



## Sales and Use Tax Guidance for Online Sellers

The U.S. Supreme Court issued its decision in the *South Dakota v. Wayfair, Inc.* case on June 21, 2018. 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 collection requirements.

The Department of Revenue promulgated Title 35, Part IV, Subpart 03, Chapter 09 Out of State Sales into the State (see below) to address Mississippi’s definition of economic presence nexus. This rule became effective December 1, 2017. The Department was not actively enforcing this rule prior to the Supreme Court’s *Wayfair* decision, the Department is now issuing guidance for online sellers who have economic presence nexus with the state. **The Department will allow online sellers to begin collection of Mississippi use tax for sales made on or after September 1, 2018 when such sellers register to collect Mississippi tax by August 31, 2018.**

Remote sellers with annual Mississippi sales in excess of the \$250,000 small seller exception should register for a Mississippi Use Tax Account and begin collecting tax no later than September 1, 2018. All online or remote sellers seeking to comply with these provisions should visit <https://tap.ms.gov> to register with the Department.

Online sellers seeking to determine whether they meet or exceed the \$250,000 small seller exception should make this determination based on their total sales into this state in the prior twelve-month period. A total sales measure means and includes all sales into this state, both those that are wholesale and those that are taxable under the Mississippi sales and use tax statutes. Total sales also includes any sales that are subject to any exemption provided by the Mississippi sales tax statutes.

### Chapter 09 Out of State Sales into the State

100 Sellers who lack physical presence nexus in Mississippi but who are purposefully or systematically exploiting the Mississippi market have a substantial economic presence for use tax purposes if their sales into the state exceed \$250,000 for the prior twelve months. These sellers are required to register with the Department of Revenue in order to collect and remit tax as provided by Miss. Code Ann. Section 27-67-4(2)(e).

101 Purposefully or systematically exploiting the market includes but is not limited to:

1. Television or Radio advertising on a Mississippi station;
2. Telemarketing to Mississippi customers;
3. Advertising on any type of billboard, wallscape, bus bench, interiors and exteriors of buses or other signage located in Mississippi;
4. Advertising in Mississippi newspapers, magazines or other print media;
5. Emails, texts, tweets and any form of messaging directed to a Mississippi customer;
6. Online banner, text or pop up advertising directed toward Mississippi customers;
7. Advertising to Mississippi customers through applications “apps” or other electronic means on customer’s phones or other devices; or
8. Direct mail marketing to Mississippi customers.

102 As provided by Miss. Code Ann. Section 27-67-1 et seq., sellers with a substantial economic presence must add to the sales price of tangible personal property the amount of tax imposed on the purchaser. The tax must be stated separately from the sales price on the invoice and accounted for separately on the seller’s records.

103 This rule applies to all transactions occurring on or after December 1, 2017. However, any seller who has collected and not remitted Mississippi tax on sales made before December 1, 2017 would still be liable for any tax collected.

104 (Reserved)