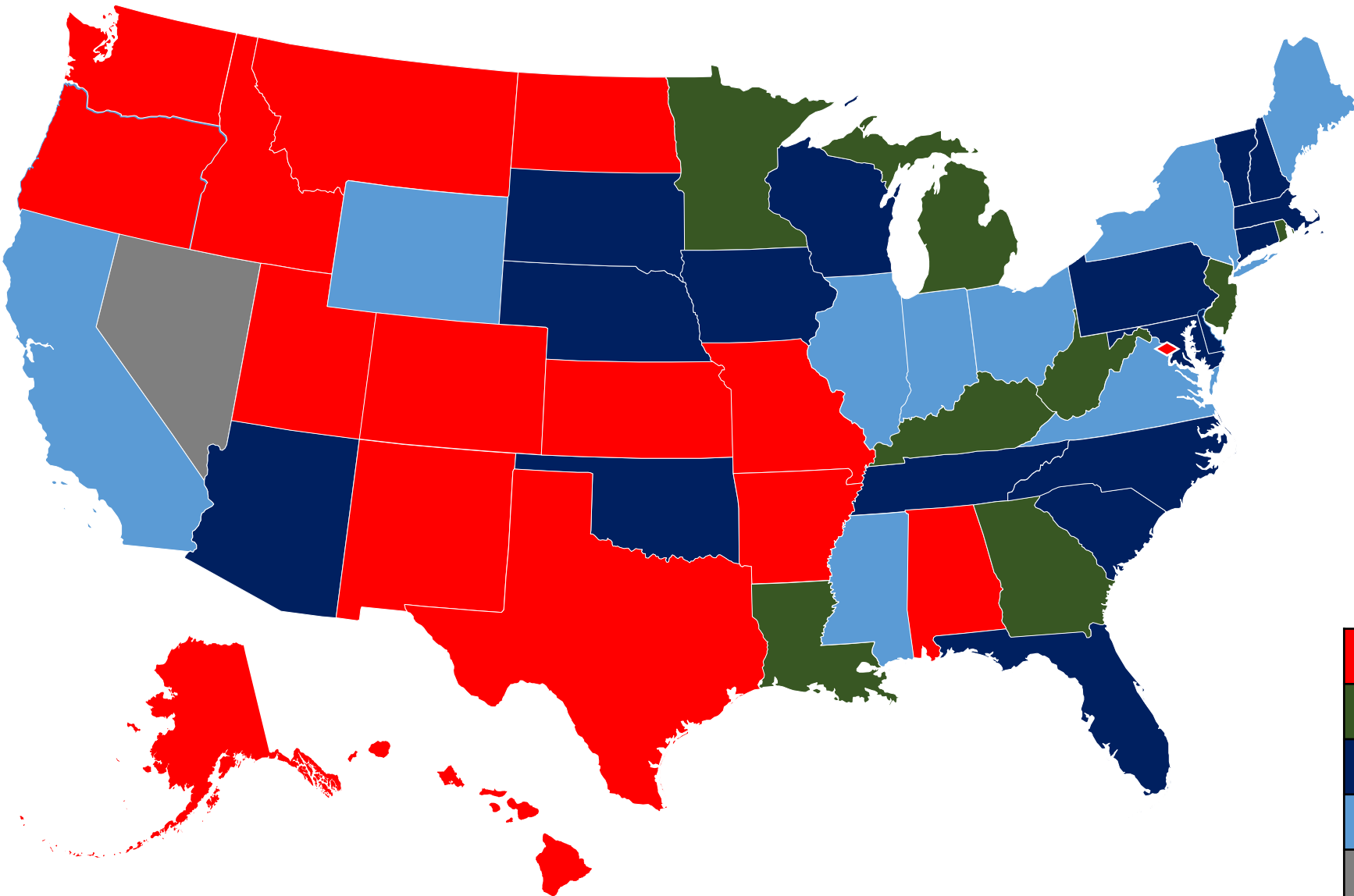
This map provides an overview of states that are members of the Multistate Tax Commission.



