

# Sales and Use Tax for Remote Sellers: Ohio

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A Q&A guide to remote sellers' exposure to sales and use tax in Ohio after the US Supreme Court's decision in *South Dakota v. Wayfair, Inc.* in 2018. This Q&A addresses issues including nexus for remote sellers, taxability based on economic nexus and software nexus, economic nexus thresholds (including the threshold measurement period), the Streamlined Sales and Use Tax Agreement (SSUTA), penalties for failure to comply with sales tax collection and remittance, and the taxation of marketplace sellers and hosts or facilitators.

## SCOPE OF SALES AND USE TAX

### 1. Does your state require remote sellers to collect sales and use tax on sales of goods or services made into your state?

Specifically, please discuss:

- How your state determines nexus for sales tax purposes for remote sellers (for example, economic nexus, physical presence nexus, click-through-nexus, affiliate nexus, cookie or in-state software nexus, or a notice and reporting system).
- The particular goods or services that are taxable.
- Relevant statutes or legislation.
- Any significant case law.

Ohio requires out-of-state sellers (including remote sellers) that have **substantial nexus** with the state to register and collect Ohio sales or use tax (R.C. 5741.04 and R.C. 5741.17(A)).

"Substantial nexus" means that the seller has sufficient contact with Ohio to allow the state to require the seller to collect and remit

use tax on sales of tangible personal property or services made to consumers in the state (R.C. 5741.01(l)(1)).

Ohio presumes that a seller has substantial nexus with the state if **any** of the following direct physical connections exist:

- The seller uses an office, distribution facility, warehouse, storage facility, or similar place of business in Ohio, unless operated by a common carrier (R.C. 5741.01(l)(2)(a)).
- The seller has employees, agents, representatives, solicitors, installers, repairers, salespersons, or other persons in Ohio to:
  - conduct the seller's business in the state;
  - engage in a business with the same or a similar industry classification as the seller and selling a similar product or line of products as the seller; or
  - use trademarks, service marks, or trade names in Ohio that are the same or similar to the seller's.

(R.C. 5741.01(l)(2)(b).)

- The seller uses any person in Ohio, other than a common carrier, to:
  - receive or process orders of goods or services;
  - advertise, promote, or facilitate sales by the seller;
  - deliver, install, assemble, or perform maintenance services for the seller's customers; or
  - facilitate delivery by allowing the seller's customers to pick up products sold by the seller at their place of business.

(R.C. 5741.01(l)(2)(c).)

- The seller delivers goods for sale into Ohio other than by common carrier, for example, by the seller's own trucks (R.C. 5741.01(l)(2)(d)).
- The seller owns tangible personal property that is rented, leased, or offered to consumers in Ohio (R.C. 5741.01(l)(2)(f)).

Substantial nexus is not limited to direct physical presence. Ohio also finds substantial nexus if an out-of-state seller has:

- Affiliate nexus (R.C. 5741.01(l)(2)(e); see Affiliate Nexus).
- Click-through nexus (R.C. 5741.01(l)(2)(g); see Click-Through Nexus).
- Software nexus (R.C. 5741.01(l)(2)(h); see In-State Software Nexus).
- Network nexus (R.C. 5741.01(l)(2)(i); see Network Nexus).

A seller may rebut a presumption of substantial nexus by demonstrating that its activities in or connections with Ohio are not significantly associated with its ability to establish or maintain the seller's Ohio market (R.C. 5741.01(l)(3)).

Sales subject to Ohio sales and use tax include both:

- Transfers of title or possession of tangible personal property for consideration.
- The provision of a taxable service for consideration.

(R.C. 5739.01(B).)

For additional information pertaining to Ohio sales and use tax, see State Q&A, Sales and Use Taxes: Ohio ([5-518-7108](#)).

## NEXUS

Nexus for sales and use tax purposes is the connection that a seller has with a state that requires it to collect and remit tax on sales made to that state. States have adopted various nexus standards relating to the taxation of remote sellers. For a discussion of the various approaches used by states to determine nexus for sales tax purposes, including economic nexus, see Practice Note, Sales and Use Tax for Remote Sellers: Sales Tax Nexus Approaches and Economic Nexus ([W-016-0090](#)).

In Ohio, the nexus connection for sales and use tax purposes must be substantial. Each of the standards adopted by Ohio relating to remote sellers discussed below satisfy the substantial nexus requirement. If a remote seller satisfies the requirements of any one of the nexus standards, they must collect and remit Ohio sales or use tax.

