

2023 SUPPLEMENT
to
STATE AND LOCAL
TAXATION
CASES AND MATERIALS
Eleventh Edition

**Walter Hellerstein, Kirk J. Stark,
and Joan M. Youngman**

PREFACE

This supplement updates the casebook to take account of the reversal by the Louisiana Supreme Court of *Normand v. Walmart.com USA, L.L.C* and to provide an overview of post-*Wayfair* remote seller and platform legislation.

Walter Hellerstein
Kirk J. Stark
Joan M. Youngman

August 2023

CHAPTER 2

JURISDICTION TO TAX

B. THE RISE AND FALL OF THE “PHYSICAL PRESENCE” STANDARD FOR STATE TAXING JURISDICTION

NOTES AND QUESTIONS

Add the following Note F and accompanying table after Note E on page 58.

F. *States’ Legislative Response to Wayfair*. In response to *Wayfair*, the state legislatures responded with extraordinary speed to adopt statutes reflecting the “economic and virtual” nexus standards endorsed by the Court’s decision. Indeed, by August 2021, every state with a sales tax (as well as the District Columbia) had adopted economic nexus standards for imposition of sales and use tax collection obligations on remote sellers as reflected in the following table.

Post-*Wayfair* Nexus Rules for Remote Sellers (as of August 2023)

STATE	ANNUAL SALES THRESHOLD	ANNUAL TRANSACTION THRESHOLD	EFFECTIVE DATE
ALABAMA	\$250,000 (goods only)	Not applicable	Oct. 1, 2018
ARIZONA	\$100,000	Not applicable	Oct. 1, 2019
ARKANSAS	\$100,000	200	July 1, 2019
CALIFORNIA	\$500,000	Not applicable	Apr. 1, 2019
COLORADO	\$100,000	Not applicable	June. 1, 2019
CONNECTICUT	\$100,000	200	July 1, 2019

DISTRICT OF COLUMBIA	\$100,000	200	Jan. 1, 2019
FLORIDA	\$100,000	Not applicable	July 1, 2021
GEORGIA	\$100,000 (goods only)	200 (goods only)	Jan. 1, 2019
HAWAII	\$100,000	200	July 1, 2018
IDAHO	\$100,000	Not applicable	June 1, 2019
ILLINOIS	\$100,000	200	Oct. 1, 2018
INDIANA	\$100,000	200	Oct. 1, 2018
IOWA	\$100,000	Not applicable	Jan. 1, 2019
KANSAS	\$100,000	Not applicable	July 1, 2021
KENTUCKY	\$100,000	200	Oct. 1, 2018
LOUISIANA	\$100,000	200 (not applicable as of May 2023)	July 1, 2020
MAINE	\$100,000	200 (not applicable as of Jan. 1, 2022)	July 1, 2018
MARYLAND	\$100,000	200	Oct. 1, 2018
MASSACHUSETTS	\$100,000	Not applicable	Oct. 1, 2019
MICHIGAN	\$100,000	200	Oct. 1, 2018
MINNESOTA	\$100,000	200	Oct. 1, 2019
MISSISSIPPI	\$250,000	Not applicable	Sept. 1, 2018
MISSOURI	\$100,000	Not applicable	Jan. 1, 2023
NEBRASKA	\$100,000	200	Apr. 1, 2019
NEVADA	\$100,000	200	Nov. 1, 2018
NEW JERSEY	\$100,000	200	Nov. 1, 2018
NEW MEXICO	\$100,000	Not applicable	Oct. 1, 2018
NEW YORK	\$500,000	100	Jan. 15, 2019
NORTH CAROLINA	\$100,000	200	Nov. 1, 2018
NORTH DAKOTA	\$100,000	200	Oct. 1, 2018
OHIO	\$100,000	200	Aug. 1, 2019
OKLAHOMA	\$100,000	Not applicable	July 1, 2018
PENNSYLVANIA	\$100,000	Not applicable	July 1, 2019
RHODE ISLAND	\$100,000	200	July 1, 2019
SOUTH CAROLINA	\$100,000	Not applicable	Nov. 1, 2018
SOUTH DAKOTA	\$100,000	200 (not applicable as of July 1, 2023)	Nov. 1, 2018
TENNESSEE	\$100,000	Not applicable	Oct. 1, 2019
TEXAS	\$500,000	Not applicable	Oct. 1, 2019
UTAH	\$100,000	200	Jan. 1, 2019
VERMONT	\$100,000	200	July 1, 2018
VIRGINIA	\$100,000	200	July 1, 2019
WASHINGTON	\$100,000	200	Oct. 1, 2018
WEST VIRGINIA	\$100,000	200	Jan. 1, 2019
WISCONSIN	\$100,000	200	Oct. 1, 2018
WYOMING	\$100,000	200	Feb. 1, 2019

