

2017 legislative changes: State tax matters

Understand critical legislative updates from 2017 affecting state and local tax planning and compliance. While every effort has been made to make this guide complete and accurate, it does not supersede any firm policies or procedures.

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Federal legislation affecting SALT

Introduced federal legislation affecting SALT

Sales tax on remote sales

- Marketplace Fairness Act of 2017 (S. 976)
 - The Marketplace Fairness Act of 2017 (MFA) provides a procedure for remote sellers to collect and remit sales and use taxes with respect to sales in a jurisdiction the seller does not have nexus. The MFA grants qualifying states the authority to compel remote sellers with more than \$1 million in annual remote sales to collect and remit sales tax on taxable sales delivered to in-state purchasers. The sale would be sourced to the location where the product or service is received by the purchaser.
- Remote Transactions Parity Act of 2017 (H.R. 2193)
 - The Remote Transactions Parity Act is substantially similar to the MFA with several notable differences. Among those differences is the small seller exemption, while identical to the MFA at \$1 million

in gross annual receipts, is phased in over a three year period beginning with a \$10 million exemption the first year, \$5 million the second year, and \$1 million each year thereafter. Additionally, the small seller exemption does not apply to businesses that sell through electronic marketplaces like Amazon.com.

Nexus reform

- No Regulation Without Representation Act of 2017 (H.R. 2887)
 - The No Regulation Without Representation Act effectively codifies the physical presence standard established in the 1992 U.S. Supreme Court decision *Quill v. North Dakota*. The bill also imposes a 15-day threshold in order for an out-of-state entity to be deemed present in the remote jurisdiction. A similar bill was introduced last session.

Mobile employees

- Mobile Workforce State Income Tax Simplification Act of 2017 (H.R. 1393)
 - The Mobile Workforce Act prohibits the wages earned by an employee who performs employment duties in more than one state from being subject to state income tax in a state other than the state of the employee's residence, unless the employee is in the state for more than 30 days during the calendar year the wages are earned. The bill also exempts employers from state income tax withholding and information reporting for employees performing employment duties in a state for fewer than 30 days. An almost identical bill introduced in the last congressional session was voting out of the house. More recently, H.R. 1393 was also voted out of the house. Read more: <http://rsmus.com/what-we-do/services/tax/state-and-local-tax/income-and-franchise/house-passes-mobile-workforce-legislation.html>.

Sales and Use Tax

The state assault on physical presence nexus

Sales tax on remote sales

In his concurrence to the U.S. Supreme Court's 2015 opinion in *Direct Mktg. Ass'n v. Brohl*, the case addressing Colorado's use tax reporting law, Justice Kennedy observed that remote sellers cannot be required to collect and remit sales tax on sales to in-state purchasers and those in-state purchasers overwhelmingly fail to meet their use tax remittance responsibilities, thus resulting in an unjust loss of state tax revenues. Justice Kennedy concluded that the combination of this tax loss and far-reaching systemic and structural changes in the economic and social activities wrought by the expanding use of the internet were indicative of a need for the court to revisit the *Quill* physical presence, and called for the states to provide the court with a case suitable to address whether the rationale in *Quill* is still viable in the modern world.

Wyoming House Bill 19

- Applicable to remote sellers with over \$100,000 of sales or 200 or more separate transactions into the state. Effective July 1, 2017. (Signed March 1, 2017). Read more: <http://rsmus.com/what-we-do/services/tax/state-and-local-tax/sales-and-use-tax/wyoming-becomes-latest-state-to-challenge-quill.html>.

North Dakota Senate Bill 2298

- Applicable to remote sellers with over \$100,000 of sales or 200 or more separate transactions into the state. Delayed effective date. (Signed April 10, 2017). Read more: <http://rsmus.com/what-we-do/services/tax/state-and-local-tax/sales-and-use-tax/north-dakota-lays-groundwork-to-challenge-quill-25-years-later.html>.

