

PUBLICATION

Spotlight on Alabama: After *Wayfair*, Sales and Use Tax Compliance for Alabama E-Commerce

Authors: Allen Brooks Blow

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The U.S. Supreme Court's decision in *South Dakota v. Wayfair, Inc., et al.* represents a significant change in the sales tax collections and remitting responsibilities of all businesses (large or small) involved in selling at retail across state lines by means of e-commerce. Baker Donelson published a first look at this landmark decision on June 26. As a follow-up to that initial publication, this alert addresses the current status of sales and use tax compliance in Alabama in light of *Wayfair*.

Alabama was one of the leaders on the forefront challenging the physical presence standard. Alabama adopted an "economic nexus" standard by way of regulatory action by the Alabama Department of Revenue (ADOR), which was effective January 1, 2016. See, Ala. Reg. 810-6-2-.90.03.

The Alabama "economic nexus" regulation generally provides out-of-state sellers, who lack an Alabama physical presence, but who are making retail sales of tangible personal property into the state have a substantial economic presence in Alabama for sales and use tax purposes, and are required to register for a license with the ADOR and to collect and remit use tax, provided (1) seller's retail sales of tangible personal property sold into the state exceeded \$250,000 in the previous calendar year (well above the \$100,000 threshold in the South Dakota law), and (2) seller conducts one or more of a number of specified activities, which include, among others, the following activities:

- soliciting, pursuant to a contract with a cable television operator located in this state, orders for tangible personal property by means of advertising which is transmitted or distributed over a cable television system in this state;
- soliciting orders for tangible personal property by means of a telecommunication or television shopping system which is intended by the person to be broadcast by cable television or other means of broadcasting, to consumers located in this state;
- distributing catalogs or other advertising matter and by reason thereof receiving and accepting orders from residents, within the state; and
- maintaining any other contact with the state that would allow the state to require the seller to collect and remit the tax due under the provisions of the Constitution and laws of the United States.

A seller's compliance requirement to collect and remit can be satisfied using the traditional collecting, reporting, and remitting provisions of the Code of Alabama, or using the collecting, reporting, and remitting provisions under the Simplified Sellers Use Tax Remittance Act, Code of Alabama §§ 40-23-191 through 40-23-199. Under that Act, sellers may remit monthly a flat eight percent sellers use tax to the ADOR. Further, the ADOR's online filing portal, ONE SPOT, allows out-of-state retailers to file both their state and all local use taxes through the portal.

The possibility exists that since the Supreme Court's decision approved a more aggressive economic nexus statute in South Dakota, the Alabama Legislature may, perhaps, move to pass a law much closer to that of South Dakota.

On July 3, the ADOR published guidance on the impact of the *Wayfair* decision on Alabama sales and use tax compliance. The guidance indicates that the ADOR intends to apply the "economic nexus" regulation (referenced hereinabove) prospectively for sales made on or after October 1, 2018, indicating that the ADOR will not attempt to apply the regulation retroactively to those taxpayers who did not previously voluntarily comply. The guidance instructs remote sellers with Alabama sales in excess of the \$250,000 threshold to register for the Simplified Sellers Use Tax Program and begin collecting and remitting tax to the ADOR for sales made on or after October 1, 2018. Although this guidance is the ADOR's first following the *Wayfair* opinion, it appears that this guidance is intended to move toward an alignment with certain parameters the Court approved or noted in that opinion. The ADOR indicates that it will continue to study the impact of *Wayfair* and provide additional, more detailed guidance in the future.

Baker Donelson stands ready to assist businesses of all sizes in understanding and complying with Alabama's sellers use tax requirements, which arguably the *Wayfair* decision has implicitly sanctioned. If you have any questions on how the *Wayfair* decision will affect your sales business in Alabama, please contact [Ross Cohen](#), [Allen Blow](#) or [Tom Mahoney](#) (each resident in our Birmingham office), or any member of the Firm's [Tax Group](#).