

*Strong States, Strong Nation*

# State Implementation of the *Wayfair* Decision

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 NATIONAL CONFERENCE *of* STATE LEGISLATURES



# South Dakota v. Wayfair

- S.B. 106 (2016)
  - ▣ Requires 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:
    - Generated more than \$100,000 in revenues from sales into the state the previous calendar year, or
    - Had more than 200 separate transactions (sales) into the state the previous calendar year.
- 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 States Guidelines

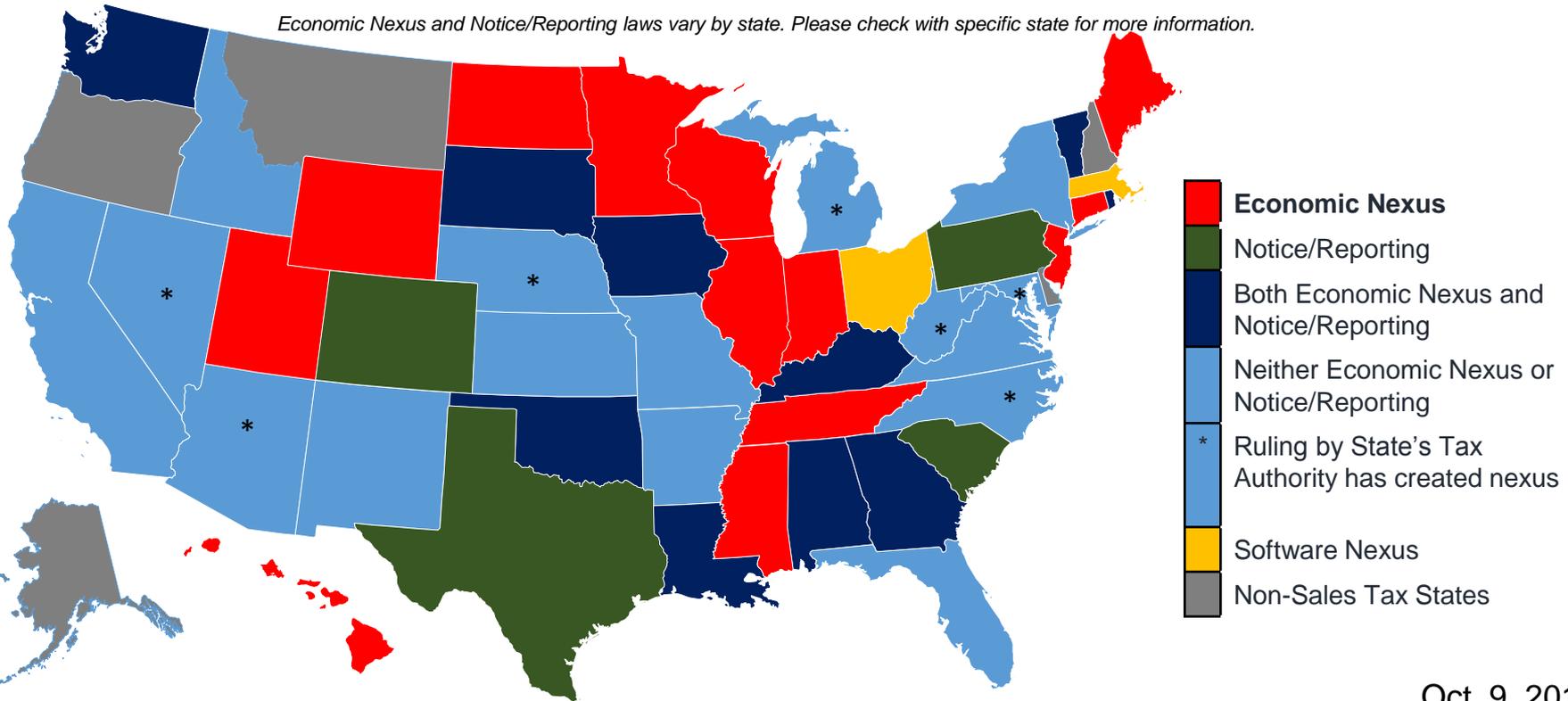
- Although, the Court eliminated the physical presence standard, it recognized that undue burdens could be sufficiently reduced through other means, or a combination of means, including:
  - ▣ A safe harbor for small sellers;
  - ▣ No retroactive tax collection;
  - ▣ Single, state-level administration of sales taxes;
  - ▣ A simplified tax rate structure; and
  - ▣ Uniform definitions and other rules