Indiana House Bill 1129

- Applicable to remote sellers with over \$100,000 of sales or 200 or more separate transactions into the state. Effective July 1, 2017. (Signed April 28, 2017). Read more: <http://rsmus.com/what-we-do/services/tax/state-and-local-tax/sales-and-use-tax/indiana-enacts-economic-sales-tax-nexus-provisions.html>.

Maine Legislative Document 1405

- Applicable to remote sellers with over \$100,000 of sales or 200 or more separate transactions. Effective October 1, 2017. (Signed June 21, 2017). Read more: <http://rsmus.com/what-we-do/services/tax/state-and-local-tax/sales-and-use-tax/maine-enacts-economic-sales-tax-nexus-provisions.html>.

States providing an election between use tax reporting or remote sales tax collection

- Washington House Bill 2163
 - Election for remote sellers to collect sales tax when making over \$10,000 of Washington sales, or comply with use tax notice and reporting requirements. Effective Jan. 1, 2018. (Signed July 7, 2017). Read more: <http://rsmus.com/what-we-do/services/tax/state-and-local-tax/washington-enacts-use-tax-reporting-and-b-o-changes-for-remote-s.html>.
- Rhode Island House Bill 5175
 - Election for remote sellers to collect sales tax when making over \$100,000 of sales or 200 or more separate transactions into the state, or comply with use tax notice and reporting requirements. (Signed Aug. 3, 2017). Read more: <http://rsmus.com/what-we-do/services/tax/state-and-local-tax/sales-and-use-tax/rhode-island-provides-consolidated-website-on-new-remote-seller.html>.

For more information on economic sales and use tax nexus laws, see our periodically updated tracking article here: <http://rsmus.com/what-we-do/services/tax/state-and-local-tax/topics/nexus/economic-sales-and-use-tax-nexus-laws.html>

Expanded sales tax nexus: click-through, affiliate nexus, and use tax reporting requirements

The states have continued to push the boundaries of traditional sales tax nexus concepts in ways that are focused more on pushing the boundaries than on directly challenging the Quill physical presence standard. These expanded nexus concepts are seen through click-through nexus, affiliate nexus and use tax reporting. While states have been fairly quiet on click-through nexus and affiliate nexus in 2017, use tax reporting has begun to come into the spotlight, especially with the end of the DMA litigation. This year, Colorado's use tax notice reporting requirements finally take effect. Colorado joins Alabama, Louisiana, Oklahoma, South Carolina, South Dakota and Vermont which have enacted similar statutes.

Colorado House Bill 1193 (Signed Feb. 24, 2010)

- The DMA litigation is concluded and use tax reporting becomes effective. Read more: <http://rsmus.com/what-we-do/services/tax/state-and-local-tax/sales-and-use-tax/us-supreme-court-issues-dma-ruling.html>.

Alabama Senate Bill 86

- Effective July 1, 2017, Senate Bill 86 authorizes the Alabama Department of Revenue to implement use tax reporting requirement if the remote seller does not otherwise collect sales and use taxes. (Signed March 22, 2017).

Use tax reporting and notice requirements elections (discussed above)

- Washington House Bill 2163
- Rhode Island House Bill 5175

"Cookie nexus"

- Massachusetts Directive 17-1 (revoked)
 - Policy directive established a remote sales tax collection requirement on remote retailers who met certain sales thresholds and that "engaged in business" in the state, including through computer networks. The Massachusetts Department of Revenue revoked the directive after litigation, but is currently working on promulgating regulations addressing this issue. Read more: <http://rsmus.com/what-we-do/services/tax/state-and-local-tax/sales-and-use-tax/massachusetts-joins-wave-of-new-economic-sales-tax-nexus-states.html>.
- Ohio House Bill 49
 - The Ohio budget bill imposes a remote seller sales tax collection requirement on remote retailers that use in-state software or provides or enters into an agreement to provide a content distribution network in the state. Read more: <http://rsmus.com/what-we-do/services/tax/state-and-local-tax/ohio-enacts-broad-tax-changes-in-fy18-budget-bill.html>.

