

Blog Post

# Tennessee, North Carolina's Changing Nexus Standards – Seeking Revenue and Reducing Economic Nexus Thresholds

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On June 30, 2020, the Tennessee legislature passed SB 2932 which reduces the economic nexus sales threshold for remote sellers from \$500,000 to \$100,000 in the past 12-month period. It also makes the same reduction in the sales or sales facilitated threshold for marketplace facilitators for sales made through the facilitator's platform. The law becomes effective on October 1, 2020. Interestingly, this bill was introduced on May 19, 2020, a mere six weeks prior to its passage and signage by the Governor.

Similarly, on June 25, 2020, the North Carolina legislature passed HB 1080 which removes any economic nexus threshold for marketplace facilitators that have a physical presence in the state. It also now requires marketplace facilitators that facilitate sales of food and beverages to remit local meals tax to the taxing city or county, among other changes. The law became effective on July 1, 2020. This bill was introduced on May 14, 2020, again just six weeks prior to its passage and signage by the Governor.

While the states may have already been contemplating these or similar changes, it is no coincidence that state legislators took these decisive actions during a time when cash is desperately needed. In doing so, these states may have

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potentially tripped a constitutional line in their effort to lower the bar on nexus given that these changes may be inconsistent with the *Wayfair* standards. Additionally, six weeks, in the case of North Carolina, may not be a long enough period for purposes of notice.[1]

Unfortunately, many state governments were already in a difficult fiscal position prior to the COVID-19 pandemic and things have only gotten worse. Some states, such as Ohio, Colorado, and Georgia, among others, have announced cuts to government aid. However, states like Tennessee and North Carolina are also looking to increase revenue, by expanding the reach of their taxing authority.

As discussed in “Removing Transaction Thresholds – Where does *Wayfair* go from here?” and “Removing *Wayfair* Thresholds and the Rebirth of “Slightest Presence” Nexus” some states – including California, Colorado, North Dakota and South Carolina – have begun to shift away from a dual threshold approach that was ratified in *Wayfair* to a singular dollar threshold, often \$100,000 or even excluded these thresholds altogether as was done in Kansas last year.[2] This move to singular dollar nexus thresholds raised concerns of a “race to the bottom” where taxing jurisdictions would continually lower the amount of the dollar threshold. These concerns are now being realized and amplified by states in dire need of additional revenue.

While changing nexus thresholds is not the only way state and local governments will look to increase their revenue (hello state and local tax audits!), it is likely that legislatures may be emboldened by the urgent need for additional cash and push for an aggressive position. We expect more changes on this front as well as aggressive positions from Departments of Revenue in enforcement of these laws in the future.

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[1] The Streamlined Sales and Use Tax Agreement typically recommends at least sixty-days notice for rate changes to ensure proper notice and allow time for businesses to comply with the change.

Additionally, in order to create administrative rules in most taxing jurisdictions, the governing body must allow at least a sixty-day public comment period prior to exacting a new rule for similar reasons. In contract, a meager six weeks is not a lot of time for affected taxpayers to register, update their tax systems, notify customers, etc. to ensure compliance going forward.

[2] There is some dispute regarding the Kansas Department of Revenue's authority to enforce its no safe-harbor sales threshold as it was done via a Departmental notice.

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