

New York's Sleeping Economic Nexus Law & Awakens

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A [recent announcement](#) by the New York State Department of Taxation and Finance indicates that the state is about to begin a renewed effort to require out-of-state sellers to collect and remit sales tax.

New York has had an economic nexus law on its books since 1990. It requires out-of-state sellers to register as sales tax vendors and to collect and remit sales tax where the seller (1) has more than \$300,000 of sales of tangible personal property delivered into New York *and* (2) makes more than 100 sales of tangible personal property delivered into New York in the immediately preceding four sales tax quarters. The law was not enforced, however, in light of the Supreme Court's 1992 decision in *Quill Corp. v. North Dakota* that it was unconstitutional to require sellers who lacked a physical presence in a state to collect and remit sales tax.

In June 2018, [the Supreme Court reversed its decision in Quill](#), paving the way for New York to revive enforcement of its long dormant law. In *South Dakota v. Wayfair*, the Supreme Court addressed whether South Dakota's law requiring a remote seller with economic nexus to the state to collect and remit sales tax was unconstitutional because it violated the physical presence requirement. The court concluded that a state may impose a sales tax collection obligation on a remote seller that has economic nexus, but no physical presence, in the state. The statute in that case is slightly different than the New York law. The South Dakota law provides that a remote seller has economic nexus in that state where (1) it sells \$100,000 of goods or services into the state *or* (2) it engages in 200 or more separate transactions to sell goods or services into the state. The New York State Department of Taxation and Finance's announcement states that as a result of the Supreme Court's decision in *South Dakota v. Wayfair* "existing provisions in the New York State Tax Law that define a sales tax vendor immediately became effective." The state goes on to advise sellers meeting the \$300,000/100 sales thresholds to register as vendors and indicates that additional information will be forthcoming.

While New York has long been one of the most aggressive enforcers of its sales tax laws, the New York notice is a clear indication that a new wave of enforcement activity is likely to begin (we in fact have seen anecdotal evidence that it already has begun). A retroactive application of New York's nexus rule is not, however, immune from challenge. Furthermore, remote sellers should be wary of New York's expansive interpretation of its sales tax rules, including the types of transactions subject to tax, the definition of "tangible personal property" and taxation of digital products and services.

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