Marketplace providers

- Minnesota House File 1
 - Enacted with an effective date contingent on Quill overturned or July 1, 2018, Minnesota House File 1 requires marketplace providers to collect sales on their sales made on behalf of third-party retailers. Read more: <http://rsmus.com/what-we-do/services/tax/state-and-local-tax/minnesota-legislature-passes-tax-bill.html>.
- Washington House Bill 2163
 - Effective Jan. 1, 2018, Washington enacted provisions applicable to marketplace providers and "referrers." Marketplace providers that sell at least \$10,000 of a third-party's product through a physical or electronic marketplace must collect sales tax. Read more: <http://rsmus.com/what-we-do/services/tax/state-and-local-tax/washington-enacts-use-tax-reporting-and-b-o-changes-for-remote-s.html>.

Significant state rate changes, taxability, exemptions and tax base

New Jersey Assembly Bill 12

- Effective Jan. 1, 2017, the state of New Jersey enacted a sales tax rate reduction to 6.875 percent from 7 percent. The rate is further reduced to 6.625 effective Jan. 1, 2018. (Signed Oct. 14, 2016). Read more: <http://rsmus.com/what-we-do/services/tax/state-and-local-tax/sales-and-use-tax/new-jersey-enacts-sales-tax-rate-reduction-and-estate-tax-phase.html>.

Missouri Amendment 4

- Prohibits a new state sales or use tax on any service of activity that was not subject to a sales or use tax as of Jan. 1, 2015.

Wyoming SF 70

- Extends the sunset date for the manufacturing machinery sales and use tax exemption from Dec. 31, 2017 to Dec. 31, 2027. (Signed March 9, 2017).

Florida House Bill 7109

- Reduces the state's commercial rent tax from 6 percent to 5.8 percent beginning Jan. 1, 2018. Also provides a sales and use tax exemption for data center property purchased or leased to construct, maintain, and operate computer server equipment at a data center. Exemption requires \$150 million capital investment and certain power requirements. (Signed May 25, 2017).

Illinois Senate Bill 9

- Effective July 1, 2017, the graphic arts machinery and equipment exemption is restored after expiring in 2014. (Veto override July 7, 2017).

Other transaction tax trends in 2017

Taxes on vapor products

- While there is no federal excise tax on vapor products, more states are beginning to levy their own state and local excise taxes on these products.

Soda Taxes

- Soda taxes looked to be the “hot new tax” a few years ago before fizzling out. However, the last year has seen a resurgence of these taxes in large cities like Philadelphia and Chicago, and a growing number of smaller cities.

Practice and procedure

Recently completed amnesties

- Pennsylvania H.B. 1198
 - H.B. 1198 establishes a 60-day amnesty program ending on or before June 30, 2017. This is Pennsylvania’s first amnesty program since 2010 and applies to any tax administered by the Department of Revenue (signed July 13, 2016). Read more: <http://rsmus.com/what-we-do/services/tax/state-and-local-tax/sales-and-use-tax/pennsylvania-enacts-tax-changes.html>.

Current and upcoming amnesties

- Multistate Tax Commission Online Marketplace Seller Voluntary Disclosure Initiative
 - Limited voluntary disclosure program with participation from over a dozen states focusing on those who are remote sellers that may have established nexus by using online marketplaces or a program such as “fulfilled by Amazon” where inventory movements may have established nexus for the seller. The program runs from Aug. 17, 2017 through Oct. 17, 2017. Benefits for most sellers include no look-back (forward looking only), and therefore waiver of any interest or penalties. Collected sales tax must be remitted. Look-back may not be available for income and franchise taxes. Read more: <http://rsmus.com/what-we-do/industries/consumer-products/retail/mtc-nexus-program-offers-limited-time-amnesty-for-amazon-retailer.html>.
- New Jersey – Click-through/referral agreement amnesty
 - Limited voluntary disclosure program for remote sellers who have entered into click-through or referral agreements with in-state parties. Program runs from Aug. 21, 2017 through Nov. 21, 2017. Benefits include limited look-back from periods beginning Jan. 1, 2017 and waiver of penalties. Read more: <http://rsmus.com/what-we-do/services/tax/state-and-local-tax/sales-and-use-tax/new-jersey-offers-limited-click-through-nexus-voluntary-disclosure.html>.

