



## TAX ALERT

### Oklahoma Changes Remote Seller Sales Tax Collection Threshold to \$100,000 per *Wayfair* Case

By Sheppard Miers, Jr.

May 23, 2019

The Oklahoma Sales Tax Code has been amended to require remote (out-of-state) sellers to collect Oklahoma sales or use tax on sales of tangible personal property made remotely, such as over the internet, to customers in Oklahoma if the seller has at least \$100,000 of annual sales to customers in the state. The law was amended by Senate Bill 513 (“SB 513”), enacted by the Oklahoma Legislature on May 16, 2019.

The change conforms Oklahoma law to a key provision of a South Dakota sales tax law that was recently held by the U. S. Supreme Court to be constitutional under the Commerce Clause of the U. S. Constitution in the landmark case of *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080 (2018).

In the *Wayfair* case, the court held 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.

Prior to the *Wayfair* opinion, the court had ruled under the Commerce Clause a state could only require an out-of-state seller to collect and remit sales tax if the seller had “substantial nexus” with the taxing jurisdiction which required a physical presence of the seller within the state where the sale was made. That prior rule, set down in the case of *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), was overruled by the court in the *Wayfair* case.

The Oklahoma law amended by SB 513, is Title 68, Sections 1391-1397, Oklahoma Statutes, enacted in 2018 shortly before the *Wayfair* case was decided. The Oklahoma law’s provisions are aimed at remote sellers who sell tangible personal property to customers in Oklahoma in sales that are retail sales subject to Oklahoma sales or use tax. Under the Oklahoma law a “remote seller” is a person that does not maintain a place of business in Oklahoma that through a forum such as an internet website makes taxable sales to its customers in Oklahoma (e.g. seller in Maine, that has no place of business in Oklahoma, makes retail sales of clothing, sporting equipment, to customers in Oklahoma via internet). The Oklahoma law applies to sellers that have the same relationship to Oklahoma and customers in the state as the South Dakota law upheld in the *Wayfair* case has as to that state and out-of-state sellers that sell to customers in it.

A principal change in the Oklahoma law made by SB 513 is increase of the Oklahoma annual sales “threshold” to \$100,000 in order for an remote seller to have a legal duty with respect to collection and

remitting of Oklahoma sales or use tax. The prior Oklahoma threshold amount as originally enacted in 2018 has been a much lower amount of \$10,000 annually, at which remote sellers have been given an option with respect to how Oklahoma sales or use tax on their sales to Oklahoma customers is to be collected. The new, higher \$100,000 threshold amount and related changes made by SB 513 make the Oklahoma law more consistent in that regard with the South Dakota sales tax law upheld and found to be constitutional under the Commerce Clause in the *Wayfair* case.

The terms of Oklahoma law prior to the effective date of the SB 513 amendment provide that a remote seller that does not have physical presence in Oklahoma has a choice, to either (1) collect and remit Oklahoma sales and use tax on sales and deliveries to purchasers in Oklahoma and obtain a sales tax permit, or (2) comply with specified notice and reporting requirements to inform purchasers in Oklahoma that Oklahoma 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 those customers in Oklahoma. This choice has applied to remote sellers who have sales to Oklahoma customers of at least \$10,000 annually.

SB 513 has amended the Oklahoma law so that a remote seller whose amount of annual sales to Oklahoma customers is at least \$100,000 will no longer have a choice. Instead, the remote seller will have the single specific duty to [expertanalysis@law360.com](mailto:expertanalysis@law360.com) collect and remit Oklahoma sales or use tax on its taxable retail sales to Oklahoma customers. The duty to collect and remit tax will apply to the first calendar month succeeding the month when the \$100,000 Oklahoma sales threshold is met.

The Oklahoma law, as amended by SB 513, provides that sales to Oklahoma customers by an remote seller made through what are described in the law as a “marketplace forum” or a “referrer’s platform,” where the tax is collected and remitted by a person who is a “marketplace facilitator” or “referrer,” as defined in the law, shall not be included in determining whether the remote seller has met the \$100,000 annual sales threshold amount so as to impose a duty on the remote seller to collect Oklahoma sales or use tax on its sales to Oklahoma customers.

The changes to the Oklahoma sales tax enacted by SB 513 are effective November 1, 2019.

If you would like to discuss SB 513, the *Wayfair* case and effects, or related matters involving Oklahoma sales tax, please contact any attorney of GableGotwals you know or our Tax Law Practice Group.

GableGotwals attorneys who practice and assist clients with respect to taxation include:

**Sheppard Miers, Jr.**  
[smiers@gablelaw.com](mailto:smiers@gablelaw.com)  
Direct dial: 918-595-4834

**David McKinney**  
[dmckinney@gablelaw.com](mailto:dmckinney@gablelaw.com)  
Direct dial: 918-595-4860

**John Russell**  
[jrussell@gablelaw.com](mailto:jrussell@gablelaw.com)  
Direct dial: 918-595-4806

**James Scears**  
[jscears@gablelaw.com](mailto:jscears@gablelaw.com)  
Direct dial: 918-595-4879

*This alert is provided as a summary for information purposes. It does not contain legal advice or create an attorney-client relationship and is not intended or written to be used and may not be used by any person for the purpose of avoiding penalties that may be imposed under tax laws. The information provided should not be taken as an indication of future legal results; and any information stated should not be acted upon without consulting legal counsel.*