Avalara

2021 SALES TAX CHANGES REPORT: MIDYEAR UPDATE

A TAX COMPLIANCE GUIDE FOR BUSINESSES

Contents

DISCLAIMER

Tax rates, rules, and regulations change frequently. Although we hope you'll find this information helpful, this report is for informational purposes only and does not provide legal or tax advice.

INTRODUCTION

Microscopic virus? Enormous container ship? Unexpected tax policy? Whatever the world throws at us next, every business should ready itself to meet it head-on.

After a difficult 2020, 2021 began on a hopeful note: COVID-19 vaccines promised a return to normalcy; the stock market was at an all-time high; and many states discovered they had more revenue than anticipated. Indeed, California is now predicting a **$75.7 billion surplus** for budget year 2020–21.

Yet there's an elephant in the room (or a ship in the canal?): Coronavirus variants are driving a surge in cases; more than 11 million people in the United States **couldn't work** in March 2021 because their employer closed or lost business due to the pandemic; and inequity and opportunity gaps are broadening.

No one knows how long COVID-19 will play the puppeteer, or what that will mean for the economy. Nonetheless, lawmakers must do what lawmakers do – legislate on tax and policy matters to the best of their ability – and everyone else must deal with the fallout.

A lot of changes happened during the first half of 2021; to name a few:

- **California extended COVID-19 tax relief**
- **Colorado and Maryland decided to tax digital products**
- **Florida adopted economic nexus and a marketplace facilitator law**
- **Kansas lawmakers overrode a veto to tax remote sales**
- **Nevada and Pennsylvania offered tax amnesty**

The midyear update to our 2021 sales tax changes report delves into these changes and more. And since tax compliance goes beyond sales and use tax, we'll also highlight key developments in the following industries:

- **Beverage alcohol**
- **Communications**
- **Energy**
- **Hospitality**
- **Tobacco**

Read on to learn more.

COVID-19 tax relief changes shape

This time last year, many states were providing sales tax filing or payment extensions to help businesses cope with the impact of COVID-19. Continuing in that vein, **Maryland** granted taxpayers an automatic filing and payment extension during the first half of 2021, and certain **California** taxpayers can apply for a 12-month, interest-free payment plan. **Massachusetts** is giving certain vendors until October 30, 2021, to pay room occupancy excise tax and sales and use taxes otherwise due March 20, 2020, through June 1, 2021. At the local level, some home-rule jurisdictions in Louisiana provided **sales tax filing and payment extensions**.

New Mexico required taxpayers to file returns on time but gave them **more time to pay gross receipts tax**; that extension ended April 25, 2021. Taxpayers adversely affected by the pandemic may ask the Minnesota Department of Revenue to **reduce late-filing penalties and interest**. Tax relief may be available on a case-by-case basis in **Pennsylvania** and **Washington**, and **Texas** and **Vermont** may allow special payment provisions for taxpayers struggling because of COVID-19.

Recognizing how businesses in the food industry have been particularly hard-hit by the pandemic, Colorado created a special **limited state sales tax deduction** for qualifying bars, restaurants, and mobile food vendors, and **New York waived penalties and interest** for certain affected restaurants and food service establishments.

New York and Colorado offered special tax relief to businesses in the food industry.

NEVADA OFFERS TAX AMNESTY

Though not specifically geared to address challenges created by COVID-19, **Nevada offered a tax amnesty program** from February 1 through May 1, 2021. During that time, qualifying businesses with tax liability in Nevada could apply for amnesty with the Nevada Department of Taxation. For successful applicants who fulfilled the terms of amnesty, the department waived monetary penalties and interest due on outstanding taxes.

Why do states offer tax amnesty?

By encouraging taxpayers to voluntarily pay the taxes they owe, tax amnesty programs boost tax collections with minimal cost to the state. Taxpayers get a break on penalties and interest, and the state can forgo many audits. It's a win-win.

EXEMPTIONS FOR PERSONAL PROTECTIVE EQUIPMENT

Some states are finding other ways to ease the ill effects of COVID-19 on businesses. Virginia's providing a **temporary sales tax exemption for personal protective equipment** (PPE) to encourage businesses to comply with COVID-19 prevention measures. Connecticut, Minnesota, and New Jersey have considered exempting PPE, but haven't done so as of this writing. Indiana is **waiving use tax on donated COVID-19 supplies** (e.g., medical supplies, food, and cleaning supplies).

Other countries are also reducing or eliminating taxes on PPE. For example, on November 30, 2020, Canada revealed a plan to apply a zero rate of **tax** to certain supplies of **face masks and face shields** made after December 6, 2020, until further notice. And on April 19, 2021, the European Commission decided to **prolong the temporary relief for customs duty and VAT** on the import of medical devices and protective equipment through the end of 2021.

A few examples of PPE:

- *Coveralls, full body suits, gowns, and vests*
- *Approved disinfecting products*
- *Face coverings, face shields, and filtering facepiece respirators*
- *Hand sanitizer*
- *Temperature-checking devices and monitors*

STATES GRAPPLE WITH TAX IMPLICATIONS OF A REMOTE WORKFORCE

States are examining whether and how their tax policies should adapt to new remote work schemes, which have become much more prevalent due to the pandemic.

Ordinarily, employees working remotely in a state establish physical presence nexus for their employers and have tax implications for both the employer and employee. Several states took a more lenient view in 2020, with the promise of dropping the hammer once the pandemic passed. Yet it's now clear COVID-19 may affect the way we live and work for years to come, and since many companies still require employees to work remotely, states are reevaluating their policies.

Maine determined that, for sales occurring in 2020, the presence of remote employees in the state doesn't constitute substantial physical presence for sales and use tax (so long as they started working in Maine during and because of the pandemic). In March 2021, Massachusetts clarified that nonresidents who worked in Massachusetts prior to COVID-19 and are now required to work remotely from another state will **continue to pay Massachusetts income tax as before**.

A new Connecticut law provides that "for purposes of the imposition of any Connecticut tax," the Department of Revenue Services **shall not consider the activities of an employee working remotely** from Connecticut in 2020 "solely due to COVID-19." All bets are off in 2021, as this policy applies to 2020 only.

In states where pandemic-related nexus relief was created by a gubernatorial **emergency order**, the nexus relief will expire when the emergency order expires.

It's now clear COVID-19 may affect the way we live and work for years to come, and since many companies still require employees to work remotely, states are reevaluating their policies.

Connecticut HB 6516 provides the following for taxable year 2020:

"The Department of Revenue Services shall not consider, in determining whether an employer has nexus with this state for purposes of the imposition of any Connecticut tax, the activities of an employee who worked remotely from this state during said taxable year solely due to COVID-19."

Exempting essentials

While COVID-19 continues to influence tax policy, there's still plenty of "business as usual" underway in state capitols around the nation. As in most years, a common topic of discussion is whether to carve out new sales and use tax exemptions – temporary or permanent – for a variety of essential products.

LOWERING THE COST OF FOOD

Only a few states tax sales of food for home consumption (aka, groceries) at the full rate; in most states, food is exempt or subject to a reduced tax rate. Alabama, Mississippi, and South Dakota are the outliers, and two of the three have been working to change that – with little success.

A bill proposing to phase out the state tax on groceries over the next four years is on the table in Alabama, where it may stay; similar proposals in the past hit a dead end. **Mississippi lawmakers also tried to pass a phase-out measure**, but the bill died in committee. Neither bill would have affected local taxes on food items.

Mississippi and Alabama have been trying to exempt or reduce tax rates for groceries.