- Oklahoma House 2380
 - The state of Oklahoma enacted a tax amnesty program to run from Sept. 1, 2017 through Nov. 30, 2017. Program offers waiver of interest and penalties. (Signed May 24, 2017). Read more: <http://rsmus.com/what-we-do/services/tax/state-and-local-tax/sales-and-use-tax/oklahoma-enacts-tax-amnesty-program.html>.
- Virginia House Bill 2246
 - The Commonwealth of Virginia has enacted a tax amnesty program for fiscal year 2017-1, occurring over a two month period beginning September 13, and ending November 14. The main benefits of the program include a full waiver of penalties and half of the applicable interest. (Signed Feb. 20, 2017). Read more: <http://rsmus.com/what-we-do/services/tax/state-and-local-tax/sales-and-use-tax/virginia-issues-tax-amnesty-program-guidance.html>.
- Ohio House Bill 49
 - As part of its annual budget bill, Ohio has enacted a tax amnesty to run from Jan. 1, 2018 through Feb. 15, 2018. Benefits of the program include waiver of penalty and half the interest. (Signed June 30, 2017). Read more: <http://rsmus.com/what-we-do/services/tax/state-and-local-tax/ohio-enacts-broad-tax-changes-in-fy18-budget-bill.html>.

Miscellaneous administrative changes

- California Assembly Bill 119
 - Assembly Bill 119 restructures the California Board of Equalization, divesting it of certain appeals and tax administration powers which are attributed to two new agencies. The Office of Tax Appeals will hear refund and appeal petitions, and the California Department of Tax and Fee Administration will administer various state taxes. The BOE will retain a number of functions related to property tax adjustments and assessments. (Signed June 27, 2017). Read more: <http://rsmus.com/what-we-do/services/tax/tax-alerts/california-appeals-and-tax-administration-duties-removed-from-bo.html>.
- Kentucky House Bill 453
 - Codifies the Kentucky Claims Commission, which combines the former Board of Tax Appeals, Board of Claims, and Crime Victims Compensation Board. These boards were previously combined through executive order. (Signed March 21, 2017).

Income/Franchise

Nexus

Washington House Bill 2163

- Effective July 1, 2017, House Bill 2163 subjects remote retailers to the same economic nexus standards as remote wholesalers. Remote retailers achieving any of the following thresholds are deemed to establish nexus in the state for purposes of the business and occupation tax: Washington payroll of \$53,000, property of \$53,000, or gross receipts of \$267,000. Remote retailers establishing nexus under the new standards must register with the department and report business and occupation tax under the retailing tax classification, currently imposed at a tax rate of .471 percent. These economic nexus standards became applicable to *wholesalers* in 2015.

Rate Changes (corporate and individual)

California Proposition 55

- Passed through the Nov. 2016 ballot initiative, extends the Proposition 30 individual income tax increases scheduled to expire in 2018, to 2030. Single-filers earning more than \$263,000 and joint-filers making more than \$526,000 will continue to pay an extra one percent tax on their income through 2030. Single filers making more than \$526,000 and joint filers making more than \$1,053,000 will pay the highest increase of an addition three percent.

Maine Question 2

- Passed through the Nov. 2016 ballot initiative, imposes a three percent surcharge on individual income exceeding \$200,000 for tax years beginning on or after Jan. 1, 2017.

Tennessee House Bill 534

- Tennessee House Bill 534 accelerates the phase-out of the Hall income tax on interest and dividends. The taxed is reduced by one percent each year beginning in 2017 and ending in a zero rate in 2021. (Signed April 26, 2017). Read more: <http://rsmus.com/what-we-do/services/tax/state-and-local-tax/income-and-franchise/tennessee-bill-enacts-wide-ranging-tax-changes.html>.

