2017 Sales Tax Changes

2017 is shaping up to be a BIG year for sales and use tax

It should come as no surprise that 2017 will be a year of change. While what's emerged from our recent presidential election will continue to take center stage, changes to sales tax are making their own waves and reshaping the way companies in many industries manage their business. Once again, we created a guide that highlights many of the big changes in the works, from new taxes on soda to untapped revenue streams from marijuana sales and more.

It's by no means exhaustive, but it sheds light on emerging trends in sales tax laws. 2017 will make headlines in the world of sales tax. This guide explains why.

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Across the U.S. – What's Congress doing about online sales tax?

It's anyone's guess what federal legislators will do with this issue in 2017. There are currently four pieces of legislation awaiting consideration on Capitol Hill: **the Marketplace Fairness Act, the Remote Transactions Parity Act, and the Online Sales Simplification Act,** which would all authorize states to collect remote sales tax to some degree; and the **No Regulation without Representation Act,** which would definitively prevent that. Here's an overview of the proposed legislation:

Marketplace Fairness Act of 2015 (MFA) – *the proposal that launched a thousand debates*

In 2015, several members of the Senate introduced a revised Marketplace Fairness Act bill, legislation similar to the original MFA proposal in 2013. Essentially, this legislation grants states authority (should they meet certain criteria) to require non-exempt remote sellers to collect sales tax. If passed, the MFA would broaden state authority to require remote sellers to collect sales tax regardless of whether that business has a physical presence within those states. Pretty straightforward, right?

Here's where it gets complicated. The MFA would not override current state and local statutes surrounding product and service taxability, tax holidays, exemptions, or related rates, boundaries and rules. The bill would also authorize states to require remote sellers to collect and remit sales tax in accordance with state and local laws, as long as those states are in full compliance with the Streamlined Sales and Use Tax Agreement, or a member of the Streamlined Sales Tax (SST) organization, or implement a minimum set of simplification measures.

Not all out-of-state businesses would be subject to the MFA and neither would all sales transactions.

Here's what everyone wants to know: How soon would the MFA go into effect? There's no way to accurately predict. Even if this bill is signed into law in 2017, it may still be challenged on grounds of constitutionality. Legal challenges would likely delay enactment.

For more information on the MFA, read the [White Paper.]

Remote Transactions Parity Act of 2015 (RTPA) – *same idea as MFA but friendlier to small business*

The Remote Transactions Parity Act (RTPA) is similar to the MFA in that it would allow

states to apply sales tax to remote sales. As with MFA, the 23 member states of the Streamlined Sales Tax (SST) initiative would be authorized to require remote sellers to collect and remit sales tax soon after legislation is passed. Non SST member states would have to adopt and implement certain minimum simplification requirements.
The small remote seller exception is different from the small seller exception under MFA. In the Remote Transactions Parity Act, remote sellers must have gross annual receipts exceeding:

» $10,000,000 in the calendar year preceding the first calendar year any State can exercise the authority provided under this Act.

» $5,000,000 in the "second calendar year any State can exercise the authority provided under this Act."

» $1,000,000 for the "third and subsequent calendar year any State can exercise the authority provided under this Act."

In addition, the RTPA would give catalog-only sellers a break, allowing them exemption from the law. The RTPA, like MFA, would have no effect on nexus; sales made to states with no sales tax would not be subject to tax. In addition, it would create no new taxes and have no effect on intrastate sales or the Mobile Telecommunications Sourcing Act.

Learn more here.

Online Sales Simplification Act (OSSA) – *not as simple as the title suggests*

According to lawmakers, OSSA is grounded on two key principles: Simplicity, particularly for small businesses, and No Regulation without Representation. Under OSSA, a state would collect tax only on sales originating in the state, meaning the seller has a physical presence there.

However, the issue of remote sales tax remains a divisive one among federal lawmakers. As such, the most current version of OSSA 2016 exists in draft form only. As explained in the OSSA discussion draft, "A state may impose a sales, use or similar tax on a seller, or impose on a seller an obligation to collect such a tax imposed on a purchaser, with respect to remote sale of a product or service only if–Under OSSA:

1. The State is the origin State for the remote sales (where the company had the most employees during the previous calendar year);
2. The tax is applied using the origin State's tax base applicable to non-remote sales; and
3. The State participates in the State tax clearinghouse"

The clearinghouse

Central to the plan proposed in OSSA is a state tax clearinghouse, "to be established by the participating States." The clearinghouse would collect sales and use tax revenue from state revenue offices and distribute that revenue to participating states. It would also create audit regulations and reporting requirements. Participation in the clearinghouse, although encouraged, would not be mandatory.

