

## Blog Post

# Word Play: The Curious Case of Economic Nexus Legislation in Florida

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In June 2018, the United States Supreme Court in *Wayfair* held that the physical presence of the taxpayer was no longer a prerequisite for imposition of a sales tax. In so doing, the Court blessed the concept of “economic nexus” for sales tax purposes. Since that landmark decision, many states seized the opportunity to raise sales tax revenue by enacting economic nexus laws. At this moment, forty-four states have economic nexus laws in place. Of the six states without such laws, four – Delaware, Montana, New Hampshire, and Oregon – do not impose a statewide sales tax.<sup>[1]</sup> The remaining two states – Florida and Missouri – have long-been holdouts. Recently, Florida economic nexus legislation has gained substantial momentum. So, why now? What has changed?

Since the *Wayfair* decision was handed down in 2018, the Florida legislature has proposed economic nexus legislation only to see the effort fizzle before reaching the governor’s desk. The fundamental stumbling block for the final passage of economic nexus legislation was the perception that it was a “tax increase” on businesses. As recently stated by Governor DeSantis, Florida prides itself in being the state to do business. Any tax increase on businesses – even if merely a perceived one – would tarnish Florida’s business-friendly image. Proponents of economic nexus legislation in Florida

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contend that such a law would not be a “tax increase.” They note that Florida would merely be lawfully collecting sales tax revenue in accordance with the holding in *Wayfair*.

Fast forward to 2021, and Florida is facing a reported \$2 billion budget shortfall due in large part to the impacts of the COVID-19 pandemic. Perhaps by mere coincidence, the “tax increase” perception is now being pushed aside. Recently, both the House and Senate economic nexus bills have gained steam. Although there remain legislators concerned by the “tax increase” perception, they are now undoubtedly in the minority. It is reported that if Florida enacts economic nexus legislation, it can expect an infusion of approximately \$1 billion of additional sales tax revenue. Revenue raised by Florida’s economic nexus law would go to shore-up the Unemployment Tax and Trust Fund – a fund depleted by the effects of the global pandemic.

If passed, Florida’s economic nexus law would require remote sellers – and marketplace facilitators such as [Amazon.com](https://www.amazon.com) – to collect and remit sales tax if they had more than \$100,000 in sales into the state during the 2020 calendar year. Although all signs are that the Florida legislature will pass some form of economic nexus legislation, it is by no means clear that Governor DeSantis will sign it into law. Despite all the recent press coverage of Florida’s efforts to pass an economic nexus law, Governor DeSantis has remained silent.<sup>[2]</sup> Has the governor’s “tax increase” perception of economic nexus laws changed? We will have to wait and see.

<sup>[1]</sup> It is important to note that, although Alaska does not impose a statewide sales tax, Alaska localities are authorized to do so. Many Alaska localities have adopted economic nexus laws post- *Wayfair*.

<sup>[2]</sup> Under Florida’s constitution, the governor has seven days to either sign legislation into law or veto it, otherwise the legislation automatically becomes law.

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