New Hampshire House Bill 517

- The state's Business Profits Tax rate was reduced from 8.2 percent to 7.7 percent for tax periods ending on or after Dec. 31, 2019. For periods ending on or after Dec. 31, 2021, the rate is further reduced to 7.5 percent. The state's Business Enterprise Tax rate is reduced from .72 percent to 0.6 percent for periods ending on or after Dec. 31, 2019. For periods ending on or after Dec. 31, 2021, the rate is further reduced to .5 percent. (Signed June 28, 2017).

North Carolina Senate Bill 257

- The corporate income tax rate is reduced from the current three percent rate to 2.5 percent beginning on or after Jan. 1, 2019. (Veto override on June 28, 2017).

Delaware House Bill 175

- House Bill 175 increases the state's maximum corporate franchise tax from \$180,000 to \$200,000. Also imposes a new tax of \$250,000 on large corporate filers. (Signed July 2, 2017).

Illinois Senate Bill 9

- The first Illinois budget bill in several years increases both the individual and corporate income tax rates. Individual rates are increased to 4.95 percent, and corporate income tax rates are increased to seven percent, both beginning on July 1, 2017. (Veto override July 6, 2017). Read more: <http://rsmus.com/what-we-do/services/tax/state-and-local-tax/illinois-enacts-first-state-budget-since-2015.html>.

Washington, D.C. Act 22-104

- The District of Columbia codified certain business tax rate reductions which were planned to occur over a number of years when certain revenue thresholds were met. The thresholds were met in advance and the district codified the remaining reductions. For the 2017 tax year, the unincorporated business and incorporated business franchise tax rate is nine percent, and for the 2018 tax year and after, the rate is 8.25 percent. (Signed July 20, 2017).

Apportionment and allocation

Indiana Senate Bill 440

- Senate Bill 440 requires that the moving party, whether petitioning for the use of alternative apportionment (taxpayer), or requiring the use of alternative apportionment (the state), has the burden of proof to demonstrate the standard method does not fairly represent the taxpayer's income derived by Indiana sources and that alternative apportionment is reasonable. (Signed April 13, 2017).

Tennessee House Bill 534

- Tennessee has provided an election for manufacturers whose primary business in Tennessee is manufacturing to elect a single-sales factor to apportion net worth for franchise tax purposes and net earnings for excise tax purposes. The election is available for tax years beginning on or after Jan. 1, 2017. (Signed April 26, 2017). Read more: <http://rsmus.com/what-we-do/services/tax/state-and-local-tax/income-and-franchise/tennessee-bill-enacts-wide-ranging-tax-changes.html>.

Montana House Bill 511

- Montana adopted the Multistate Tax Compact market-based sourcing provisions effective for tax years beginning after Dec. 31, 2017. (Signed May 3, 2017). Read more: <http://rsmus.com/what-we-do/services/tax/state-and-local-tax/income-and-franchise/montana-enacts-market-based-sourcing-provisions.html>.

Oregon Senate Bill 28

- Oregon Senate Bill 28 enacts market-based sourcing provisions, based on the Multistate Tax Compact provisions, for tax years beginning on or after Jan. 1, 2018. (Signed July 3, 2017).

Net Operating Losses

Montana House Bill 550

- Net operating losses generated after Dec. 31, 2017 are carried forward 10 years, an increase of three years from the current seven year carryforward. NOL carried back remains the same three years. Additionally, HB 550 limits the amount of NOL carry back to \$500,000 beginning after Dec. 31, 2017. There is currently no carry back limit. (Signed May 22, 2017).

Income Tax Base

Texas House Bill 4002

- House Bill 4002 amends the statutory definition of production as it relates to cost of goods sold for franchise tax purposes by removing the term "installation," effective Sept. 1, 2017. The Comptroller emphasized that the amendment is not a change in interpretation or application of the statute. The Comptroller's historical position has been to disallow "installation" labor as a cost of goods sold for companies that do not own the goods in which installation services were performed, generally impacting service companies. However, the Comptroller has allowed "installation" as a cost of goods sold during the construction or production process, in many cases. (Signed June 1, 2017).