REMOVING THE TAX ON DIAPERS AND FEMININE HYGIENE PRODUCTS

As of this writing, **measures to exempt diapers and/or feminine hygiene products** are under consideration in approximately 17 states. Lawmakers in another five states opted not to exempt these products during their 2021 legislative sessions.

States that tax these products are getting pressure to exempt them because they're essential: Infants cannot do without diapers; menstruating women cannot do without tampons or pads. Many states do provide an exemption for certain essential items, like food or prescription drugs, but they also tax products we can't do without, like clothes.

Some states sidestep this issue by providing a temporary sales tax exemption for certain essentials.

EMBRACING TEMPORARY SALES TAX EXEMPTIONS

There are more than 25 sales tax holidays on the calendar for 2021, and there could soon be close to 35.

Florida frequently enacts one or more stand-alone tax-free periods, though it has shied away from adopting an annual sales tax holiday. Lawmakers proposed three sales tax holidays during the 2021 legislative session, including one they've dubbed "**Freedom Week**." The bill became law on May 24, 2021, mere days before the start of the disaster-preparedness tax holiday.

Similar to last year, **Tennessee will provide a sales tax holiday** for retail sales of food, food ingredients, and prepared food this summer. It's also considering a small business sales tax holiday during the 2021 Labor Day weekend.

At least four states that don't generally offer sales tax holidays are pondering them this year. California is considering two, one for **emergency preparation items** and another for **school supplies**. Indiana is weighing the pros and cons of a **back-to-school sales tax holiday**. New York may encourage residents to purchase **water-conserving products** with a new sales tax holiday. Finally, **Wisconsin is considering a sales tax holiday** to shore up sales at pubs, restaurants, and other businesses that have suffered under COVID-19.

Sales tax holidays in 2021:

Examples of taxable products that can be exempt during sales tax holidays:

- *Clothing and footwear*
- *Energy Star products*
- *2nd Amendment supplies*

States explore new sales tax revenue streams

An interest in establishing new sales tax exemptions doesn't preclude states from broadening their sales tax laws. And COVID-19's shocking effect on certain industries has promoted some states to reevaluate their tax base.

In February, the **Vermont Tax Structure Commission** stated that "the broader the [sales tax] base, the less likely a particular crisis is to have a disproportionate negative effect" on revenue. For example, it found that "COVID would have been much less damaging to state revenue" if groceries were subject to Vermont sales tax.

The Vermont Tax Structure Commission on broadening the sales tax base:

"All other things being equal, a broader tax base is more fair, more sustainable/stable, and simpler than a narrow tax base. If you combine a broader tax base with a lower rate, the new system becomes even more sustainable."

Nebraska may **extend sales tax to certain services** that are currently exempt. Other states have already begun to broaden sales tax in other ways, as described on the next page.

TAXING DIGITAL ADVERTISING AND PRODUCTS

Maryland became the first state in the nation to tax digital advertising services in March 2021. With little time to adapt to the new requirements, businesses pressured lawmakers to push back the effective date and provide an exemption for certain ads; as of this writing, it seems they may get their wish. Meanwhile, **several other states** aim to follow Maryland's lead, including Connecticut, Indiana, Massachusetts, New York, and Washington.

Maryland also extended sales and use tax to certain digital products in March, and the Maryland Comptroller interpreted the new law broadly. As with the tax on digital ads, lawmakers in Maryland are already seeking to amend and clarify how tax applies to digital goods and Software as a Service.

The digital tax revolution is gaining steam. **Colorado** began taxing digital products and streamed services on January 1, 2021, and **Georgia** is looking to do the same as of July 1, 2021. **Kansas** lawmakers are considering a measure that would impose sales tax on digital property and subscription services, while **Wyoming** is working to tax streaming services. In Maine, where digital subscription services are already taxed, lawmakers may try to **raise the rate**.

Examples of digital advertising services subject to tax under Maryland's new bill:

- *Banner advertising*
- *Interstitial advertising*
- *Search engine advertising*

Examples of digital products subject to tax under Maryland's new law:

- *Digitized sound files (e.g., ring tones)*
- *Access to/use of video or online games*
- *Digital downloaded or streamed tutorials*

Economic nexus/ marketplace facilitator pulse check

Extending sales tax to remote sales has been one of the most effective ways for states to increase sales tax collections since June 21, 2018, when the Supreme Court of the United States ruled in favor of the state in South Dakota v. Wayfair, Inc.

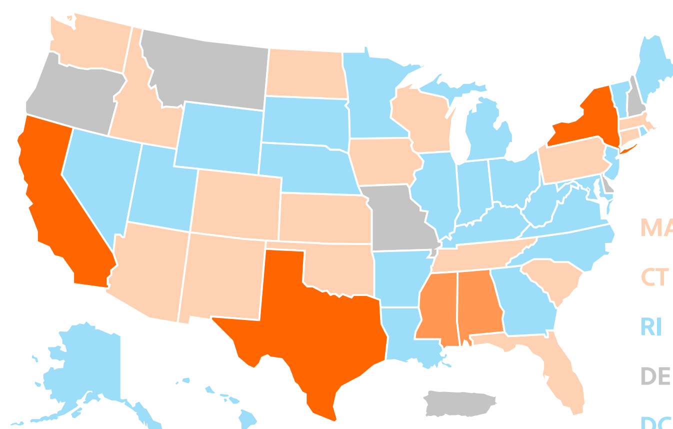
The Wayfair decision overruled a long-standing physical presence rule, authorizing states to base sales tax nexus – the connection with a state that creates a sales tax collection obligation for a business – solely on economic activity in the state (economic nexus). Though having a physical presence in a state still creates nexus, it's no longer the sole requirement.

> ***The Wayfair decision overruled a long-standing physical presence rule, authorizing states to base sales tax nexus solely on economic activity in the state.***

ECONOMIC NEXUS LAWS BY SALES THRESHOLD

- $500,000
- $250,000
- $100,000
- $100,000 ***or*** 200 transactions
- Does not have economic nexus law

Connecticut's threshold is gross receipts of $100,000 **and 200 retail transactions*
***New York's threshold is $500,000 **and** 100 transactions*



All states now provide safe harbor from economic nexus for companies doing a relatively small amount of business in the state (i.e., those selling under a specified economic nexus threshold). **Economic nexus**

thresholds vary by state, from $100,000 in taxable sales in Florida in the current or previous calendar year, to $500,000 in taxable sales *and* 100 separate taxable sales transactions in New York during the previous four sales tax quarters.

Wayfair also paved the way for marketplace facilitator laws, which require marketplace facilitators or providers to collect and remit tax due on behalf of marketplace sellers. It's much easier for states to hold the marketplace liable for this tax, rather than individual sellers that may not even meet a state's economic nexus threshold.

Three years after Wayfair, economic nexus and marketplace facilitator laws have been adopted by every state with a sales tax except one.

THE THIRD MOST POPULOUS STATE DECIDES TO TAX REMOTE SALES

One of the last holdouts, **Florida enacted economic nexus in April 2021**. Starting July 1, 2021, an out-of-state seller with no physical presence in Florida must register with the Department of Revenue and comply with all applicable sales and use tax rules if it has more than **$100,000** in taxable sales into Florida in the previous calendar year. The Sunshine State is also requiring marketplace facilitators to collect and remit the tax due on third-party sales on and after July 1, 2021.

Florida's economic nexus law also makes an important change to the **state's rounding rule**. This will make it easier for Florida to join the Streamlined Sales and Use Tax Agreement (SSUTA) should it want to do so, which in turn would simplify and perhaps reduce compliance costs for out-of-state sellers. To become a member of the SSUTA, states must adopt uniform sourcing rules and tax base definitions as well as other streamlining measures.

