



JANUARY 2019 • NO. 1

New Pennsylvania Sales Tax Rules for Out-Of-State Sellers

The Pennsylvania Department of Revenue (“DOR”) has adopted new rules explaining when out-of-state sellers are required to collect Pennsylvania sales tax on sales to Pennsylvania buyers. The new rules are effective July 1, 2019.

In its June 2018 decision in *South Dakota v. Wayfair, Inc.*, the Supreme Court of the United States overruled its long-standing precedent that a business had to have a physical presence in a state before it could be required to collect sales tax on its sales in that state. Instead, a seller’s “economic” presence or nexus was enough to require the seller to collect sales tax. The DOR has now adopted some of the same rules the Supreme Court cited in *Wayfair* in upholding South Dakota’s economic nexus law.

The new economic nexus rules require an out-of-state seller to collect sales tax on its sales to Pennsylvania buyers if the seller made more than \$100,000 in taxable sales to Pennsylvania buyers within the previous 12 months. To deflect potential claims that the new rules may impose an undue burden on out-of-state sellers, they will apply prospectively only, effective July 1, 2019, and out-of-state sellers may rely on DOR-certified service providers who will offer sales-tax processing software and assist sellers in determining what products and services are taxable. If a seller relies on the advice of a certified service provider to determine what is taxable, it will be relieved of liability if it is audited.

In the same announcement, the DOR explained how these new rules will interact with Pennsylvania’s Marketplace Sales Act, enacted in 2017 to require marketplace facilitators (such as eBay) and out-of-state sellers making more than \$10,000 per

year in Pennsylvania sales to collect sales tax or, alternatively, report its sales to the DOR (and notify its customers that it will do so), thereby allowing the DOR to assess tax directly against the Pennsylvania buyers.

For a marketplace facilitator or out-of-state seller that has neither a physical presence nor an economic presence, *i.e.*, does not make more than \$100,000 in Pennsylvania sales, the Marketplace Sales Act remains fully in effect. If the \$10,000 threshold of that Act is met, the seller must either collect sales tax or report its sales to the DOR. However, if a marketplace facilitator or out-of-state seller now has economic nexus under the new rules because it exceeds the \$100,000 sales threshold, it is required to begin collecting sales tax; it may no longer elect the alternative of reporting its sales to the DOR.

For more information on the DOR’s new rules for out-of-state sellers, please refer to [Sales and Use Tax Bulletin 2019-01](#) (January 8, 2019). Additional guidance regarding certified service providers is expected to be made available on the DOR’s website.

For additional information, please contact:

David M. Kuchinos
215.569.5729 | kuchinos@blankrome.com