### Economic Nexus

Economic nexus requires a remote seller to collect and remit sales or use tax on sales made to a state if its sales or transaction volume (or a combination of the two) to in-state customers exceeds specified thresholds, even if the seller lacks physical or any other type of presence in the state. In *South Dakota v. Wayfair, Inc.*, the US Supreme Court overruled the physical presence test and noted its approval of South Dakota's economic nexus statute (138 S. Ct. 2080 (2018)). For a discussion of the *Wayfair* decision, see Legal Update, States Consider Next Steps on Taxing Remote Sellers After *S. Dakota v. Wayfair* ([W-015-5051](#)).

While certain nexus standards that Ohio currently uses incorporate elements of economic nexus, Ohio has not adopted a pure economic nexus standard like the one at issue in *South Dakota v. Wayfair, Inc.* Ohio deems a physical presence to exist if a vendor meets the standard for software nexus or network nexus. Legislation has been proposed to replace Ohio's software nexus and network nexus standards, which have an economic threshold, with economic nexus provisions similar to South Dakota's law (see In-State Software Nexus and Network Nexus).

### Click-Through Nexus

An out-of-state seller is presumed to have click-through nexus for Ohio sales and use tax collection if both:

- The seller enters into an agreement with one or more Ohio residents under which the residents, for a commission or other

consideration, refer potential customers (directly or indirectly) to the seller, whether:

- by web link;
- in-person;
- by telemarketing; or
- otherwise.

- The seller's cumulative Ohio gross receipts from sales to consumers referred by all those residents exceeds \$10,000 in the preceding twelve months.

(R.C. 5741.01(l)(2)(g).)

A typical example of remote sellers with click-through nexus include e-commerce retailers that advertise products on websites maintained by other parties and pay a commission when a consumer clicks on the advertisement and makes a purchase.

A seller presumed to have click-through nexus may rebut this presumption. A seller rebuts the presumption by submitting proof that each Ohio resident engaged by the seller to refer potential customers did not engage in any activity in Ohio within the preceding 12 months that was significantly associated with the seller's ability to establish or maintain the seller's Ohio market. This proof may consist of sworn written statements from all such residents that the resident did not solicit sales in Ohio on behalf of the seller. (R.C. 5741.01(l)(4); for more information, see Ohio Department of Taxation Information Release ST 2001-01 (updated Oct. 2017) § III.)

Ohio's click-through nexus standard is unique in that it specifically applies to the use of telemarketers in Ohio. However, use of a telemarketer in Ohio does not create nexus if the telemarketer only solicits sales from customers outside Ohio (R.C. 5741.17(A)(3)).

For more information on click-through nexus, see Practice Note, Sales and Use Tax for Remote Sellers: Click-Through Nexus ([W-016-0090](#)).

### In-State Software Nexus

An out-of-state seller has in-state software nexus and is required to collect and remit Ohio sales or use tax if it both:

- Uses in-state software to sell taxable products or services to Ohio consumers.
- Has more than \$500,000 of Ohio gross receipts in the current or preceding calendar year.

(R.C. 5741.01(l)(2)(h).)

Ohio's Revised Code states that in-state software nexus is a rebuttable presumption (R.C. 5741.01(l)(3)). However, in practice it is highly unlikely that a seller would be able to overcome the presumption if the requirements establishing nexus are met.

"In-state software" means computer software that is either:

- Stored on property in Ohio.
- Distributed in Ohio for purpose of facilitating the seller's sale.

(R.C. 5741.01(l)(6)(d).)

In-state software does **not** include cookies, which are simply text files that allow a website to recognize returning customers, as opposed to coded instructions that cause a computer to perform a task (R.C. 5739.01(BBB)). Examples of in-state software include catalog applications and html or java script coding used to display the seller's website on customers' computers or cell phones (Ohio Department of Taxation Information Release ST 2017-02 (Oct. 2017) § I).

The \$500,000 gross receipts threshold is sometimes mistakenly referred to as "economic nexus." However, Ohio treats in-state software owned by the seller and stored on its customers' computers or devices as a physical presence sufficient to create substantial nexus requiring tax collection. Pure economic nexus laws are based exclusively on sales or transaction volume without regard to the referral of sales from in-state residents through weblink or otherwise.

### Network Nexus

An out-of-state seller has network nexus and is required to collect Ohio sales or use tax if it both:

- Provides or enters into an agreement to use a content distribution network with servers located in Ohio to accelerate or enhance delivery of the seller's website to consumers.
- Has more than \$500,000 of Ohio gross receipts in the current or preceding calendar year.