The rounding rule change:

12.354567 ↑

Previous method:
The computation of the tax must be carried to the third decimal place.

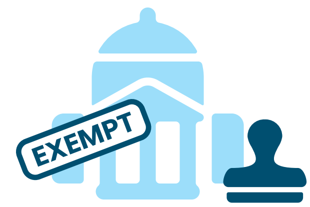
12.354 ↓

New method:
The tax must be rounded to the whole cent using a method that rounds up to the next cent whenever the third decimal place is greater than four.

FLORIDA HAS SPECIFIC REQUIREMENTS FOR EXEMPTION AND RESALE CERTIFICATES

Once registered, remote retailers and marketplace facilitators will need to develop a system to collect and validate Florida exemption and resale certificates. Collecting certificates can be more challenging in Florida than in other states because Florida certificates must be issued by the state and passed to the seller – they can't be printed blank and filled in.

Florida **resale certificates expire annually** on December 31 (certain other certificates are valid for a longer period; for example, exempt organization certificates are good for **five years**). Fortunately, it isn't always necessary to collect a new certificate every time a certificate expires: If a certificate is on file, so long as there's been continuous activity within the year, the tax ID can be verified within the Florida Department of Revenue portal. However, the verified ID information must then be maintained as proof that the certificate has been validated.



Government entities such as counties, municipalities, states, and political subdivisions (e.g., municipal libraries or school districts) are generally exempt from Florida sales and use tax.

MISSOURI STANDS ALONE

Missouri is now the last state without economic nexus standing. **Senate Bill 153**, which was sent to the governor May 25, 2021, would require certain remote vendors and marketplace facilitators to register with the Missouri Department of Revenue then collect and remit sales and use tax starting January 1, 2023.

If the Show-Me State is last to the remote sales tax party, it's not for lack of trying: Lawmakers have been working to get a bill across the governor's desk since shortly after the Supreme Court overturned the physical presence rule in **2018**. Yet Missouri's extremely complicated local sales and use tax system has been a formidable hurdle for policymakers to overcome: There are more than **2,000 local taxing jurisdictions** in the state, many of which overlap.

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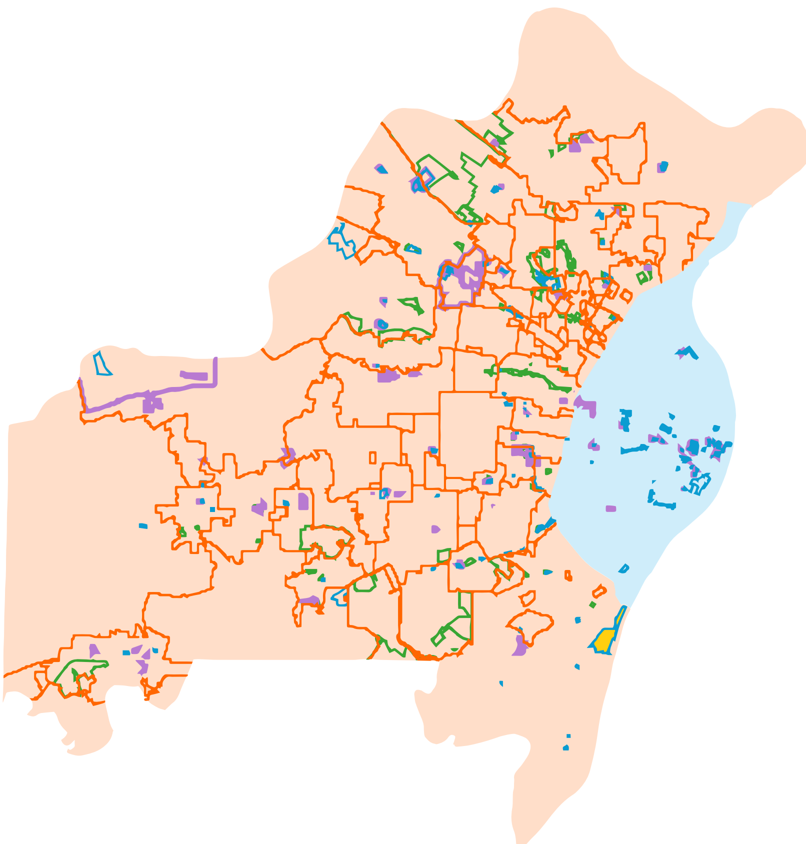
SAMPLE OF MISSOURI SALES TAX JURISDICTIONS



- St. Louis City
- St. Louis County
- Municipalities
- Community Improvement
- Transportation Development
- Local Tax Increment Financing
- Port Improvement

Other tax jurisdictions include:

- *Ambulance*
- *Emergency Management*
- *Fire Protection Information*
- *Hospital Information*
- *Public Library*
- *Regional Jail*
- *Regional Recreation*
- *Tourism*
- *Zoological*

SB 153 lays out a plan to simplify local sales and use tax compliance for registered businesses:

- The Missouri Department of Revenue must provide and maintain a downloadable taxability matrix containing total use tax rates (collected by remote vendors) in addition to total sales tax rates (collected by in-state vendors)
- The department must provide reasonable notice of changes in the taxability of products or services listed in the matrix
- Businesses that rely on erroneous data provided or approved by the department won't be liable for charging the incorrect amount of state or local sales or use tax

The measure also allows local governments to exclude remote vendors from the obligation to collect local use tax enacted prior to January 1, 2023. A remote seller won't be subject to local use taxes enacted prior to January 1, 2023, unless that seller would have been subject to the tax prior to January 1, 2023, or a majority of voters in the district approve an expansion of the tax after January 1, 2023. Remote sellers will be subject to any new local use tax enacted on or after January 1, 2023.

It's good that economic nexus and the marketplace facilitator collection requirement won't kick in until 2023 under SB 153. The state will need all the time it can get to implement the necessary changes.

KANSAS TOES THE LINE

The situation in Kansas is also unique: For years, it's been the only state with economic nexus that didn't provide an exception for small sellers, and the only state enforcing economic nexus that didn't require marketplaces to collect tax on behalf of third-party sellers.

About a year after the Wayfair ruling, in August 2019, **the Kansas Department of Revenue issued a notice** stating, "Kansas can, and does, require online and other remote sellers with no physical presence in Kansas to collect and remit the applicable sales or use tax on sales delivered into Kansas." In theory, as little as one transaction in the state for any amount could trigger a Kansas sales tax collection obligation for an out-of-state seller.

The same notice encouraged marketplace facilitators to enter into a voluntary compliance agreement with the department.

When the Kansas policy was challenged for not providing an exception for small sellers, the Kansas Department of Revenue claimed it **could not select the laws it enforces**. In other words, only the Kansas Legislature has the authority to establish a safe harbor provision or make marketplace facilitators liable for the tax due on third-party sales.

> ”
> ***In theory, as little as one transaction in the state for any amount could trigger a Kansas sales tax collection obligation for an out-of-state seller.***

Kansas lawmakers tried to do just that, but their first efforts were blocked. A bill seeking to establish an economic nexus threshold and marketplace facilitator collection requirement was vetoed in 2019, a **victim of aggressive tax cuts**. And in mid-April 2021, the governor of Kansas **vetoed another economic nexus and marketplace facilitator provision** contained in a larger tax package. For about two weeks, it looked like all was lost.

Kansas is a Streamlined Sales Tax (SST) member state.

