

ASK THE CPA



**James (Jay) M. Brower, Jr.,
CPA, MST**

Partner
P. 215.572.7790
jbrower@markspaneth.com

Marks Paneth LLP

261 Old York Road
Suite 900
Jenkintown, PA 19046

www.markspaneth.com

Q How do I know if my company is affected by the *Wayfair* ruling?

A Last year's *Wayfair* ruling replaced the "physical presence" rule with an "economic nexus" threshold for determining when states can collect sales tax. Even without offices or employees in a state, a company may now be liable for sales tax if the dollar amount of its sales or number of sales transactions meet or exceed a "substantial presence" threshold in the state.

The best way to determine *Wayfair's* effect on your business is to conduct a State Nexus Study. While states cannot retroactively collect sales tax prior to when their economic nexus thresholds were enacted, it is your responsibility to identify and register with those states moving forward. If the study finds any past-due sales tax liability, a Voluntary Disclosure Agreement might be negotiated.

It is important to note that this change does not affect retailers alone. Service providers and wholesalers may also be affected. Finally, while *Wayfair* dealt with sales tax, it also has implications for income and other business taxes.

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This general information is not intended to provide individual advice. Schedule an appointment with a professional to discuss your particular situation and needs. Questions sent to these professionals may be answered in future issues.

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Q I own/operate a service-based business and do not sell any physical products. Is my company affected by the *Wayfair* decision?

A Possibly. While most state sales taxes are imposed on the retail sale of goods, many states also tax services, and there is no uniformity among the states as to which services are taxable. You may have to register to collect sales tax in one or more states where you do not have a physical presence if you exceed that state's substantial nexus threshold.

Also, many states have enacted economic nexus or factor nexus rules for income taxes and other business taxes. States that employ market-based sourcing may require you to source your revenues (and therefore the incidence of taxation) to the state where your customers are, not the state where you actually perform services.

Many states also impose sales tax on services provided by SaaS (software as a service) companies. Businesses that provide a mixture of both taxable and non-taxable services need to properly segregate the charges to avoid the entire charge being subject to sales tax.

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