Rates and rules

For states participating in the clearinghouse, remote sales would be taxed at a single statewide rate established by the destination state (the location of the consumer). In this scenario, a seller based (with the most employees) in New York City would collect the California single statewide rate on a sale to a consumer located in California. If the destination state doesn't participate in the clearinghouse, the origin state's normal tax rate (the combined state and local rate) would apply. In this case, the New York seller would apply the New York City rate to the California consumer's sale.

Retailers would rely on the origin state's product taxability rules to determine which goods and services are taxable and which are exempt. In both of the above examples, New York and not California product taxability rules would apply.

OSSA also presents a plan for dealing with buyers and sellers located in the five states without a general sales tax: Alaska, Delaware, New Hampshire, Montana and Oregon.

Learn more [here.]()

No Regulation without Representation Act – *takes the legs out from under each proposition*

In the summer of 2016, a fourth piece of legislation was introduced, this one seeking to prevent states from taxing any seller lacking a physical presence. The **No Regulation without Representation Act** of 2016 seeks to codify the physical presence requirement upheld by the U.S. Supreme Court in 1992 (Quill Corp. vs North Dakota case).

Taxation with representation only

According to bill sponsor Congressman Jim Sensenbrenner (R-Wis), "States should not have the ability to tax non-citizens, plain and simple. This legislation would help reduce burdensome overregulation, keep government overreaches in check, and ensure that only residents of a state are subjected to tax obligations." Under his bill, "a state may not obligate a person to:

» Collect a sales, use or similar tax;

» Report the sale;

» Assess a tax on a person; or

Treat the person as doing business in a state for purposes of such tax, unless the person is physically present in that state during the relevant tax period.

The bill also establishes a de minimis physical presence under which "physical presence" does not include any of the following:

Referral agreements with in-state persons who receive commissions for referring customers to the seller

» Presence for less than 15 days in a taxable year

» Product delivery in-state by a third-party

» Internet advertising services not exclusively directed towards, or exclusively soliciting, in-state customers

Finally, it protects non-sellers: "Sales tax payment, collection or reporting obligations may only be imposed on a purchaser or seller having a physical presence in the taxing State." It would take effect January 1, 2017 – long before a challenge to Quill is likely to make its way to the Supreme Court.

Possible fallout?

It's too early to tell if this measure will have any traction. However, if enacted, the click-through and affiliate nexus laws in place in numerous states would likely be trumped by the bill's de minimis provision. Notice and reporting requirements such as the one established in Colorado would also be preempted by the physical presence requirement. And there would be little point in continuing the legal battles currently underway over the Alabama and South Dakota laws (with an eye to reverse Quill), as the federal law would take precedence over the Supreme Court.

Nexus Perplexus(or states take matters into their own hands…)

According to MultiState Insider, 2016 ushered in a lot of sales tax nexus legislation, as states attempted to overturn Quill Corp. vs North Dakota. In total, a whopping 42 bills were introduced in 16 states, but only four bills were ultimately enacted (Louisiana, Oklahoma, South Dakota, and Vermont) and one still in play (Ohio).

Here are a few of the highlights from key states:

South Dakota: SD stipulated that an out-of-state seller has nexus if their gross sales revenue exceeds $100,000 in the previous year or if they engaged in 200 or more separate transactions. Litigation is already under way, with the state having sued three remote sellers earlier this year.

Alabama: AL adopted an economic nexus position–asserting substantial nexus based on economic activity rather than physical presence–via the regulatory process. Litigation is currently underway.

Tennessee: Like AL, TN proposed a rule that asserts economic activity, rather than physical presence, establishes an obligation for online sellers to collect. This is in step with a growing movement by states to capture more sales and use tax revenue from sales by out-of-state sellers. Learn more here.

Colorado and **Florida** are also involved in legal disputes that could find resolution with the Supreme Court and the overturning of Quill Corp. v. North Dakota. Learn more here.