Then, on May 3, 2021, **the Kansas Legislature overrode the gubernatorial veto**. Starting July 1, 2021, an out-of-state retailer must register then collect and remit sales tax only if the retailer had more than $100,000 of cumulative gross receipts from sales to customers in the state in the current or immediately preceding calendar year.

Also effective July 1, 2021, marketplace facilitators with economic nexus or a physical presence in Kansas are responsible for collecting and remitting the tax due on third-party sales.

WEST VIRGINIA CONSIDERS A NEW INTERNET SALES FEE

Many online sales have been subject to West Virginia sales tax since January 1, 2019, when the Mountain State started enforcing economic nexus, or July 1, 2019, when its marketplace facilitator law took effect. Nonetheless, **some lawmakers in West Virginia want to assess an impact fee on internet sales**.

The coronavirus pandemic has exacerbated any lingering inequalities between brick-and-mortar and online stores.

*According to **Digital Commerce 360**, "Sales through all other channels – stores, catalogs and call centers – declined."*

The authors of **House Bill 3213** recognize that the rise of ecommerce has contributed to a decline in traditional brick-and-mortar sales. Should the measure be enacted as written, revenue generated by the fee would fund a Storefront Business Preservation Fund to support in-state physical retail spaces.

However, the measure will likely fail. Although it treats all internet sales the same, it treats businesses with different sales models differently, which is generally frowned upon. Furthermore, it would impose the fee on West Virginia online retailers selling to customers throughout the state.

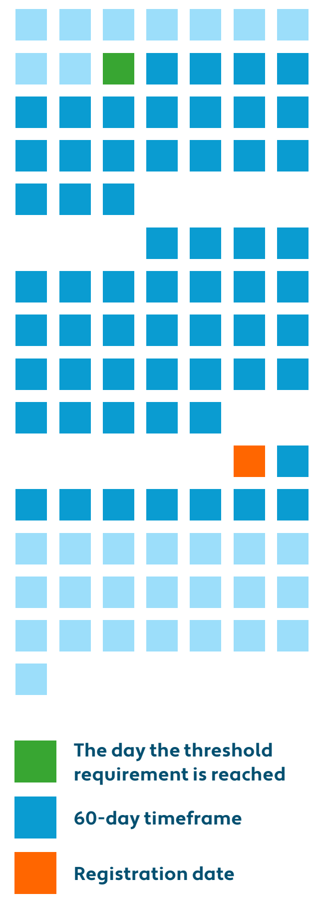
KENTUCKY GIVES REMOTE SELLERS MORE TIME TO REGISTER

Starting July 1, 2021, remote vendors that establish economic nexus with **Kentucky will have 60 days to register** and prepare to start collecting and remitting sales tax. Specifically, the registration date will be the first day of the calendar month that's at most 60 days after the threshold was reached. Prior to July 1, remote vendors with economic nexus have only 30 days to register with the Kentucky Department of Revenue.

The change isn't surprising, especially since Kentucky was one of the first states to adopt and start enforcing economic nexus after the Wayfair decision. The ensuing years have likely demonstrated a need to provide remote sellers more time.

It will be interesting to see if other states follow Kentucky's lead. **Indiana** requires remote sellers to register "immediately upon reaching the threshold." Thirty days is the policy in **Alaska**, **Louisiana**, and several other states. **Minnesota** and **North Carolina** are two of four states where remote vendors have 60 days to register. **Colorado** gives vendors 90 days.

Example of remote retailer's timeline to register with Kentucky for a sales and use tax permit (as of July 2021):



FLORIDA, CALIFORNIA, INDIANA, AND NORTH CAROLINA LOOK BEYOND SALES TAX

Most economic nexus and marketplace facilitator laws pertain to sales and use tax only, but a few states extend the collection requirements to other fees or taxes. For example, **in North Carolina, marketplace facilitators are also liable for**:

- Dry cleaning solvent tax
- Motor vehicle lease and subscription tax
- Scrap tire disposal tax
- White goods disposal tax
- 911 service charge for prepaid wireless telecommunications service

Florida's economic nexus and marketplace provision applies only to sales and use tax from July 1, 2021, through the end of March 2022. Starting April 1, 2022, marketplace providers will also be responsible for collecting and remitting **Florida's prepaid wireless E911 fee, lead-acid battery fee, and new tire fee**.

If **California Assembly Bill 1402** is enacted, marketplace facilitators that are responsible for collecting and remitting sales tax on behalf of third-party sellers will also be liable for the state fees on lead-acid batteries, lumber, tires, and video displays containing hazardous waste. The extended collection requirement would take effect January 1, 2022, and is expected to generate approximately $1 million annually.

Indiana has enacted a law (**SB 383**) requiring out-of-state sellers with economic nexus to collect and remit applicable fireworks public safety fees, prepaid wireless service charges, and waste tire management fees in addition to sales and use tax. It takes effect July 1, 2021.

Beginning July 1, 2022, the Hoosier State also plans to impose an **electronic cigarette tax** on the sale and use of certain vaping products. Like in-state retailers, out-of-state retailers with economic nexus will be liable for the tax unless sales are made through a marketplace, in which case the marketplace facilitators will be responsible for collecting and remitting the electronic cigarette tax.

California, Florida, Indiana, and North Carolina are among the states looking to expand marketplace facilitator collection requirements to other taxes and fees, in addition to sales and use tax.

MARKETPLACE LAWS AFFECT FOOD DELIVERY AND HOSPITALITY

The first states to adopt marketplace laws often focused on companies like Amazon, and as a result, many marketplace laws don't reference food-delivery services.

Yet marketplaces now dominate food delivery, as anyone who's ever ordered food through DoorDash or Grubhub knows. So, states are refining their marketplace laws to address this industry.

Marketplaces now dominate food delivery ... So, states are refining their marketplace laws to address this industry.

Some states are making food-delivery marketplaces responsible for collecting and remitting the taxes due, while some are not. For example:

- Food-delivery marketplaces are liable for sales tax in **North Carolina**.
- **Georgia's** law applies to third-party food-delivery services but not app or web sales by a franchisor on behalf of franchisees.
- Marketplace facilitator laws in **California** and **Tennessee** do not apply to food-delivery marketplaces.
- Marketplace facilitators are not required to collect the tax due on sales of restaurant food in **New York**.

Of course, marketplace facilitator laws are subject to change, like other sales and use tax laws. Last year, **Mississippi** adopted an exemption for third-party food-delivery platforms.

Several states have also extended their marketplace facilitator collection requirements to lodging marketplaces like Expedia or Hotels.com. These states include **Indiana** and, as of January 1, 2022, **West Virginia**. On the other hand, marketplace facilitators are not required to collect hotel occupancy tax in New York. Read the **hospitality industry section** for more details.

It's complicated, but food-delivery service providers and businesses in the lodging industry must understand how marketplace facilitator laws impact tax compliance.

States are still enforcing other types of nexus (or not)

Although economic nexus tends to get the lion's share of the attention lately, it isn't the only type of nexus on the block.

There's physical presence nexus, of course, which according to the Washington State Department of Revenue is created by "**only more than the slightest presence**." Everything from inventory stored to making a delivery in a state can trigger physical presence nexus. In fact, Washington state recently clarified that certain **trade show activities establish an obligation to collect and remit sales tax**.

Beyond physical presence, there's affiliate nexus, click-through nexus, and cookie nexus – the least common but perhaps the most interesting.

Everything from inventory stored to making a delivery in a state can trigger physical presence nexus.

CRUMBLING COOKIE NEXUS

Before the Supreme Court opened the door to economic nexus, Massachusetts claimed large internet vendors could establish a physical presence in Massachusetts through **the apps or "cookies"** they place on in-state devices to bolster business. The Massachusetts Department of Revenue began enforcing its cookie nexus regulation in 2017.