The [Multistate Tax Commission](#) is an intergovernmental state tax agency working on behalf of states and taxpayers to facilitate the equitable and efficient administration of state tax laws that apply to multistate and multinational enterprises. The commission was created in 1967 as an effort by states to protect their tax authority in the face of previous proposals to transfer the writing of key features of state tax laws from the state legislature. For that reason, the Commission has been a voice for preserving the authority of states to determine their own tax policy within the limits of the U.S. Constitution.

Legend

	Compact Member States
	Sovereignty Member States
	Program Member States
	Associate Member States
	Non-member States

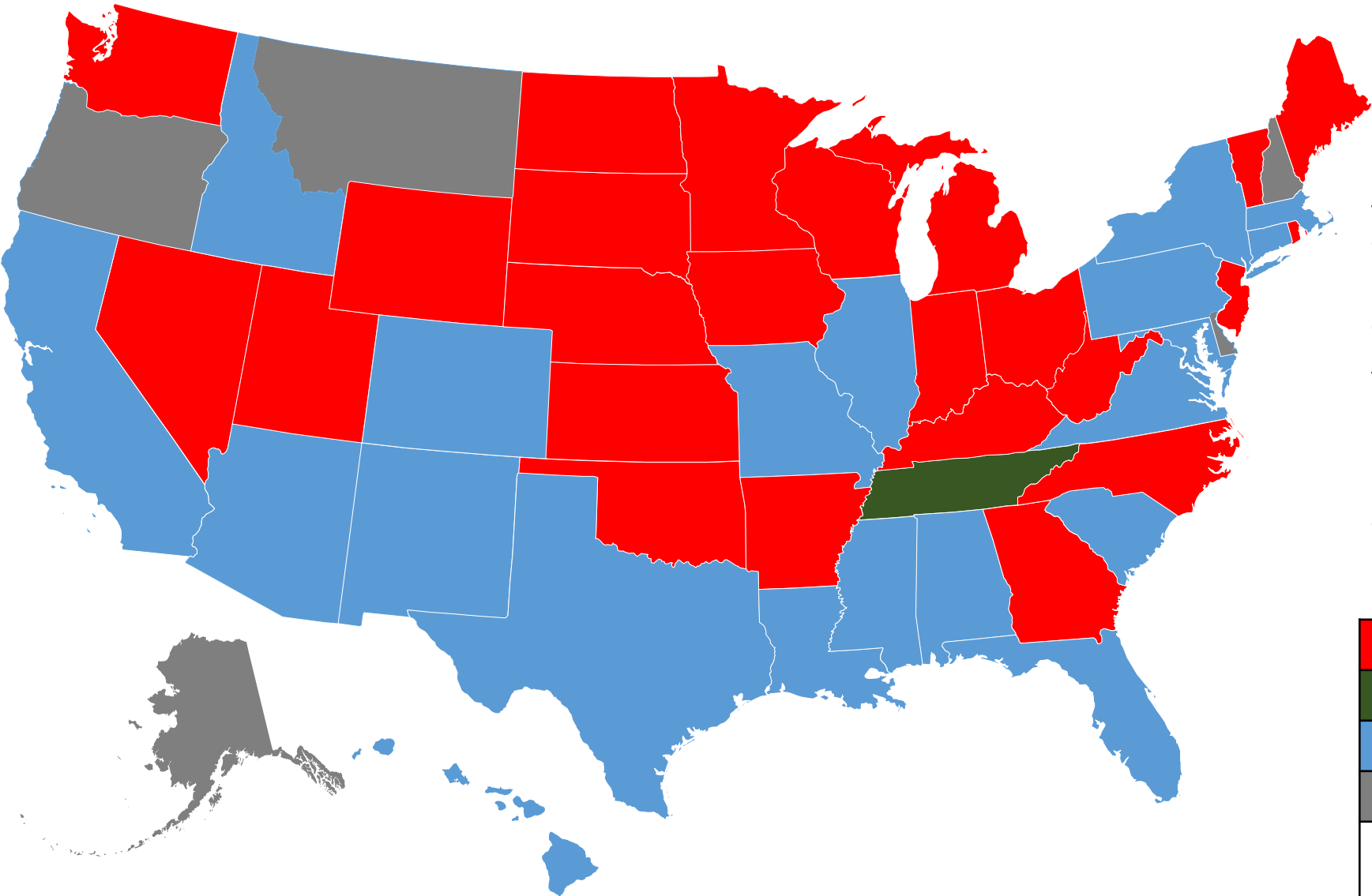


As of July 1, 2018

Streamlined Sales and Use Tax States



On June 21, 2018, the U.S. Supreme Court, in *South Dakota v. Wayfair*, ruled that states can require remote sellers to collect and remit applicable sales tax. This map provides an overview of states that are members of the Streamlined Sales and Use Tax Agreement (SSUTA).



