

Appendix A. Sales and Use Tax Nexus

“Nexus” refers to the connection a business has with a state before the state may place requirements on the business, in this case, the requirement to collect sales tax.¹

Tennessee considers a seller to have sales tax nexus in the state if it has a physical presence in the state, an affiliate that has a physical presence in the state (affiliate nexus), or one or more persons located in the state referring potential customers to the seller, whether by a link on an Internet web site or any other means (click-through nexus). If the General Assembly enables the Department of Revenue to enforce Rule 129, Tennessee would consider sellers with more than \$500,000 in sales in the state to have economic nexus. Other states have enacted marketplace facilitator nexus and cookie nexus.²

Marketplace Facilitator Nexus

A significant portion of out-of-state sellers that do not collect sales and use tax work through a marketplace facilitator like Amazon, eBay, or Etsy. Recognizing that many of these sellers have limited sales that would not establish economic nexus, states instead require their marketplace facilitator to collect sales and use tax for them. Tennessee does not have marketplace facilitator nexus; the states that do are Alabama,³ Arizona,⁴ Connecticut,⁵ Iowa,⁶ Massachusetts,⁷ Minnesota,⁸ New Jersey,⁹ Oklahoma,¹⁰ Pennsylvania,¹¹ Rhode Island,¹² South Carolina,¹³ South Dakota,¹⁴ and Washington.¹⁵

¹ 1977 Complete Auto Transit, Inc. v. Brady.

² <https://www.salestaxinstitute.com/resources/remote-seller-nexus-chart>

³ Alabama 2018 Acts, No. 18-539.

⁴ 2016 Arizona Department of Revenue, Transaction Privilege Tax Ruling 16-3.

⁵ 2018 Connecticut Public Act No. 18-152.

⁶ 2018 Iowa Acts, Chapter 1161.

⁷ 830 Code of Massachusetts Regulations 64H.1.7.

⁸ 2017 Minnesota Session Laws, Chapter 1.

⁹ 2018 New Jersey Acts, No. 4496.

¹⁰ 2017 Oklahoma Laws, Chapter 17.

¹¹ 2017 Pennsylvania Laws, 43.

¹² Rhode Island General Laws, Section 44-18.2-1 et seq.

¹³ South Carolina Revenue Ruling #18-14.

¹⁴ 2018 South Dakota Senate Bill 2.

¹⁵ 2017 Washington Laws, Chapter 28.

The Multistate Tax Commission created best practices for states considering enacting marketplace facilitator nexus.¹⁶

Cookie Nexus

A “cookie” is a text file created by a website to record user information needed to improve users’ experience with future visits to the website, remembering items in the users shopping cart if the user leaves the website but comes back later. Cookies are used by nearly all websites with online shopping carts, meaning that cookie nexus essentially imposes nexus on all internet sellers. Iowa,¹⁷ Massachusetts,¹⁸ Ohio,¹⁹ and Rhode Island²⁰ have enacted cookie nexus.

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¹⁶ <http://www.mtc.gov/getattachment/Uniformity/Project-Teams/Wayfair-Implementation-Informational-Project/White-Paper-Final-clean-v4.pdf.aspx?lang=en-US>

¹⁷ 2018 Iowa Acts, Chapter 1161, Section 203.

¹⁸ 830 Code of Massachusetts Regulations 64H.1.7.

¹⁹ Ohio Revised Code Annotated, Section 5741.01(I)(2)(h).

²⁰ General Laws of Rhode Island, 44-18.2-1(3).