(R.C. 5741.01(l)(2)(i).)

Ohio's Revised Code states that network nexus is a rebuttable presumption (R.C. 5741.01(l)(3)). However, in practice it is highly unlikely that a seller would be able to overcome the presumption if the requirements establishing nexus are met.

"Content distribution network" means a system of distributed servers that deliver websites or other web content to a user based on:

- The user's geographic location.
- The origin of the website or content.
- A content delivery server.

(R.C. 5741.01(l)(6)(e).)

These networks are commonly used by online retailers to accelerate the delivery of their website to consumers throughout the country (Ohio Department of Taxation Information Release ST 2017-02 (Oct. 2017) § I).

The \$500,000 gross receipts threshold is sometimes mistakenly referred to as "economic nexus." However, Ohio treats the use of in-state servers by the seller as a physical presence sufficient to create substantial nexus requiring tax collection. Pure economic nexus laws are based exclusively on sales or transaction volume without regard to the use of in-state property, like servers.

### Affiliate Nexus

An out-of-state seller is presumed to have affiliate nexus with Ohio for sales and use tax purposes if it has an affiliated person with substantial nexus with Ohio (R.C. 5741.01(l)(2)(e)).

An "affiliated person" is any person that either:

- Is part of the same controlled group of corporations under I.R.C. § 1563(a).
- Regardless of form, bears the same ownership relationship to the seller as a member of the same controlled group of corporations. (R.C. 5741.01(l)(6)(a).)

Ohio's statute is unlike many other states' affiliate nexus provisions, which typically only attribute nexus if the related party:

- Sells the same or a similar line of products.
- Uses the same or a similar business name.
- Has an in-state facility or employees that advertise, promote, or facilitate sales, including delivering products or accepting returns on the seller's behalf.

However, even if there is a connection between the seller and an affiliated person in Ohio, the seller may be able to rebut this presumption. The seller must demonstrate that the affiliated person's presence in Ohio is not significantly associated with the seller's ability to establish or maintain the seller's market in Ohio.

### Marketplace Nexus

Ohio has not issued any guidance on marketplace nexus with respect to sales and use tax collection and remittance obligations. For more information on marketplace sellers, see Practice Note, Sales and Use Tax for Remote Sellers: Box: Marketplace Sales Tax ([W-016-0090](#)).

### Nexus Safe-Harbors

The Ohio Department of Taxation provides several safe-harbor exemptions from the enforcement of nexus, primarily for administrative convenience reasons. The Department does not require out-of-state sellers to collect and remit sales or use tax if the seller's only contacts with Ohio consist of:

- Having tangible personal property in the state for no more than seven days and less than \$25,000 of Ohio sales during the year. The sales threshold is reduced to \$10,000 for determining click-through nexus.
- Conducting meetings with in-state suppliers or government representatives.
- Entering the state for purposes of bringing or defending a lawsuit.
- Attending meetings, retreats, seminars, conferences, schools, or other training sponsored by others.
- Holding retreats, seminars, conferences, employee training, or recruitment or hiring events (but not board of directors' meetings).
- Advertising through electronic or print media.
- Renting customer lists to or from Ohio entities.
- Attending trade shows as a consumer.
- Participating in trade shows as an exhibitor if the seller also meets the final exception below.
- Having less than eight instances of nexus creating activities in Ohio and no more than \$25,000 of Ohio sales during the year.

The sales threshold is reduced to \$10,000 for determining click-through nexus.

(Ohio Department of Taxation Information Release ST 2001-01 (updated Oct. 2017) § IV.)

There is also a statutory exception for the ownership of certain property located at a printing facility located in Ohio. This property includes:

- Final printed products.
- Property that becomes part of the final printed products.
- Copy from which the final printed product is produced.

An example of this exception includes a seller that uses an in-state printer to produce and mail catalogs or other advertising.

### TAXABILITY OF GOODS AND SERVICES

Retail sales of the following by out-of-state sellers with substantial nexus to Ohio are subject to Ohio sales and use tax:

- Tangible personal property (as defined by R.C. 5739.01(Y)).
- Installation of and repairs to tangible personal property, the purchase of which would be taxable.
- Various types of services as provided in R.C. 5739.01(B)(3), including:
  - automatic data processing;
  - electronic information services (excluding digital advertising services);
  - electronic publishing;
  - computer services; and
  - employment services.

(R.C. 5739.01(B) (providing a complete list of transactions that qualify as retail sales subject to Ohio sales and use tax).)