CHAPTER 8

SALES TAXATION

H. COLLECTION OF THE TAX BY THE VENDOR

NOTES AND QUESTIONS

Replace the heading and first sentence of Note A on page 800 with the following.

A. *Subsequent Case History and Other Platform Cases and Rulings.* The court of appeals’s decision in *Normand v. Walmart.com* was subsequently reversed by the Louisiana Supreme Court, which ruled that (1) the store's online marketplace was not a “dealer” statutorily obligated to collect and remit sales tax on sales made by third-party retailers through its website; and (2) the store's online marketplace did not contractually assume the obligation of retailers, under its marketplace retailer agreement, to collect sales tax from purchasers in connection with third-party sales made through the marketplace. *Normand v. Walmart.com USA, L.L.C.*, 340 So.3d 615 (La. 2020). That was not the last word, however, as the Louisiana legislature subsequently adopted marketplace platform legislation that expressly imposes a sales and use tax collection obligation on marketplace facilitators. La. Rev. Stat. Ann. § 47:340.1(B) (Westlaw 2023) (effective July 1, 2020). See Notes B and F *infra* (and accompanying table of state platform legislation).

Like Louisiana, several other states addressed the collection and remittance obligations of marketplace platforms prior to the adoption of express platform legislation.

Replace Note E on page 805 with the following.

E. *Summary Table of States’ Platform Legislation.* Just as the states responded to *Wayfair* with extraordinary speed by adopting statutes for remote sellers reflecting the “economic and virtual” nexus standard endorsed by the Court’s decision (see the preceding

discussion in this supplement supplement addressed to Chapter 2, Section B), so the states responded with equal speed in adopting legislation imposing tax collection obligations on platforms reflecting similar nexus rules. Indeed, as in the case of remote sellers, by August 2021, every state with a sales tax (as well as the District Columbia) had adopted economic nexus standards for imposition of sales and use tax collection obligations on platforms as reflected in the following table.

State Marketplace Platform Legislation (as of August 2023)

STATE	OBLIGATIONS	THRESHOLDS	EFFECTIVE DATE
ALABAMA	Collect and remit or comply with notice/information reporting requirements	\$250,000 aggregate platform sales	Jan. 1, 2019
ARIZONA	Collect and remit	\$100,000 aggregate platform sales	Oct. 1, 2019
ARKANSAS	Collect and remit	\$100,000 aggregate platform sales or 200 transactions	July 1, 2019
CALIFORNIA	Collect and remit	\$500,000 aggregate platform sales	Oct. 1, 2019
COLORADO	Collect and remit	\$100,000 aggregate platform sales	Oct. 1, 2019
CONNECTICUT	Collect and remit	\$250,000 aggregate platform sales	Dec. 1, 2018
DISTRICT OF COLUMBIA	Collect and remit	\$100,000 aggregate platform sales or 200 transactions	Apr. 1, 2019
FLORIDA	Collect and remit	\$100,000 aggregate platform sales	July 1, 2021
GEORGIA	Collect and remit	\$100,000 aggregate platform sales	April 1, 2020
HAWAII	Collect and remit	\$100,000 aggregate platform sales or 200 transactions	Jan. 1, 2020
IDAHO	Collect and remit	\$100,000 aggregate platform sales	June 1, 2019
ILLINOIS	Collect and remit	\$100,000 aggregate platform sales or 200 transactions	Jan. 1, 2020
INDIANA	Collect and remit	\$100,000 aggregate platform sales or 200 transactions	July 1, 2019
IOWA	Collect and remit	\$100,000 aggregate platform sales	Jan. 1, 2019