Taxpayers challenged the regulation before the ink was dry, and earlier this year, the **Massachusetts Appellate Tax Board** found in their favor. It ruled that cookies do *not* qualify as physical presence, and that by enforcing cookie nexus, Massachusetts was violating the Internet Tax Freedom Act and Due Process clause.

Massachusetts defines "cookies" as:

Text data files generally used by an internet vendor to enhance its customer sales. Cookies are stored locally on computers and physical communications devices of the customers of an internet vendor when such customers visit the vendor's website for the first time and act to identify the customer on each subsequent visit.

Interestingly, the Department of Revenue **regulation** still claims cookie nexus "is effective on September 22, 2017," and no longer in effect "as of October 1, 2019," which is when the Bay State began enforcing economic nexus.

THE END OF AFFILIATE AND CLICK-THROUGH NEXUS

Ohio eliminated cookie nexus after the Wayfair decision. A few other states also lost their appetite for other types of nexus: In 2019, Arkansas, California, and Colorado **repealed affiliate nexus laws**, and Arkansas, California, Colorado, Ohio, and Washington **repealed their click-through nexus** laws. Illinois repealed affiliate and click-through nexus but then had a change of heart and **re-enacted them**.

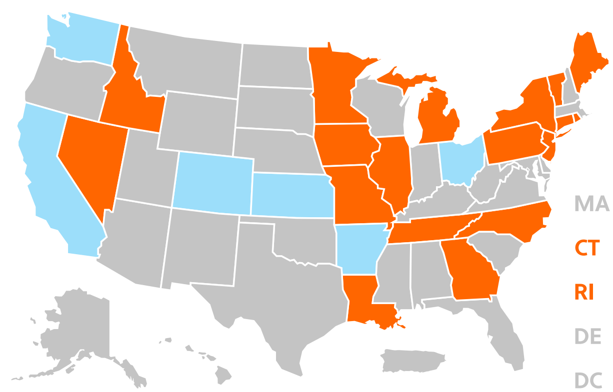
More recently, **Kansas lawmakers eliminated click-through nexus** with the enactment of Senate Bill 50, which also created an economic nexus threshold and a marketplace facilitator collection requirement.

Under click-through nexus laws:

An out-of-state business establishes a physical connection to a state through agreements to reward persons in the state for directly or indirectly referring potential purchasers through links on a website or otherwise.

CLICK-THROUGH NEXUS LAWS BY STATE

- States with click-through nexus laws
- States that repealed click-through nexus laws
- States that don't have click-through nexus laws



Switching up sourcing rules

Some states are also refining their **sales tax sourcing rules**, which dictate which rates and rules govern each transaction.

There are essentially three ways to source a sale:

DESTINATION SOURCING

bases rates and rules on the location where the buyer takes possession of the goods or receives a service

ORIGIN SOURCING

bases rates and rules on the location of the seller

MIXED SOURCING

applies both destination and origin sourcing rules

NEW MEXICO SWITCHES TO DESTINATION SOURCING

Starting July 1, 2021, **New Mexico is switching from origin sourcing to destination sourcing**. A December 2020 notice issued by the New Mexico Taxation and Revenue Department explains: "Currently, most businesses use their business location to determine the location in which they will report and use the corresponding tax rate, or in the case of internet-based sellers, the statewide GRT [gross receipts tax] rate. Starting July 1, 2021, tax on most transactions including remote sales will be based on the rate at the location where goods are delivered. The change, enacted under 2019 legislation, will allow cities and counties to share directly in tax revenue generated by internet and other remote sales."

Since gross receipts taxes are levied on the seller, not the buyer, sellers aren't required to collect it from buyers. However, most do.

This is worth underscoring: Prior to July 1, 2021, internet sales are subject to New Mexico's state gross receipts tax only (5.125%). As of July 1, 2021, "**receipts from these sales will also be subject to local option gross receipts rates.**" However, sales of some professional services will still be governed by origin sourcing rules, and "**special rules will also apply to construction services** and real estate commissions."

TEXAS MAKES NEW RULES FOR INTERNET ORDERS

Texas is also working to change sourcing rules. Last year, the Texas Comptroller proposed **distinguishing internet orders from telephone and in-person orders**, and establishing destination sourcing for internet orders and sales made by a marketplace seller through a marketplace. These changes are set to take effect October 1, 2021.

House Bill 2410 seeks to make this change legislatively. It would add to a **2019 law** taxing marketplace sales at the rate in effect at "the location in this state to which the item is shipped or delivered or at which possession is taken by the purchaser."

If adopted as written, the proposed sourcing changes will have a profound impact on in-state businesses that make internet sales to consumers statewide. Expect more developments in this area in the coming months.

Texas is establishing destination sourcing for internet orders and sales made by a marketplace seller through a marketplace.

How far back can a state reach for sales tax?

Now that most states have the authority and the laws in place to require out-of-state sellers to collect and remit sales tax, are they still seeking to boost sales tax collections by uncovering past unpaid tax liability? In a word, yes.

In theory, states have the freedom to reach back as far as they want – and legally can. Yet most state economic nexus laws clearly state that they're to be enforced on a prospective basis only, meaning from the moment the law first took effect. Not applying economic nexus retroactively reduces the chances that an economic nexus law will be challenged.

Still, some states haven't given up on the hope of collecting more tax revenue from out-of-state sellers based on previous activity in the state. For example, **California has been holding marketplace sellers liable** for tax on sales made prior to the effective date of the state's economic nexus and marketplace facilitator laws on the grounds that housing inventory in the state (e.g., in a marketplace fulfillment center) gave marketplace sellers physical presence nexus.

This is a hard pill for marketplace sellers to swallow, especially those that weren't aware they had inventory in California.

South Carolina has taken a slightly different approach, **going after Amazon for uncollected taxes on third-party sales** made prior to the effective date of its marketplace law. Amazon is fighting back with the support of the **Council on State Taxation** (COST).

Other states, including Pennsylvania and **Washington**, are grappling with this issue as well.

In theory, states have the freedom to reach back as far as they want – and legally can.

Inventory creates a physical presence:

One Philadelphia-based FBA seller was notified that he could owe California up to $1.6 million in back sales tax, plus penalties and interest, because he had inventory stored for sale in Amazon warehouses in the state.

PENNSYLVANIA LIMITS LIABILITY FOR MARKETPLACE SELLERS

Earlier this year, **Pennsylvania provided a 90-day voluntary compliance program** for unregistered out-of-state businesses with inventory in the Keystone State. The Pennsylvania Department of Revenue offered a limited lookback period and penalty relief for businesses meeting the terms of the program.

Unlike traditional tax amnesty programs, which are generally open to most businesses, Pennsylvania's program was created with marketplace sellers in mind. Often unbeknownst to them, many marketplace sellers developed a physical presence in states through inventory housed in warehouses owned or operated by marketplace facilitators.

Pennsylvania's soft approach may prove more successful than the more aggressive tactics undertaken by California and South Carolina. It will certainly build more goodwill.

Voluntary compliance programs are generally good both for states and sellers.

They reduce past tax burdens and financial penalties for participating out-of-state businesses; they level the playing field for in-state businesses; and they increase state tax collections, bringing in outstanding past taxes as well as future taxes by newly registered businesses, without entailing costly audits or lawsuits.

