Establishing Economic Nexus for Out of State Sellers

Issue:
How does the Wayfair Supreme Court decision affect municipalities if the Court only discussed and wrote about state-level jurisdiction? Are only remote sales into a jurisdiction considered for threshold determination?

Recommendation:
The remote seller’s gross annual sales will determine whether they have met the threshold.

Example:
A seller has sales into Alaska through its website or via a marketplace facilitator. The seller will use its gross, statewide sales to determine if they have economic nexus (meet the threshold of either $100,000 in annual sales or 200 individual transactions).

Rationale:
The ruling establishes the basis for establishing a statewide threshold test to determine if there is an economic nexus within a state and does not distinguish between local jurisdictions. All sales into the state are used to determine if a seller meets the threshold. Once nexus is established with a state, the inquiry is over and a seller may not refuse to collect sales tax on the basis of lack of nexus.