The [Streamlined Sales and Use Tax Agreement](#) was created by the National Governors Association and the National Conference of State Legislatures in the fall of 1999 to simplify sales tax collection to overcome the complexities highlighted in *Quill*.

The agreement minimizes costs and administrative burdens on retailers that collect sales tax, particularly retailers operating in multiple states. Streamlined has proven that remote sales tax collection is not only possible, but can be done very efficiently, without creating an undue burden on retailers.

Legend

	Streamlined Sales Tax (SST) State
	Associate SST State
	Non-Streamlined Sales Tax State
	Non-Sales Tax States

*An **associate state** is a state that has achieved substantial compliance with the terms of the Agreement taken as a whole, but not necessarily each provision, measured qualitatively.

July 31, 2018

What Congress Didn't Do

As Senator Bramble expressed so eloquently before the House Judiciary Committee last week, Congress had ample opportunity to act, but didn't.

- ❖ Even in the 1960s, Congress was considering the issue.
- ❖ After Quill, the states began the Streamlined effort – but Congress offered no real encouragement.
- ❖ In 2013, the Senate finally passed a bill that the states generally agreed to support (Marketplace Fairness Act), but the House refused to have hearings or a vote—fearing that it would pass.
- ❖ An alternative bill, the Remote Transactions Parity Act, which had problems but which most states reluctantly supported also did not get a hearing.



Remote Sales Tax Collection

States Got Tired of Waiting for Congress...





2010 – Colorado’s Reporting Requirement

Requires retailers that do not collect sales or use taxes to notify any Colorado customer of the state’s use tax payment requirement and to report tax-related information to those customers and the Colorado Department of Revenue.

December 10, 2016 - *Direct Marketing Association v. Brohl*

The U.S. Supreme Court declined to review the Tenth Circuit’s decision upholding Colorado’s reporting regime against a Commerce Clause challenge.

Any out-of-state business selling into Colorado will be required to comply with the new notice and reporting requirements beginning July 1, 2017.

DMA v. Brohl

“Given these changes in technology and consumer sophistication, it is unwise to delay any longer a reconsideration of the Court’s holding in *Quill*. A case questionable even when decided, *Quill* now harms States to a degree far greater than could have been anticipated earlier.”

– Justice Kennedy in *DMA v. Brohl*, March 3, 2015



States Got Tired of Waiting for Congress...

“If we are going to do it [pass legislation to challenge *Quill* in the states], we need to have a bill ready January 1 and be ready to rock 'n' roll on it because committee hearings start the second week in January.”

– *Senator Deb Peters (S.D.), Nov. 20, 2015*

Jan. 8, 2016 – NCSL Task Force on State and Local Taxation

- Task Force members heard from a Supreme Court expert and discussed a state legislative proposal to collect sales taxes.
- Proposal was sent to legislative leaders and tax chairs across the country.



South Dakota S.B. 106 (2016)

Requires an out-of-state seller to follow all applicable procedures and requirements of law as if the seller had a physical presence in the state, if they:

- 1) Generated more than \$100,000 in revenues from sales into the state the previous calendar year, or**
- 2) Had more than 200 separate transactions (sales) into the state the previous calendar year.**



South Dakota S.B. 106

- ❖ Notably included legislature’s “findings” in legislation.
- ❖ Directed the state legal system to hear and rule on any case challenging the law “as expeditiously as possible.”
- ❖ Does not apply any provisions of the law retroactively.



S.B. 106: From Pierre to SCOTUS



Jan. 27, 2016

Senator Deb Peters introduced Senate Bill 106.