Massachusetts gives a little, takes a little

Taxpayers now have an extra 10 days to file and pay Massachusetts sales and use tax, room occupancy tax, and a few other taxes. Instead of being due 20 days after the close of a tax filing period, they're now due 30 days after the close of a filing period. This change took effect for tax periods ending after April 1, 2021.

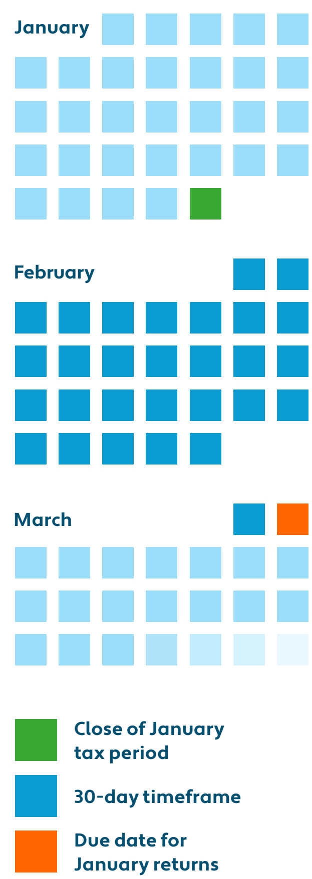
Interestingly, Massachusetts also now requires taxpayers with more than $150,000 in cumulative tax liability for the immediately preceding calendar year to make advance tax payments. These are due on the 25th of the month.

Accelerated remittance is the first phase in Governor Charlie Baker's more ambitious plan to establish **real-time sales tax remittance**. If the governor's full plan is realized, which is a big if, all retailers and credit card processors would be required to capture sales tax at the time of purchase and remit it daily.

The new due date for returns is usually the 30th of the following month, except for the January monthly filing period.*

If the last day of February is the 28th, the due date for January returns would be March 2nd (seen below).

If the last day of February is the 29th, the due date for January returns would be March 1st.



** For Massachusetts sales and use tax and room occupancy excise returns*

There's a world of opportunity out there for the bold

Though the pandemic shut the doors of in-person commerce close to home, it opened opportunities for global ecommerce. Homebound consumers whose incomes were not affected by COVID-19 had a lot of time on their hands to shop online. And boy, did they.

This is an exciting time for companies currently selling across international borders and businesses interested in developing cross-border sales. Yet it's also a challenging time: Several significant changes on the international front are complicating customs duty, import tax, and value-added tax (VAT) compliance.

Brexit was a biggie. Under the terms of the agreement, the United Kingdom is now a "third country" sitting securely outside the European Single Market and EU Customs Union. As a result, EU-U.K. cross-border sales are subject to numerous new nontariff trade barriers as of the first of the year.

Though Brexit doesn't directly impact all U.S. sellers, the new U.K. ecommerce VAT package that also took effect January 1, 2021, has changed tax obligations for U.S. ecommerce businesses shipping to consumers in the U.K. And Brexit may have affected U.S. businesses that house inventory in the U.K. for shipment to EU members, or vice versa.

Several significant changes on the international front are complicating customs duty, import tax, and VAT compliance.

In January 2021, online marketplaces trading in the U.K. were hit by a triple wave of customs obligations and VAT charges, due to:

- *The end of the Brexit transition period*
- *HMRC's new rules on imports*
- *Cross-border marketplace VAT liabilities*

Soon after adjusting to these changes, ecommerce companies selling into the EU will have to deal with sweeping **reforms to EU VAT obligations for B2C ecommerce sellers and marketplaces**. These include:

- Launching the new One-Stop-Shop EU VAT return
- Eliminating the low-value import VAT exemption
- Making marketplaces the deemed supplier

It's hoped these measures will reduce VAT fraud and level the playing field for EU sellers that are unable to sidestep their tax obligations (not that they'd want to).

These are just a few of this year's global tax compliance concerns. Others include electronic invoicing, digital reporting, and conflict over digital services taxes.

Miscellaneous tax issues

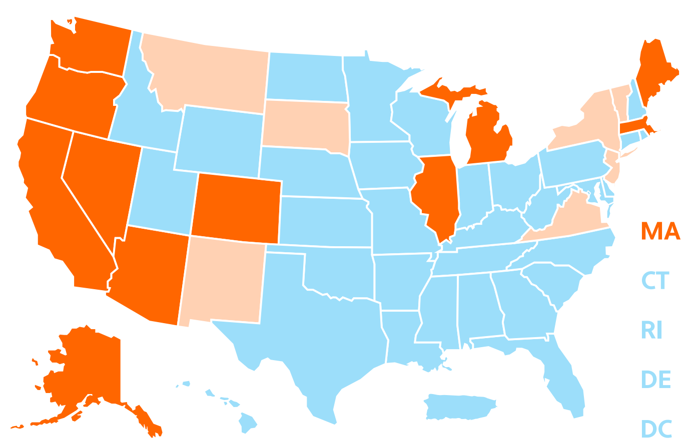
Every legislator can draft and submit a bill, and any bill can become law. Though some seem unlikely at the outset, you never know what will resonate or what could launch a new trend.

TAXING WACKY TOBACKY

For example, the legalization of marijuana was once unfathomable, yet as of May 2021, it's now possible for adults to buy recreational marijuana products off the shelf in **11 states**. These will soon be joined by seven others: **Montana**, **New Jersey**, **New Mexico**, **New York**, **South Dakota** (though legalization is being challenged), **Vermont**, and **Virginia**. Although efforts to legalize recreational sales of cannabis died in **North Dakota**, **Wyoming**, and a few other states, they're still alive as of this writing in **Washington, D.C.**, and at least three states: **Connecticut**, **Delaware**, and **Rhode Island**.

STATE-BY-STATE GUIDE TO RECREATIONAL CANNABIS LAWS

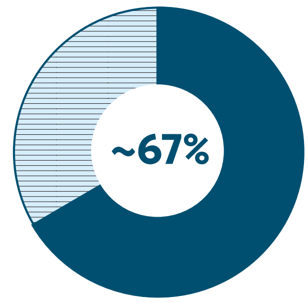
- Retail sale is currently legal
- Retail sale has been approved but isn't yet available
- Retail sale of recreational marijuana is fully illegal



Recreational pot owes a debt to medical marijuana, but the potential tax benefits of legalization also played a key part in legalization efforts. It's just easier for states to authorize the use and sale of long-outlawed products if doing so will increase the bottom line.

As marijuana legalization sweeps the nation, a quiet movement to decriminalize and eventually legalize psilocybin is hanging off its coattails. It's not the first time – **scientists studied psilocybin's potential benefits back in the 1950s** – but this time at least one state is looking to legalize the sale of psilocybin products or related services. Should Oklahoma **House File 636** be enacted, sales tax would apply to psilocybin products.

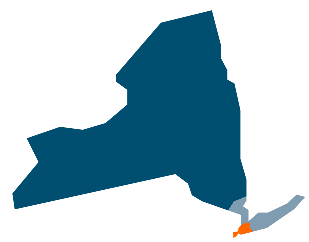
Roughly two-thirds of Americans back legal weed.



54 STATES AND COUNTING

During the first half of 2021, as the new U.S. president made a plea for unity, **lawmakers in Illinois, New York, and Washington introduced measures to divide their states** to better address differing political ideologies and needs. Illinois would break into an urban Cook County and a rural "downstate" area, while Washington's divide would run north-south along the Cascade Range. Each of these two-state solutions leave a lot to the imagination. The New York plan proposes three autonomous regions rather than three new states and takes a stab at reorganizing the sales tax structure.

The Illinois bill has seen some movement, but the bills in New York and Washington have been languishing in committee since their introduction. For now, at least, the U.S. will likely stick to 50 states.



