

2020-03 INTERPRETATION



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 \$100,000 in annual sales).

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.