Kansas Senate Bill 30

- The Kansas State Legislature overrode the governor's veto to repeal the pass-through exemption enacted by Gov. Brownback in 2012. (Veto override on June 6, 2017). Read more: <http://rsmus.com/what-we-do/services/tax/state-and-local-tax/income-and-franchise/kansas-legislature-overrides-veto-on-income-tax-revenue-raisers.html>.

Illinois Senate Bill 9

- Illinois budget bill requires section 199 addback for tax years after Dec. 31, 2017. Also effective for tax years after Dec. 31, 2017, Senate Bill 9 eliminates the prohibition on unitary business groups including members which are

ordinarily required to apportion income under different subsections of section 304. (Veto override July 7, 2017). Read more: <http://rsmus.com/what-we-do/services/tax/state-and-local-tax/illinois-enacts-first-state-budget-since-2015.html>.

City-specific individual income and employment tax

Seattle Ordinance 125339

- Establishes income tax of 2.25 percent on individual salaries in excess of \$250,000, effective Jan. 1, 2018. Read more: <http://rsmus.com/what-we-do/services/tax/additional-tax-resources/blog/july-2017/seattle-creates-waves-by-passing-tax-on-high-income-earners.html>.

Portland Ordinance 182137

- Establishes surtax on certain publicly traded company CEO salaries more than 100 times the median pay of their workers, effective Jan. 1, 2017. The surtax is 10 percent of base tax liability for pay ratios between 100:1 and 250:1, and 25 percent for pay ratios of 250:1 or greater.

Washington, D.C. Universal Paid Leave

- Establishes one of the most generous paid family leave programs in the country, joining several states, including California, New Jersey, New York and Rhode Island. Read more: <http://rsmus.com/what-we-do/services/tax/state-and-local-tax/payroll-and-employment-tax/district-of-columbia-mayor-bowser-allows-paid-leave-bill-to-beco.html>.

Credits and incentives

Illinois Senate Bill 513

- The Illinois Economic Development for a Growing Economy Tax Credit Act was extended from Dec. 31, 2016 to April 30, 2017. The program provided nonrefundable corporate income tax credits for capital and hiring investments. (Signed Jan. 20, 2017). Legislation on the governor's desk to further extend EDGE until 2022. Read more: <http://rsmus.com/what-we-do/services/tax/state-and-local-tax/illinois-extends-edge-tax-credit-program-an-additional-four-month.html>.

Maryland Senate Bill 317

- The More Jobs for Marylanders Act of 2017 enacted a comprehensive package of incentives for manufacturers for a variety of state taxes. (Signed April 11, 2017). Read more: <http://rsmus.com/what-we-do/services/tax/state-and-local-tax/income-and-franchise/maryland-enacts-favorable-tax-incentives-for-manufacturers.html>.

Tennessee House Bill 534

- Tennessee House Bill 534 provides a single-sales factor election for taxpayers whose principal business is manufacturing effective for tax years beginning on or after Jan. 1, 2017. (Signed April 26, 2017). Read more: <http://rsmus.com/what-we-do/services/tax/state-and-local-tax/income-and-franchise/tennessee-bill-enacts-wide-ranging-tax-changes.html>.

Arizona Senate Bills 1416 and 1292 and House Bill 2191

- Arizona enacted a number of taxpayer-favorable credits and incentives. (Signed May 22, 2017). Read more: <http://rsmus.com/what-we-do/services/tax/credits-and-incentives/arizona-enacts-taxpayer-favorable-credit-and-incentive-modifications.html>.

Illinois Senate Bill 9

- Restores the Illinois research and development credit that sunset in 2015. The credit is equal to 6.5 percent of qualifying expenditures for research activities. (Veto override July 7, 2017). Read more: <http://rsmus.com/what-we-do/services/tax/state-and-local-tax/illinois-enacts-first-state-budget-since-2015.html>.

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