Senate Bill 4541 seeks to divide New York into three autonomous regions:

- *The Montauk Region (Nassau, Rockland, Suffolk, and Westchester counties)*
- *The New York Region (New York City)*
- *The New Amsterdam Region (Upstate New York)*

REAL TAX IMPLICATIONS FOR THE VIRTUAL WORLD

Effective July 1, 2021, charges related to the commercial mining of cryptocurrency, including those related to the electricity used or consumed in the mining, are exempt from Kentucky sales and use tax and excise tax. Cryptocurrency mining uses an enormous amount of electricity, so this will save miners a pretty penny. The new law also defines various terms related to blockchain technology and cryptocurrency commercial mining. It's scheduled to sunset June 30, 2025.

Kentucky is also extending certain **clean-energy incentives** to miners who invest at least $1 million worth of equipment in the state. The state hopes to become a leader in the cryptocurrency field.

It will be interesting to see how long it takes for other states to legislate on tax matters related to the virtual universe. There's money to be made there – the virtual world **The Sandbox** sold about $2.8 million worth of "land" in February, and a digital collage sold through Christie's for $69.3 million in March. Where money goes, tax policy usually follows.

These shapes outline the virtual real estate inside the metaverse of The Sandbox.

Each "plot" is part of a finite world where users will be able to host games or social experiences in the future. Through the implementation of Play-to-Earn mechanics, owners will be able to generate revenue and monetize their gameplay and experience through various blockchain-based features.

INDUSTRY IMPACTS

In this section we explore key modifications to tax compliance developments in the following industries:

BEVERAGE ALCOHOL INDUSTRY

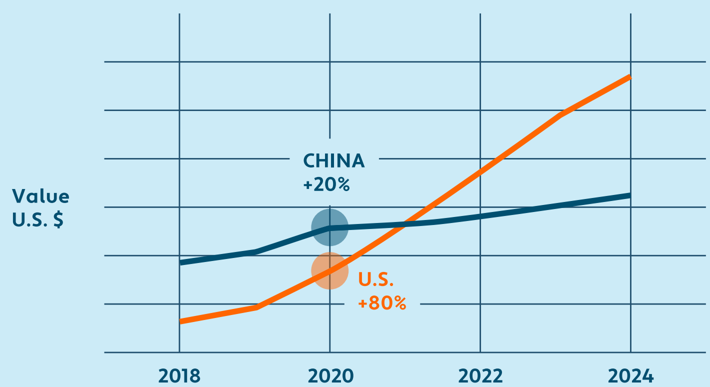
Pandemic sparks new developments in the beverage alcohol industry

Nearly half of the U.S. consumers who bought alcohol online last year did so **for the first time**, mostly due to COVID-19. The pandemic continues to impact the beverage alcohol industry in 2021: Although restrictions on in-person dining and drinking have been **eliminated** in much of the country, people from **Miami** to **Seattle** are still ordering to-go drinks. Online alcohol sales are booming. By the end of 2021, **alcohol ecommerce sales in the U.S. will likely surpass sales in China** – the world's largest online alcohol market.

Changes in consumer habits often lead to regulatory changes. Read on to discover some of the key happenings to date.

ONLINE ALCOHOL SALES: U.S. AND CHINA

COVID-19 has accelerated the absolute value growth in the U.S.



HOW DID WE EVER MAKE DO WITHOUT COCKTAILS TO GO?

With **restrictions on in-person dining and drinking** still present in many states, lawmakers are reevaluating whether and how restaurants should be able to sell drinks to go. Restaurants usually make about **30%** of their revenue from alcohol sales, so being able to sell beer, wine, and cocktails to go during COVID-19 lockdowns has helped many businesses stay afloat.

Fewer than 20 states allowed businesses to sell alcohol to go before the pandemic. Today, approximately 46 states permit some sort of alcohol delivery, at least temporarily. Several have legalized alcohol delivery or to-go sales on a permanent basis, or are moving in that direction.

Georgia permanently authorized **beer and wine delivery sales** in 2020 and did the same for **cocktails** in May 2021. **Kentucky** made alcohol delivery (including cocktails to go) permanent effective March 15, 2021. A bill that would make alcohol delivery legal in **Kansas** starting July 1, 2021, was approved by the governor on May 26, 2021. In **New Mexico**, a law authorizing to-go sales of cocktails and other alcohol is in effect July 1, 2021, through at least July 1, 2026.

Although currently there are **no restrictions on restaurant dining in Texas**, lawmakers in the Lone Star state also want to permanently allow the pickup and delivery of alcoholic beverages. **House Bill 1024** would enable the holder of a mixed beverage permit to deliver an alcoholic beverage from its permitted premises to a consumer located off premises, provided certain conditions are met. For example, the alcohol must accompany a sale of food, and it cannot be transported in the passenger area of a motor vehicle.

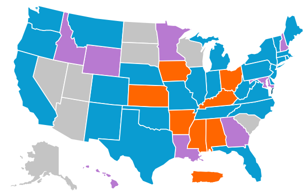
Each state's rules for to-go and delivery alcohol sales are unique. Like Texas, many states mandate a food purchase with alcohol sales, but not all do. And while Massachusetts and Michigan allow third-party delivery of alcohol, Kansas and Louisiana do not.

Where third parties can make alcohol deliveries, all involved parties need to understand who's responsible for collecting and remitting the taxes due.

MARKETPLACE LAWS MEET BEVERAGE ALCOHOL LAWS

Last year, concerns over contagion coupled with the shuttering of businesses led to dramatic drops in ridership for transportation

States that permit alcohol delivery:



Alcohol delivery allowed permanently

Alcohol delivery allowed temporarily

Complicated; see chart

Alcohol delivery not allowed

Where third parties can make alcohol deliveries, all involved parties need to understand who's responsible for collecting and remitting the taxes due.

companies like Uber. Yet business boomed at Uber Eats, which transports food from restaurants to consumers.

After states loosened restrictions on alcohol deliveries, some companies rushed to jump on new opportunities. In February, **Uber/Uber Eats announced plans to acquire alcohol delivery service Drizly**, and online wine marketplace/wine app Vivino had its fourth round of funding. In March, Southern Glazer's Wine & Spirits announced an equity investment in ReserveBar, an ecommerce platform for premium and luxury spirits. It will be interesting to see what new blends emerge in the coming years.

Most states have marketplace laws that make marketplace facilitators, not individual marketplace sellers, liable for collecting and remitting applicable taxes. However, these laws tend to be at odds with alcohol regulations, which require the alcohol licensee to control the sale of alcohol and collect and remit related taxes.

If alcohol marketplaces and online alcohol delivery services have been able to sidestep this issue thus far, it's because they merely provide the platform where licensed alcohol sellers and consumers connect. But states are reevaluating the intersection of marketplace facilitator and alcohol laws. Key considerations include:

Relaxed restrictions on alcohol delivery have caused tectonic shifts in the alcohol ecommerce industry:

Uber Eats revenue eclipsed ride sharing by more than doubling from one year ago

$1.2 billion

Vivino wine app sales hit record growth in year-over-year sales in April 2020

+157%

- **The soliciting of sales by unlicensed third-party providers**
- **Conflicting marketplace and alcohol guidance**
- **Following the money**
- **Validating the age of consumers**

States are starting to modify their laws and regulations to **allow and better regulate online sales of alcohol** by delivery apps, marketplaces, retailers, and suppliers.