For additional guidance on the taxability of specific products and services in Ohio, see State Q&A, Sales and Use Taxes: Ohio: Question 3 ([5-518-7108](#)).

### STATUTES AND LEGISLATION

Relevant authority related to this subject can be found in Ohio Revised Code Chapters:

- 5739 for Sales Tax (R.C. 5739.01 to R.C. 5739.99).
- 5741 for Use Tax (R.C. 5741.01 to R.C. 5741.99).

### SIGNIFICANT CASE LAW

Ohio applies the nexus standards set out by the US Supreme Court prior to *Wayfair, Inc.* in determining federal limitations on state taxation. Because the legislation on click-through nexus, software and network nexus, and affiliate nexus is recent, there are no significant Ohio cases involving remote sellers. The following US Supreme Court cases, however, are relevant:

- *South Dakota v. Wayfair, Inc.* (138 S. Ct. 2080 (2018)).
- *Quill Corp. v. North Dakota* (504 U.S. 298 (1992)).

### TAXABILITY BASED ON ECONOMIC NEXUS

#### 2. If your state currently does or intends to require remote sellers to collect sales tax for sales of goods or services into your state based on economic nexus, please:

- Provide the date this requirement either went into or is intended to go into effect.
- Discuss whether the requirement is retroactive.
- Discuss whether there is an economic threshold that remote sellers must meet before they are subject to the collection and remittance requirements.
- Discuss any amnesty opportunities.

Ohio has not enacted an economic nexus law, but legislation has been proposed to replace Ohio's software nexus and network nexus with economic nexus provisions similar to South Dakota's law.

### EFFECTIVE DATE

Ohio does not currently use an economic nexus standard for sales and use tax purposes, but it does impose a sales volume threshold for software nexus and network nexus (see Question 1: In-State Software Nexus and Network Nexus). The effective dates for several of the nexus standards that a remote seller may be subject to in Ohio are:

- **Click-through nexus** became effective July 1, 2015.
- **In-state software nexus** became effective January 1, 2018.
- **Network nexus** became effective January 1, 2018.
- **Affiliate nexus** became effective July 1, 2015.

### RETROACTIVE COLLECTION

Ohio does not currently use an economic nexus standard for sales and use tax purposes. However, the Ohio Department of Taxation has been enforcing its click-through nexus, software nexus, and network nexus provisions since their respective effective dates (see Effective Date).

### ECONOMIC THRESHOLD

Ohio has not adopted a pure economic nexus threshold for out-of-state sellers. Nonetheless, many remote sellers are required to collect tax based upon software nexus and network nexus, each of which imposes a gross receipts threshold of \$500,000 (see Question 1: In-State Software Nexus and Network Nexus).

### VOLUNTARY DISCLOSURE AMNESTY OPPORTUNITIES

The Ohio Department of Taxation offers a Voluntary Disclosure (VDA) Program for Ohio sales and use tax as well as other taxes. This program allows taxpayers to come forward anonymously by submitting a Request for Sales and Use Tax Voluntary Disclosure (Form ST VDA) by mail, fax, or email. Taxpayers who have not been contacted by the Ohio Department of Taxation are eligible for the VDA Program.

In exchange for a company voluntarily disclosing its unpaid sales and use tax liabilities, the Ohio Department of Taxation will agree to:

- Waive civil and criminal penalties (except for a 10% penalty imposed on tax collected but not remitted).
- Limit the lookback period of 36 months (except for tax collected but not remitted, which has an unlimited lookback period).
- Not disclose the company's identity to other parties.

## ECONOMIC THRESHOLD

### 3. If your state has an economic threshold, what is the threshold measurement period?

Ohio does not currently use an economic nexus standard for sales and use tax purposes. Other nexus standards apply a threshold measurement period, including:

- **Click-through nexus** applies a preceding 12-month period (R.C. 5741.01(l)(2)(g); see Question 1: Click-Through Nexus).
- **In-state software nexus** applies a current or preceding calendar year period (R.C. 5741.01(l)(2)(h); see Question 1: In-State Software Nexus).
- **Network nexus** applies a current or preceding calendar year period (R.C. 5741.01(l)(2)(i); see Question 1: Network Nexus).

### 4. If a remote seller meets the economic threshold during the current year, does your state specify when and for how long the tax obligation applies (either by statute, regulation, or guidance)?