March 22, 2016

Gov. Dennis Daugaard (R) signed S.B. 106 into law.

March 25, 2016

The S.D. DOR sent notices to 206 sellers it identified as meeting the statutory requirements of S.B. 106.



S.B. 106: From Pierre to SCOTUS

April 28, 2016

The state filed a declaratory judgement action against 4 retailers for not collecting sales taxes per S.B. 106.

Sept. 13, 2017

The S.D. Supreme Court upheld the lower court's ruling that S.B. 106 was unconstitutional.

Jan. 12, 2018

SCOTUS granted South Dakota's petition.

Oct. 2, 2017

South Dakota petitioned the U.S. Supreme Court to hear the case. SLLC submitted an amicus brief.

March 6, 2017

The South Dakota 6th Judicial Circuit ruled that S.B.106 is unconstitutional.



S.B. 106: From Pierre to SCOTUS

April 17, 2018

SCOTUS heard oral arguments.

SOUTH DAKOTA
SOUTH



Supreme Court Considerations



- ❖ Dormant Commerce clause
- ❖ State sales tax simplification
- ❖ State activity – laws and regulations
- ❖ Retroactivity
- ❖ Advancements in technology
- ❖ Small seller thresholds/exemptions
- ❖ *Quill* will be applied only to traditional mail-order retailers (Solicitor General's argument)
- ❖ *Complete Auto Transit Inc. v. Brady* - Four prong test

S.B. 106: From Pierre to SCOTUS



June 21, 2018

In a 5-4 decision, the Court found that “economic and virtual contacts” are enough to create a “substantial nexus” with the state, allowing the state to require collection.



The Court Gave the States Guidelines

Although the Court eliminated the physical presence standard, it recognized that undue burdens could be sufficiently reduced through other means, or a combination of means, including:

- (1) a safe harbor for small sellers;
- (2) no retroactive tax collection;
- (3) single, state-level administration of sales taxes;
- (4) a simplified tax rate structure; and
- (5) uniform definitions and other rules.

On June 29, the NCSL SALT Task Force Adopted Principles of State Implementation post *South Dakota v. Wayfair*.