# 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 with specific state for more information.*

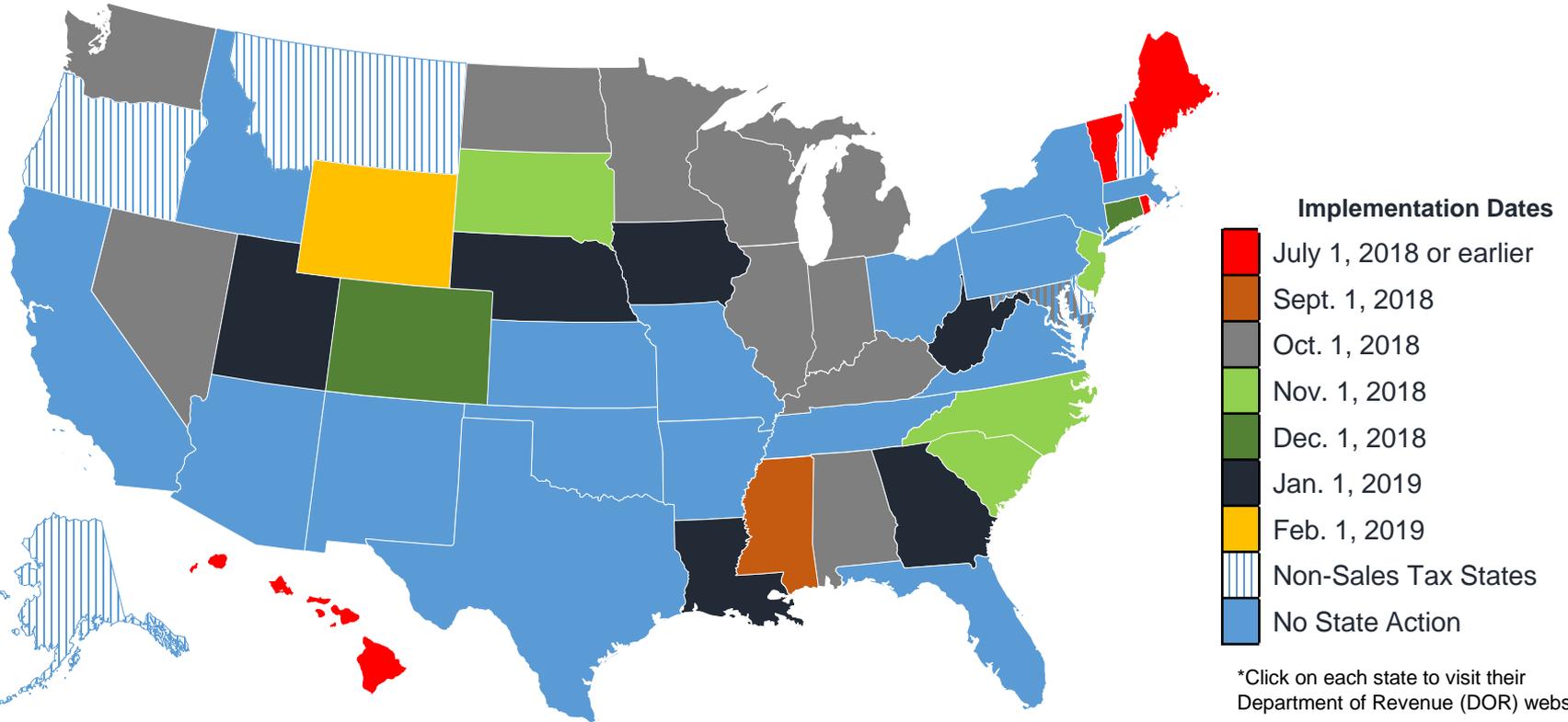


Nov. 1, 2018

# Remote Sales Tax Implementation



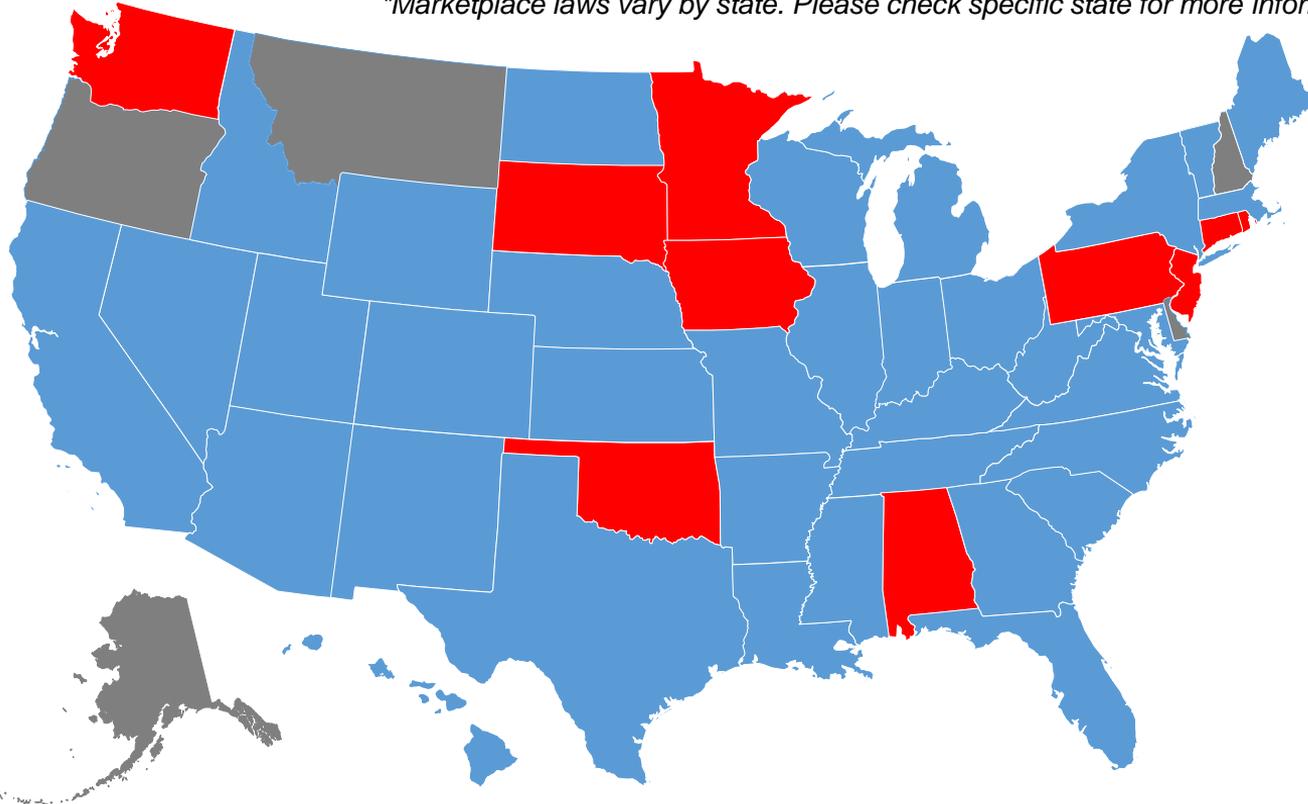
On June 21, 2018, the U.S. Supreme Court, in *South Dakota v. Wayfair*, ruled that states can require remote sellers to collect and remit applicable sales tax. This map provides an overview of when each state will begin enforcing their sales tax laws on remote sellers. Please check with individual states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



# 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 laws 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.





# State Legislation: Marketplaces

- ❑ Online marketplaces are e-commerce sites where products or service information is provided by multiple third parties, but transactions are processed by the marketplace operator.
- ❑ 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.