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ADOR Announces Sales and Use Tax Guidance for Online Sellers

MONTGOMERY, July 3, 2018 – On June 21, 2018, the U.S. Supreme Court issued its decision in [South Dakota v. Wayfair, Inc.](#) This decision struck down the requirement that a vendor must have “physical presence” in a state to be subject to state sales and use tax registration and collection requirements.

The Department of Revenue’s existing “economic nexus” rule 810-6-2-.90.03, which took effect in January 2016, will be applied prospectively for sales made on or after October 1, 2018. While this rule technically was effective January 1, 2016, its validity was in question pending the outcome of the *Wayfair* decision. Because *Wayfair* removed the constitutional impediments to the rule, it will be enforced going forward. Remote sellers with annual Alabama sales in excess of the rule’s \$250,000 small seller exception should register for the Alabama Simplified Sellers Use Tax Program (SSUT) and begin collecting no later than October 1, 2018. Remote sellers seeking to comply with this existing rule and register to collect SSUT should visit <https://revenue.alabama.gov/wp-content/uploads/2017/07/SSUT-Application.pdf> where they will find an application form and additional information about participation in the SSUT program.

In addition to the collection requirements for remote sellers, Ala. Act 2018-539 requires marketplace facilitators with Alabama marketplace sales in excess of \$250,000 to collect tax on sales made by or on behalf of its third-party sellers or to comply with reporting and customer notification requirements. The Act mandates compliance with reporting or remitting requirements on or before January 1, 2019. However, marketplace facilitators desiring to facilitate the collection and remittance obligations of their marketplace sellers that go into effect on October 1 may begin collecting and remitting taxes on marketplace sales through the SSUT program upon completion of the application and registration process. Remote sellers who can demonstrate that a marketplace facilitator is collecting and remitting SSUT or sales tax on their Alabama sales will be relieved of the requirements imposed by rule 810-6-2-.90.03.

Recent legislative changes to the SSUT, new legislative reporting requirements for online marketplaces, combined with the Supreme Court’s *Wayfair* decision represent unprecedented change for Alabama’s sales tax. The Department is studying these changes and intends to engage the rule making process to develop additional long-term guidance on the impact of these changes. Those rules will be developed with the input of stakeholders over the next several months and into 2019. Rules addressing both collection requirements for remote sellers and collection or reporting requirements for marketplace facilitators will be posted at the following link: <https://revenue.alabama.gov/tax-policy/proposed-rule-changes/>.

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