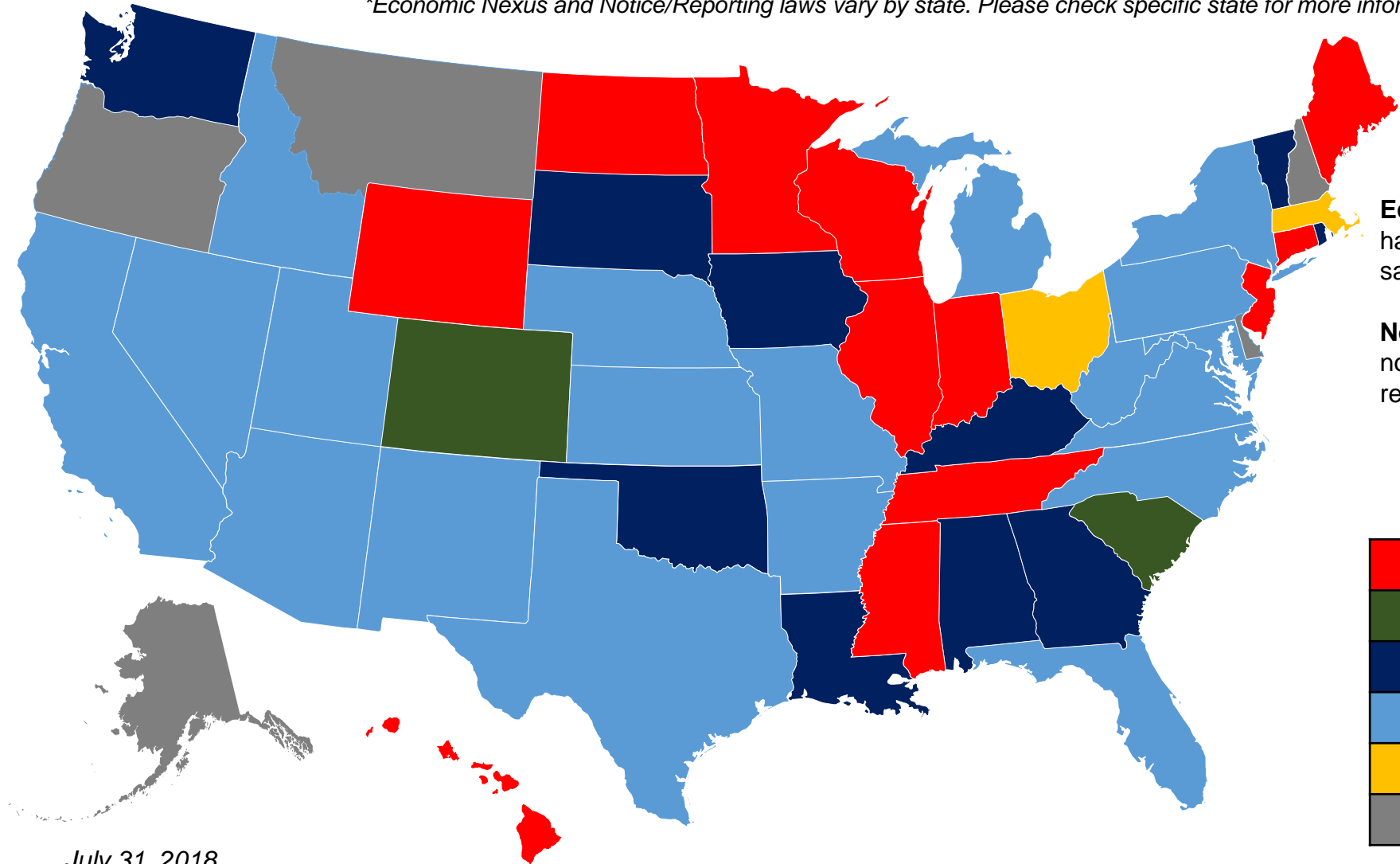


State Economic Nexus and Notice/Reporting Laws

On June 21, 2018, the U.S. Supreme Court, in *South Dakota v. Wayfair*, ruled that states can require remote sellers to collect and remit applicable sales tax. This map provides an overview of “economic nexus” and “notice/reporting” laws across the country.



**Economic Nexus and Notice/Reporting laws vary by state. Please check specific state for more information.*



Economic Nexus laws generally require businesses that have a certain amount of economic activity, such as sales volume, to collect and remit applicable sales taxes.

Notice and Reporting Laws generally impose notification and reporting requirements on out-of-state retailers that do not collect sales tax in the state.

