



TAX ALERT

Wayfair Decision and HB 1019XX Update

September 13, 2018

The Oklahoma Tax Commission has published important information on a new Oklahoma sales tax law. The published information includes a Tax Commission press release, [*Frequently Asked Questions \(FAQs\)*](#), a summary of the U. S. Supreme Court decision in *South Dakota v. Wayfair, Inc.*, and guidance on new provisions in the Oklahoma Sales Tax Code that require remote out-of-state sellers to collect Oklahoma sales tax or report Oklahoma sales to the Tax Commission.

The U. S. Supreme Court held in the *Wayfair* case, decided June 21, 2018, that states can require out-of-state retail sellers to collect sales tax, at least in some circumstances, even if they don't have a store or warehouse in the state. The *Wayfair* decision applies to sales made over the Internet.

In the *Wayfair* case the Court ruled that the physical presence rule applied in earlier cases is incorrect. The South Dakota law upheld by the Court requires collection by out-of-state sellers that on an annual basis deliver more than \$100,000 of goods or services into the state or engage in 200 or more separate transactions for delivery of goods or services into the state.

Related to this decision, Oklahoma in 2018 enacted a new law, HB 1019XX, which is now effective, providing requirements for reporting, collection and payment of Oklahoma sales and use tax by remote out-of-state sellers for sales of tangible personal property to customers in Oklahoma through the Internet. The new Oklahoma law has features similar to the South Dakota law upheld by the Court in the *Wayfair* case.

The new Oklahoma law, codified in the Oklahoma Statutes, Title 68, Sections 1391 – 1397, requires remote sellers file an election with the Oklahoma Tax Commission (1) to collect and remit sales and use tax on sales and deliveries to purchasers in Oklahoma

and obtain a sales tax permit, or (2) to comply with specified notice and reporting requirements to inform purchasers that sales or use tax may be due, and to submit a report with the Oklahoma Tax Commission with respect to sales or deliveries of tangible personal property to purchasers in Oklahoma. The requirements apply to a remote seller that during the immediately preceding 12 calendar-month period had aggregate sales of tangible personal property within Oklahoma, or delivered tangible personal property to locations within Oklahoma, subject to tax, worth at least \$10,000.

A copy of the Oklahoma Tax Commission published guidance on the *Wayfair* decision and new Oklahoma sales tax requirements for remote sellers enacted by HB 1019XX is attached.

If you would like to discuss the landmark U. S. Supreme Court decision on state and local taxes in the *Wayfair* case, and the related new Oklahoma sales tax law, please contact any attorney of GableGotwals you know or our Tax Law Practice Group.

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