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# US Sales Taxes by State

A Guide for Canadian Book Publishers  
in the Post-Wayfair Era

## US Sales Taxes by State: A Guide for Canadian Book Publishers in the Post-Wayfair Era

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# Preface

The rise of international e-commerce has led to increasing difficulty on governments around the world in determining their tax base and enforcing tax compliance with non-resident businesses. Unlike most other nations, sales and use taxes in the United States of America are administered at the state and municipal levels, with no federal sales tax currently levied. As a result, the US system is the most complex sales tax regime in place among the G7 countries, requiring extensive compliance efforts from both domestic and foreign companies alike.

This guide is a publication designed to help Canadian book publishers identify sales tax rules and practices as they apply to their operations, as both are required to remain in compliance with state and municipal legislation. The information contained herein examines sales and use taxes at the state level, from Alabama to Wyoming, and is current as of September 2019. As municipal sales tax collection thresholds typically mirror the state threshold tests and the number of taxing municipalities exceeds 10,000 unique jurisdictions, a detailed discussion of same is beyond the scope of this guide.

As this publication is general in nature, it should not be regarded as offering a complete explanation of the matters referred to and is subject to changes in laws and other applicable rules. For a more detailed discussion and analysis specific to your business situation, please contact your local chartered professional accountant or the appropriate state or municipal tax authority.

Logan Katz LLP



# Contents

<b>Overview</b> . . . . .	<b>3</b>
South Dakota v. Wayfair, Inc.—US Supreme Court, June 21, 2018. . . . .	3
<b>Nexus—Physical, Economic, Marketplace Facilitator, and More.</b> . . . .	<b>5</b>
Update on the \$300 Billion Tariff Action (List 4). . . . .	8
<b>State-by-State Examination of Sales Tax Legislation</b> . . . . .	<b>11</b>
Alabama . . . . .	11
Alaska . . . . .	12
Arizona. . . . .	12
Arkansas . . . . .	13
California . . . . .	13
Colorado. . . . .	13
Connecticut . . . . .	14
Delaware. . . . .	14
Florida . . . . .	14
Georgia . . . . .	15
Hawaii . . . . .	15
Idaho. . . . .	16
Illinois . . . . .	16
Indiana. . . . .	16
Iowa . . . . .	17
Kansas . . . . .	17
Kentucky. . . . .	18
Louisiana. . . . .	18
Maine . . . . .	19
Maryland . . . . .	19
Massachusetts. . . . .	19
Michigan. . . . .	20
Minnesota . . . . .	20
Mississippi . . . . .	21
Missouri . . . . .	21
Montana. . . . .	22

Nebraska . . . . .	22
Nevada . . . . .	22
New Hampshire. . . . .	23
New Jersey . . . . .	23
New Mexico. . . . .	23
New York . . . . .	24
North Carolina . . . . .	24
North Dakota . . . . .	24
Ohio . . . . .	25
Oklahoma . . . . .	25
Oregon. . . . .	26
Pennsylvania . . . . .	26
Rhode Island. . . . .	26
South Carolina . . . . .	27
South Dakota . . . . .	27
Tennessee . . . . .	28
Texas. . . . .	28
Utah . . . . .	29
Vermont. . . . .	29
Virginia . . . . .	29
Washington . . . . .	30
West Virginia . . . . .	30
Wisconsin . . . . .	31
Wyoming . . . . .	31
<b>Observations and Conclusions . . . . .</b>	<b>32</b>
<b>About the Authors—Troy Elliott, CPA &amp; Denis Chainé, CPA, CA . . . . .</b>	<b>35</b>
<b>References . . . . .</b>	<b>37</b>

# Overview

Sales and use tax compliance in the United States is the most complex of all western nations. In the absence of a federal and state harmonized sales tax (“HST”) or value added tax (“VAT”) regime, each state is responsible for establishing its own legislation as to the collection of sales and use taxes (henceforth “sales tax”). Additionally, municipalities also have the ability to establish their own sales tax policies in certain states, which results in more than 10,000<sup>1</sup> unique tax jurisdictions across the country. To further complicate matters, the sales tax regime has changed in light of the recent Supreme Court ruling in the case of *South Dakota v. Wayfair, Inc.*,<sup>2,3</sup> significantly expanding the scope of who is liable to collect and remit sales taxes.

This document begins with a summary of the issues and arguments presented in the *Wayfair* case before a review of different types of nexus—that is, scenarios where a business is deemed to have a significant presence in a particular state—and how these differ from the previous physical presence standard. Following such, the different sales tax regimes will be examined on a state-by-state basis.

## **South Dakota v. Wayfair, Inc.—US Supreme Court, June 21, 2018**

In the case of *South Dakota v. Wayfair, Inc.*, the court was asked to decide whether *Wayfair, Inc.* (“*Wayfair*”) had a significant business presence in South Dakota (the “*State*”), despite not having a physical presence in the state. As established under previous jurisprudence in the case of *Quill Corp. v. North Dakota*, 504 US 298 and *National Bellas Hess, Inc. v. Department of Revenue of Ill.*, 386 US 753, a business was only liable to charge and remit sales tax when said business had a physical presence in a state<sup>4</sup>—in essence, maintaining a storefront, office, or other establishment. Online sales from out-of-state businesses, such as Amazon, *Wayfair*, etc., were thus not captured under existing legislation, providing a business advantage through cheaper prices vis-à-vis in-state competition, as well as a leakage of the state’s tax basis.

*Wayfair* argued that the enforcement of a requirement to collect and remit sales tax when it maintained no physical presence in the state of South Dakota was a deviation

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<sup>1</sup> Jared Walczak and Dominic Pino, Tax Foundation, August 14, 2019, <https://taxfoundation.org/sales-tax-rates-major-cities-2019/>.

<sup>2</sup> Avalara, “South Dakota v. Wayfair, Inc.,” Avalara Tax Compliance, August 22, 2019, <https://www.avalara.com/us/en/learn/sales-tax/south-dakota-wayfair.html>.

<sup>3</sup> “South Dakota v. Wayfair, Inc. et al.,” Supreme Court of the United States of America 17–494, June 21, 2018.

<sup>4</sup> *Ibid.*

from existing legal precedent and that the case should be dismissed. South Dakota, on the other hand, argued that the previous jurisprudence was established at a time that predated the wide adoption of the Internet and that a business could not do business in a state without a permanent establishment through which to sell goods, and that as such, previous jurisprudence could no longer be relied upon to reflect the current business to consumer environment. The State argued that any business selling products to citizens within its borders, regardless of physical presence, should be taxable by the State to ensure fair competition and avoid the erosion of the State's tax base.

In a 5–4 ruling, the Supreme Court sided with South Dakota, finding that previous jurisprudence was no longer appropriate in the current environment. Accordingly, new nexus rules were introduced (see next section) which define when a business has a substantial business presence in a state and should be taxable by that state, regardless of physical presence.