KANSAS	Collect and remit	\$100,000 aggregate platform sales	July 1, 2021
KENTUCKY	Collect and remit	\$100,000 aggregate platform sales or 200 transactions	July 1, 2019
LOUISIANA	Collect and remit	\$100,000 aggregate platform sales or, prior to 2023, 200 transactions	July 1, 2020
MAINE	Collect and remit	\$100,000 aggregate platform sales or, prior to 2022, 200 transactions	Oct. 1, 2019
MARYLAND	Collect and remit	\$100,000 aggregate platform sales or 200 transactions	Oct. 1, 2019
MASSACHUSETTS	Collect and remit	\$100,000 aggregate platform sales	Oct. 1, 2019
MICHIGAN	Collect and remit	\$100,000 aggregate platform sales or 200 transactions	Jan. 1, 2020
MINNESOTA	Collect and remit	\$100,000 aggregate platform sales or 200 transactions	Oct. 1, 2018
MISSISSIPPI	Collect and remit	\$250,000 aggregate platform sales	July 1, 2020
MISSOURI	Collect and remit	\$100,000 aggregate platform sales	Jan. 1, 2023
NEBRASKA	Collect and remit	\$100,000 aggregate platform sales or 200 transactions	Apr. 1, 2019
NEVADA	Collect and remit	\$100,000 aggregate platform sales or 200 transactions	Oct. 1, 2019
NEW JERSEY	Collect and remit	None	Nov. 1, 2018
NEW MEXICO	Collect and remit	\$100,000 aggregate platform sales	July 1, 2019
NEW YORK	Collect and remit	\$500,000 aggregate platform sales or 100 transactions	June 1, 2019
NORTH CAROLINA	Collect and remit	\$100,000 aggregate platform sales or 200 transactions	Feb. 1, 2020
NORTH DAKOTA	Collect and remit	\$100,000 aggregate platform sales	Oct. 1, 2019

OHIO	Collect and remit	\$100,000 aggregate platform sales or 200 transactions	Aug. 1, 2019
OKLAHOMA	Collect and remit or comply with notice/information reporting requirements	\$10,000 aggregate platform sales	July 1, 2018
PENNSYLVANIA	Collect and remit	\$100,000 aggregate platform sales	March 1, 2018
RHODE ISLAND	Collect and remit	\$100,000 aggregate platform sales or 200 transactions	Jan. 15, 2018
SOUTH CAROLINA	Collect and remit	\$100,000 aggregate platform sales (per administrative guidance)	Apr. 1, 2019
SOUTH DAKOTA	Collect and remit	\$100,000 aggregate platform sales (or 200 transactions prior to July 1, 2023)	Mar. 1, 2019
TENNESSEE	Collect and remit	\$100,000 aggregate platform sales	Oct. 1, 2020
TEXAS	Collect and remit	\$500,000 aggregate platform sales (per administrative guidance)	Oct. 1, 2019
UTAH	Collect and remit	\$100,000 aggregate platform sales or 200 transactions	Oct. 1, 2019
VERMONT	Collect and remit	\$100,000 aggregate platform sales or 200 transactions	June 1, 2019
VIRGINIA	Collect and remit	\$100,000 aggregate platform sales or 200 transactions	July 1, 2019
WASHINGTON	Collect and remit	\$100,000 aggregate platform sales	Jan. 1, 2018
WEST VIRGINIA	Collect and remit	\$100,000 aggregate platform sales or 200 transactions	July 1, 2019
WISCONSIN	Collect and remit	\$100,000 aggregate platform sales or 200 transactions	Oct. 1, 2019
WYOMING	Collect and remit	\$100,000 aggregate platform sales or 200 transactions	July 1, 2019

For a comprehensive discussion of state platform legislation, see 2 Jerome R. Hellerstein, Walter Hellerstein & Andrew Appleby, *State Taxation* ¶ 19.08[7] (3d ed. rev. 2023).