Ohio does not apply trailing nexus if a remote seller's activities creating nexus cease and do not recur. The remote seller may cancel its registration and stop collecting tax as soon as it no longer has nexus creating contacts. However, if the seller engages in any activities creating nexus within 12 months of cancelling its registration:

- The seller is considered to have a regular presence in the state.
- The seller's substantial nexus with Ohio is presumed to have been continuous during the interim period.
- The seller is required to reinstate its registration and pay tax on all its sales during the interim period.
- The seller is required to continue to collect tax on a prospective basis.

(Ohio Department of Taxation Information Release ST 2001-01 (updated Oct. 2017) § VIII.)

### 5. If a remote seller does not meet the economic threshold in your state requiring the collection and remittance of sales tax, is it subject to notice and reporting requirements? If yes, please describe the requirements.

Ohio does not require out-of-state sellers to report sales to Ohio customers or to notify customers of Ohio filing and payment obligations. If an out-of-state seller does not collect sales tax on a taxable sale delivered to Ohio, the purchaser must report and remit use tax.

## STREAMLINED SALES AND USE TAX AGREEMENT (SSUTA)

### 6. Is your state a member of the Streamlined Sales and Use Tax Agreement (SSUTA)?

Ohio became a full member of the SSUTA in 2014. Ohio had been an associate member since 2005. Because Ohio is a member of SSUTA, remote sellers may submit their Ohio sales tax registration (as well as registration for all other member states) using the Streamlined Sales Tax Registration System (SSTRS).

For additional information about SSUTA, see Practice Note, Sales and Use Tax for Remote Sellers: Streamlined Sales and Use Tax Agreement ([W-016-0090](#)).

### 7. If your state is not a member of the Streamlined Sales and Use Tax Agreement (SSUTA), how does your state collect sales and use tax, both at the state and local level? Specifically, please discuss whether your state:

- Adheres to common tax base definitions provided in SSUTA.
- Provides base/rate lookup software for sellers.
- Offers immunity from reliance on software.
- Has uniformity between the state and local tax bases.
- Provides centralized administration by the state or otherwise for sales tax registration, filings, and tax remittance.

Ohio is a member of the SSUTA (see Question 6).

## PENALTIES

### 8. What are the penalties imposed on remote sellers by your state for failing to comply with sales and use tax collection, filing, and notice and reporting requirements?

Ohio imposes penalties for violations of sales and use tax filing and collection requirements, including for:

- **Failure to file a return or pay full amount of tax due.** In addition to the penalties and interest listed below, the failure to file a return or pay the full amount of the tax due may result in penalties of \$50 or 10% of the unpaid tax, whichever is greater, for each return (R.C. 5739.12).
- **Failure to file.** The penalty for failing to file a return ranges from \$100 to \$1,000 per return (R.C. 5739.99(B)).
- **Filing an incomplete, false, or fraudulent sales and use tax return.** The penalty for filing an incomplete, false, or fraudulent sales and use tax return ranges from \$100 to \$1,000 (maximum of \$500 for use tax) per return (R.C. 5739.99(B) and R.C. 5741.99).
- **Failure to pay or collect tax.** The penalty for failing to pay or collect tax is:
  - between \$100 and \$500 per return for corporations; and
  - between \$25 and \$100 per return for individuals.
- **Failure to remit collected tax.** The penalty for failing to remit tax that has been collected is up to 50% of the unremitted tax (R.C. 5739.133). A vendor that collects but fails to remit tax may also be guilty of a fourth-degree felony and have its vendor's license revoked (R.C. 5739.99(E)).
- **Interest.** Interest is calculated at the annual rate of 5% with a monthly accrual rate of .42% (see Ohio Department of Taxation - Annual Interest Rate Certification).

Ohio imposes additional penalties and, in certain instances, criminal charges for fraud or serial offenses.

### MARKETPLACE SELLERS AND FACILITATORS

**9. How does your state handle the collection of sales and use tax for marketplace sellers and marketplace facilitators or hosts (such as Amazon, that sell directly, but also host other sellers on its website)? Is the treatment different between marketplace facilitators or hosts versus hosted (third-party) sellers?**

Ohio has not issued any guidance on marketplace sellers or marketplace facilitators (or referrers) with respect to sales and use

tax collection and remittance obligations. For more information on marketplace sellers, see Practice Note, Sales and Use Tax for Remote Sellers: Box: Marketplace Sales Tax ([W-016-0090](#)).

### OTHER CONSIDERATIONS

**10. Does your state offer a FAQ page relating to remote sellers' exposure to sales tax? If so, please provide the website link.**

The Ohio Department of Taxation offers a FAQ page providing general information for sales and use tax. Several of the questions relate to remote sellers' exposure to sales and use tax.

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