Legend

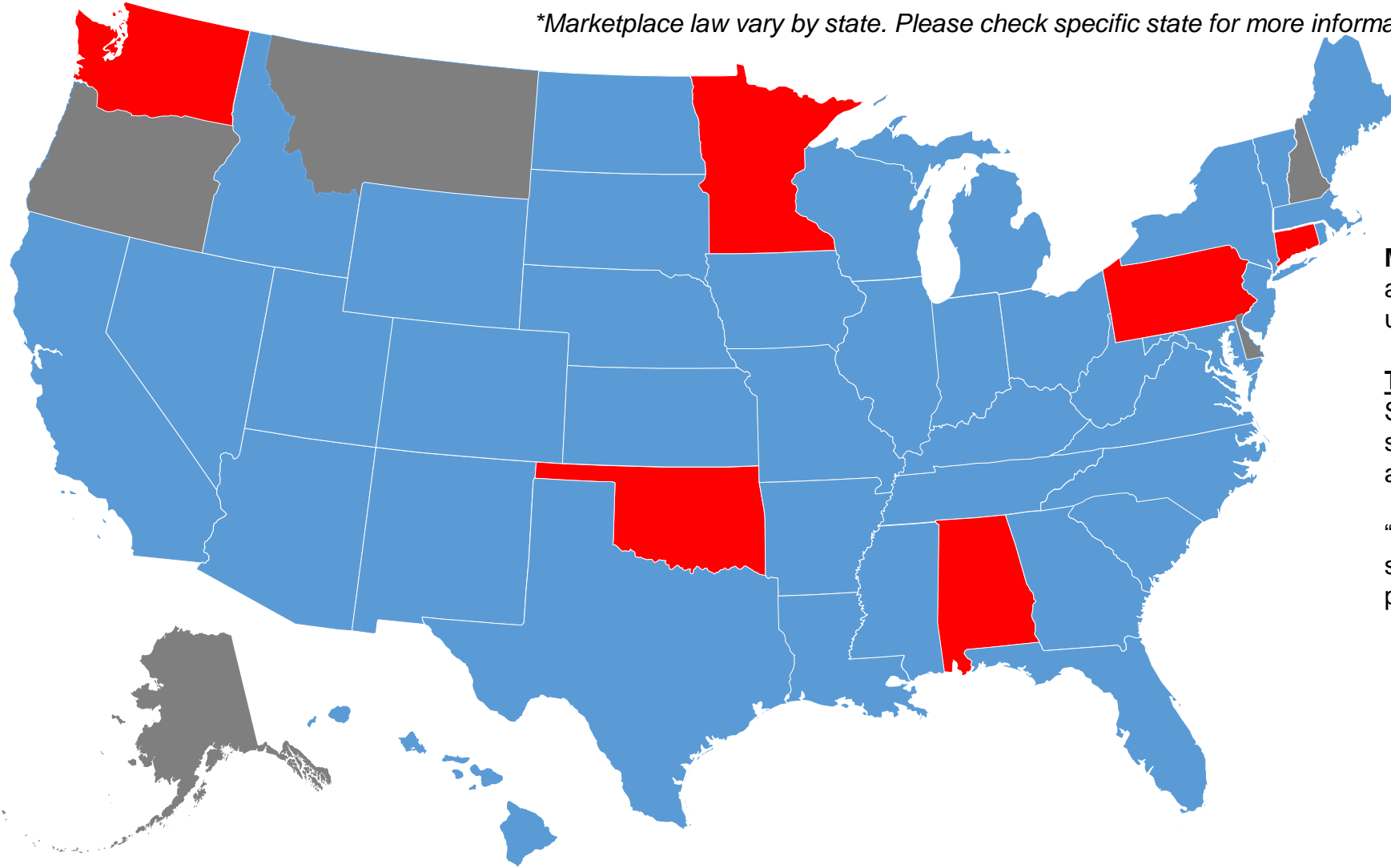
	Economic Nexus
	Notice/Reporting
	Both Economic Nexus and Notice/Reporting
	Neither Economic Nexus or Notice/Reporting
	Software Nexus
	Non-Sales Tax States

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State Marketplace Laws

On June 21, 2018, the U.S. Supreme Court, in *South Dakota v. Wayfair*, ruled that states can require remote sellers to collect and remit applicable sales tax. This map provides an overview of “marketplace” laws across the country.

**Marketplace law vary by state. Please check specific state for more information.*



Marketplace collection provisions aim to require online and other marketplaces to collect and remit sales and use tax if a retailer sells products on the marketplace.

Types of Marketplaces

Standard” or “traditional” marketplaces where multiple sellers sell products, sometimes the same products, on a single platform.

“Referral” marketplaces are where customers may search for products and are then referred to a place to purchase those products.

Legend

	Enacted Marketplace Law
	No Enacted Marketplace Law
	Non-Sales Tax States

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State Legislation: Marketplaces