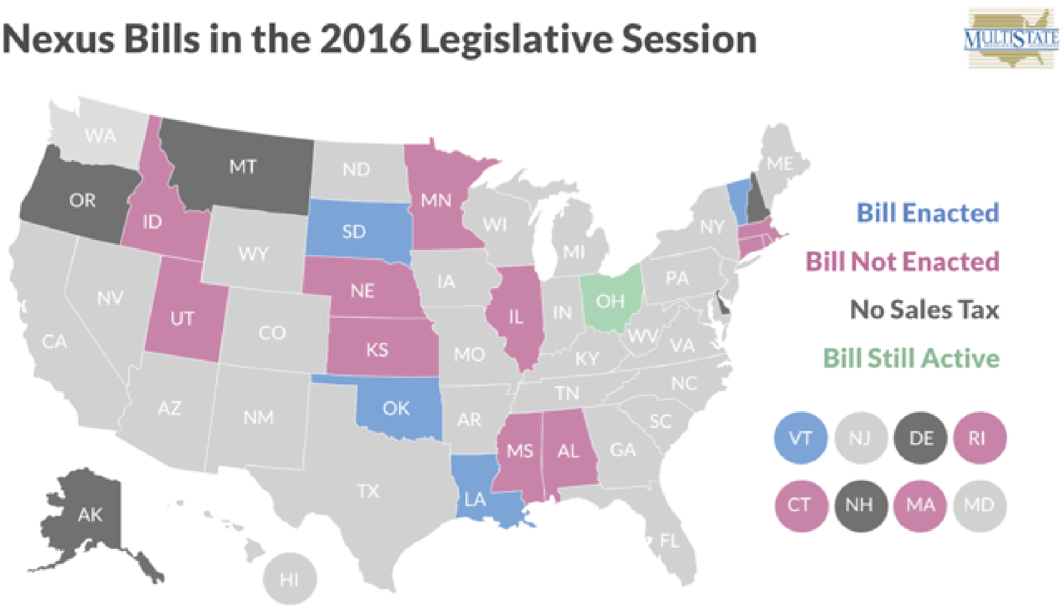
Louisiana expanded its nexus laws by applying tax to remote retailers who solicit business in the state through an independent contractor or any other representative in exchange for a consideration of any kind, provided cumulative gross receipts from such sales exceed $50,000 during the preceding 12 months.

The state was expecting to collect tax from Amazon sales under this new policy. Instead, Amazon severed connections with Louisiana affiliates, effectively undermining the click-through and affiliate law. At least for now.

More states could follow suit

Louisiana is just one state in need for more tax revenue; Alaska and Pennsylvania are two others. Even states with their financial houses more or less in order are considering

Nexus Bills in the 2016 Legislative Session



While states took different approaches at enacting new sales tax nexus laws, all of these bills shared a common objective: broaden sales tax compliance for as many online sellers as possible.

States pursued three general legislative strategies:

1 **Change nexus requirements.** Some states created affiliate or economic nexus requirements, while others imposed requirements on marketplace providers of required referral registration. States with these types of bills were Connecticut, Idaho, Louisiana, Massachusetts, Minnesota, Mississippi, Nebraska, Ohio, Oklahoma, Rhode Island, South Dakota, and Utah.

2 **Impose reporting or notification requirements**. States pursuing this approach were Kansas, Louisiana, Minnesota, and Vermont.

3. The third "approach" is less of an approach and more of a catch-all category for those states that didn't pursue the first two strategies. In this miscellaneous category were bills preparing for federal action (Illinois and Massachusetts), study bills (Nebraska), and a bill in Alabama that doesn't quite fit into any other category but is related.

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Go to MultiState Insider for a breakdown of each state and their proposed legislation. They have a handy table that highlights all of the details.

What do soda, tampons, and cigarettes have in common?

All three are being taxed differently this year.

Soda isn't just high in calories: Soda taxes are slowly sweeping the nation. Special taxes on certain sweetened beverages took effect in Berkeley California in January 2015 and in Vermont six months later. On November 8, voters in four cities approved proposed soda taxes, and two days later, the Cook County Council did the same. Philadelphia's soda tax takes effect on January 1. Similar taxes take effect in Boulder, Colorado, Oakland, California, and Cook County, Illinois on July 1, 2017.

Learn more here.

Tampons get an exemption: A number of states enacted the popularly known tampon tax exemptions in 2016. New York's took effect in September, while the Connecticut tampon tax exemption won't take effect until July 2018. The exemption for feminine hygiene products in Illinois takes effect on January 1.

Learn more here.

Tax on vaping: As of January 1, California extends cigarette and tobacco taxes to e-cigarettes and similar vaping products, "any component, part, or accessory of a tobacco product, and "any product containing, made, or derived from nicotine" and intended for human consumption. California is also increasing the tax rate on tobacco.

Learn more here.

Seven new states get high on taxes: recreational and medical marijuana sales drive revenue

Four states will prepare to administer tax revenue from sales of recreational marijuana: California, Maine, Massachusetts, and Nevada. Another three will do the same for medical marijuana: Arkansas, Florida, and North Dakota.

Tax on Netflix comes streaming in

Streaming services such as those provided by Neflix, Hulu, and HBO Go will be subject to sales tax in Pasadena, California, beginning January 1. Pasadena isn't the first city to specifically tax these (they've been subject to tax in Chicago, Illinois since July 1, 2015) and it is unlikely to be the last: a number of other cities in California – including San Bernardino and Santa Monica – are being advised to collect tax on streaming services.

Exemptions: three states forward, two states back

Ohio will once again exempt investment bullion from sales and use tax beginning January 1. Learn more here.