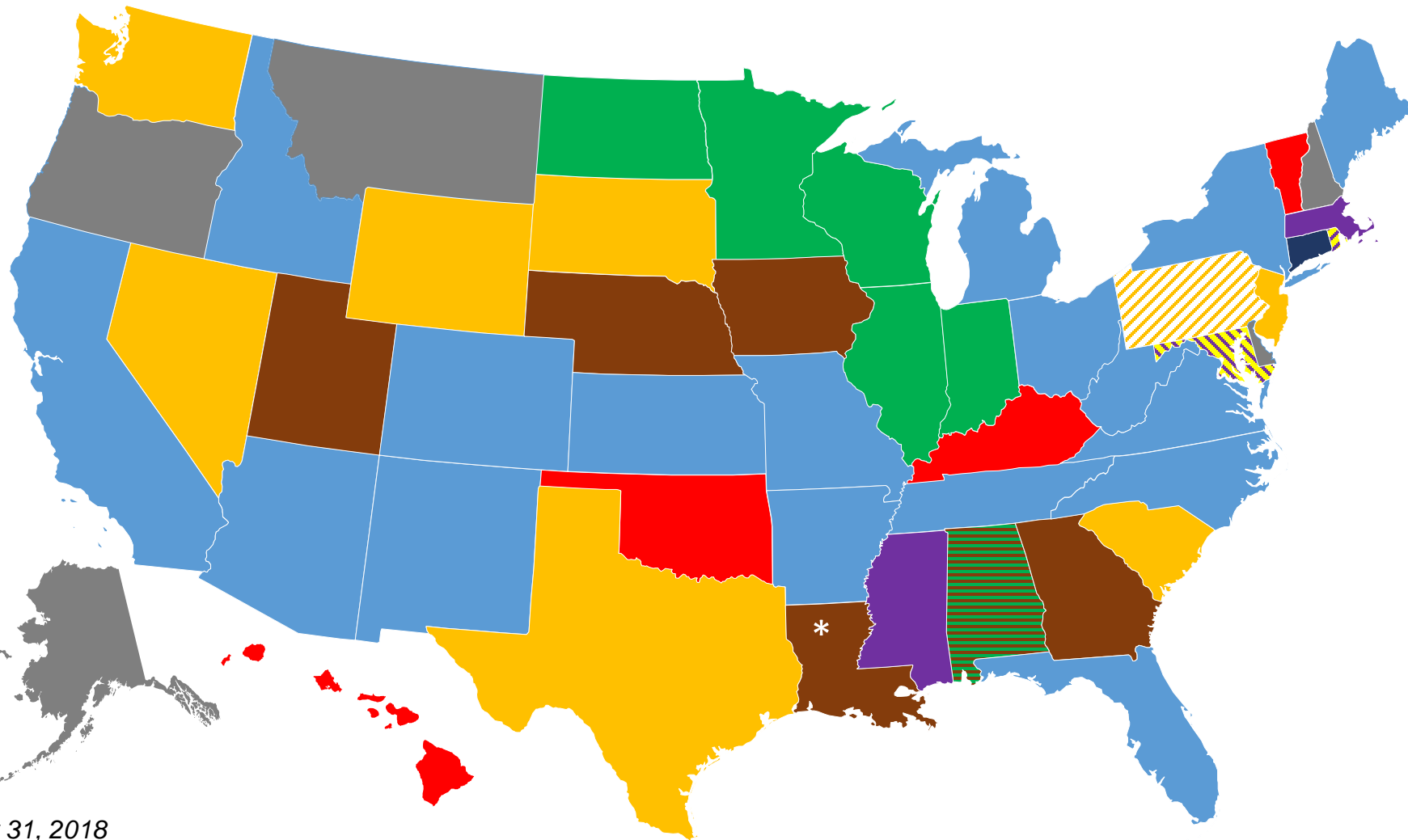


Online marketplaces are where multiple sellers sell products, sometimes the same products, on a single platform.







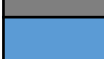

- Minnesota enacted legislation in 2017 that extended the duty to collect and remit sales tax to Internet marketplace providers located in the state unless sellers on the marketplace site are already collecting the tax.
- Washington state enacted legislation in 2017 that requires marketplaces to collect retail sales or use tax on taxable retail sales into the state or comply with certain sales and use tax notice and reporting provisions.

Remote Sales Tax Enforcement Dates

On June 21, 2018, the U.S. Supreme Court, in *South Dakota v. Wayfair*, ruled that states can require remote sellers to collect and remit applicable sales tax. This map provides an overview of when each state will begin enforcing their sales tax laws on remote sellers. Please check with individual states for specifics.



Implementation Dates

	June 21, 2018
	July 1, 2018
	Oct. 1, 2018
	Dec. 1, 2018
	Jan. 1, 2019
	State Commented/TBD
	Non-Sales Tax States
	No State Action
<small>*Tentative Date</small>	

July 31, 2018

Questions?