Maine is expanding the sales tax exemption for products used in certain commercial activities as of January 1. Additional information will soon be available from the Maine Revenue Services.

North Carolina maintains that certain service contracts sold by or on behalf of motor vehicle dealers will be exempt from sales and use tax, as will certain sales of food, prepared food, soft drinks, candy, and other items of tangible personal property at school sponsored events. Additionally, certain sales of repair, maintenance, and installation services that are part of a real property contract will be exempt. Learn more here.

Repealed exemptions

In **Georgia**, a temporary exemption for tangible personal property used for or in the renovation or expansion of qualifying aquariums terminates as of January 1, 2017.

Learn more here.

In **North Carolina,** retail sales of tangible personal property, certain digital property, and taxable services by certain nonprofits will no longer be exempt from sales and use tax as of January 1. And as of that date, purchases by a manufacturer of fuel or piped natural gas used solely for comfort heating at certain manufacturing facilities are no longer exempt from North Carolina sales and use tax.

Learn more here.

Possible exemption repeal

The Wyoming Joint Revenue Committee looks favorably upon eliminating the sales tax exemptions triggered by economic development incentives. It remains to be seen whether or not that will come to pass. More to come on this issue in 2017.

Local sales tax changes by state

California

The state sales and use tax rate in California will drop from 7.5% to 7.25% under Proposition 30, which temporarily increased the rate by 0.25% through December 1, 2016. The state rate decrease also affects certain partial state tax exemptions.

Learn more: https://www.boe.ca.gov/sutax/prop30.htm

New Jersey

To offset a recent gas tax hike, the state sales and use tax rate in New Jersey will decrease from 7% to 6.875% on January 1, 2017. The rate will drop further in 2018.

Learn more: http://www.njleg.state.nj.us/2016/Bills/AL16/57_.HTM

North Carolina

North Carolina use tax will apply to businesses storing tangible personal property or digital property in the state for any period of time. This expansion of use tax is due to the enactment of Senate Bill 729.

Learn more: http://www.ncleg.net/Sessions/2015/Bills/Senate/PDF/S729v4.pdf

Missouri

Missouri sales and use tax will not be expanded to any currently exempt services in 2017. On November 8, voters approved prohibiting the expansion of sales tax to any services not taxed as of January 1, 2015.

Learn more: http://www.taxrates.com/blog/2016/11/09/missouri-prohibits-further-taxation-of-services/

The following states have also announced local sales and use tax rate changes, effective January 1.

Arkansas

Learn more: http://www.taxrates.com/blog/2016/10/24/arkansas-sales-tax-rate-changes-january-2017/

Florida

Learn more: http://www.taxrates.com/blog/2016/11/16/florida-sales-tax-rate-changes-january-2017/

Illinois

Learn more: http://www.taxrates.com/blog/2015/07/16/cook-county-sales-tax-rate-increase-approved/

Kansas

Learn more: http://www.taxrates.com/blog/2016/10/25/kansas-sales-tax-rate-changes-january-2017/

Minnesota

Learn more: http://www.taxrates.com/blog/2016/10/28/minnesota-sales-tax-changes-january-2017/

Nebraska

Learn more: http://www.taxrates.com/blog/2015/09/04/maine-sales-tax-changes-january-2016/

Oklahoma

Learn more: http://www.taxrates.com/blog/2016/10/04/oklahoma-sales-tax-changes-january-2017/

Utah

Learn more: http://www.taxrates.com/blog/2016/10/24/utah-sales-tax-rate-changes-january-2017/

Washington

Learn more: http://www.taxrates.com/blog/2016/11/02/washington-sales-tax-rate-changes-january-2017/

Wisconsin

Learn more: http://www.taxrates.com/blog/2016/08/10/wisconsin-sales-tax-rate-changes-january-2017/

The tip of the iceberg

As 2017 progresses, we're bound to see many more changes take effect. In sales tax compliance, you can research and memorize all of the sales tax rules that affect your business on your own or you can simply automate it – and let Avalara worry about the changes.

About Avalara

Avalara, Inc., is a leading provider of cloud-based tax automation for businesses of all sizes. We help businesses achieve transactional tax compliance for sales and use, excise, communications, VAT and other tax types. Avalara's comprehensive, cloud-based solutions are fast, accurate, and easy to use with more than 500 hundred pre-built connectors into leading accounting, ERP, ecommerce and other business applications. Our Compliance Cloud™ platform helps customers manage complicated and burdensome tax compliance obligations imposed by state, local, and other taxing authorities throughout the world. Each year, Avalara processes billions of indirect tax transactions for customers and users, files hundreds of thousands of tax compliance documents and tax returns, and manages millions of exemption certificates and other compliance related documents.