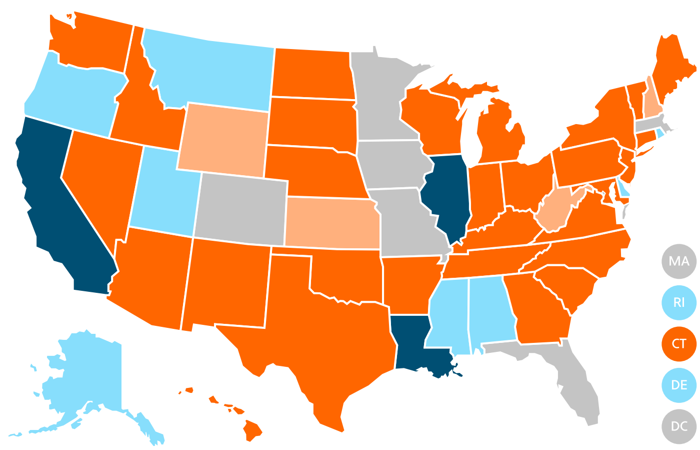
ECONOMIC NEXUS COMPLICATES COMPLIANCE FOR BEVERAGE ALCOHOL SELLERS

In the meantime, laws requiring out-of-state sellers to collect and remit tax on their sales into a state are **complicating compliance for alcohol sellers**.

Until recently, states couldn't compel a business to collect and remit sales tax unless the business had a physical presence in the state. That changed after the Supreme Court of the United States issued its pivotal decision on South Dakota v. Wayfair, Inc. (June 2018). Although physical presence still creates a tax obligation, states are now authorized to base a tax collection obligation solely on economic activity in a state, or economic nexus.

SALES TAX REQUIREMENTS FOR WINERIES

- Sales tax required
- DTC shipments prohibited/ no sales tax
- Unique winery tax rules
- Sales tax required, but variable based on nexus
- Sales tax not required unless nexus exists



In April 2021, **Florida became the 44th state to adopt an economic nexus law** (plus Washington, D.C., and some parts of Alaska, where there are local sales taxes but no state sales tax). Missouri is now the only state with a general sales tax that **doesn't have an economic nexus policy**, and it's working to rectify that with **Senate Bill 153**, which was sent to the governor on May 25, 2021. Once Missouri succeeds, economic nexus laws will be in effect in all states except Delaware, Montana, New Hampshire, and Oregon, which have no general sales tax.

Though out-of-state alcohol sellers have long been required to register with state alcoholic beverage control boards, **economic nexus laws** can and do affect them. Before July 1, 2021, when Florida's new economic nexus law took effect, **out-of-state wineries were required to collect Florida excise tax** but not Florida sales tax. As of July 1, out-of-state direct-to-consumer (DTC) wine shippers meeting the state's $100,000 economic nexus threshold must register with the Department of Revenue and collect and remit sales tax, too.

Economic nexus laws can also have other consequences. **California's economic nexus law** requires wineries meeting the state's $500,000 economic nexus threshold to collect applicable local taxes at the rate in effect at the location of the consumer. In addition to out-of-state wineries, this affects California wineries shipping to consumers throughout the state.

Whereas Illinois once allowed out-of-state wineries to collect a single, flat use tax rate on all sales into the state, it now requires **wineries with economic nexus to collect state *and* applicable local taxes**. As with California, this impacts Illinois-based wineries as well as out-of-state wineries.

Texas also started requiring licensed DTC wineries **to collect and remit local sales tax**. Those that meet the state's $500,000 threshold but have no physical presence in the state may opt to collect a flat local sales tax instead of the varying rates in effect at each shipping location, as Illinois once allowed. Yet Texas wineries and other businesses with a physical presence in the state must collect the tax in effect at each destination; they cannot collect the single local tax rate.

Some states haven't yet clarified how economic nexus laws apply to alcohol shippers. We expect that to change in the coming months and years.

There's no one-size-fits-all rule when it comes to economic nexus. Thresholds vary from state to state:

California

$500K sales

Evaluation period: Current or previous calendar year

Iowa

$100K sales

Evaluation period: Current or previous calendar year

Minnesota

$100K sales *or* 200 transactions

Evaluation period: Prior 12 months

Washington, D.C.

$100K sales *or* 200 transactions

Evaluation period: Current or previous calendar year

STATES WEIGH IN ON DTC WINE SALES

As of this writing, there are only three states where wineries currently aren't permitted to make any DTC shipments: **Alabama**, **Mississippi**, and **Utah**. In **Arkansas**, **Delaware**, and **Rhode Island**, wineries may make on-site shipments only, meaning the customer must place the order in person (e.g., when an Arkansas resident is wine tasting in California).

Change is brewing in some of these states, with varying degrees of success. Arkansas lawmakers killed a **bill** that would have removed the requirement for Arkansans to order wine for delivery in person (e.g., while visiting a winery). Direct shipping bills in Mississippi (**House Bill 577** and **Senate Bill 2449**) also failed to gain traction.

Yet Alabama lawmakers looked favorably upon **House Bill 437**, which authorizes wineries to make DTC shipments into the state and creates a license requirement for fulfillment houses. The bill was signed into law on May 13, 2021. On August 1, 2021, **Alabama will become the 47th DTC wine state**.

As of August 1, 2021, Utah and Mississippi are the only states where wineries aren't permitted to make DTC shipments.

THE FULFILLMENT HOUSE QUESTION

Kentucky authorized DTC sales of beer, wine, and spirits in 2020, but as an oversight didn't allow for the use of fulfillment houses. This was a huge blow to the industry, as fulfillment houses serve a critical role in getting wine from producers to consumers. Fortunately, after hearing the concerns of the industry, Kentucky quickly enacted a law in March that **allows direct shipper licensees to use third parties to fulfill shipments**.

Around the same time, Tennessee lawmakers crafted a bill that would specifically **make it illegal for fulfillment houses to ship wine** on behalf of licensed wineries to consumers in the Volunteer State. Yet as in Kentucky, legislators amended the bill after constituents spoke up. The newest version creates a fulfillment house license and authorizes licensed fulfillment houses to make direct sales to Tennessee consumers. The **amended bill** was signed into law on May 4, 2021.

What is a fulfillment house?

Wineries typically don't have the capacity to store much wine on premises, or the bandwidth to ship wine directly to customers in various states. Instead, they use fulfillment houses – licensed entities that store the wine, prepare it for shipment, and make sure it gets to a common carrier.

CAN A LIQUOR COMMISSION BE A DTC SHIPPER?

One of the most interesting developments in DTC shipping in 2021 comes out of New Hampshire: **The New Hampshire Liquor Commission wants to make DTC shipments** of wine, beer, and liquor to consumers in New Hampshire – and other states.

As anyone who's ever traveled to or through New Hampshire knows, New Hampshire State Liquor Stores cater to out-of-state consumers (New Hampshire neophytes are often stunned to find liquor stores at interstate-highway rest stops). Since New Hampshire doesn't collect sales or excise tax on most alcohol sales, it's **a popular destination for drinking residents of neighboring states**.

With online alcohol sales booming, the Liquor Commission sees DTC shipments as a natural extension of its physical stores. If **Senate Bill 14** becomes law, the commission will be authorized to move forward with this plan.

Not all alcohol sales are taxed alike:

Although alcohol purchased at a New Hampshire State Liquor Store or other in-state retailer is tax free, DTC alcohol shipments into New Hampshire are subject to an **8% fee**.

Approximately half of the New Hampshire Liquor Commission's alcohol sales are to out-of-state customers.

ODDS AND ENDS

Other news related to the sale and shipment of beverage alcohol:

- North Dakota will allow microbreweries to make DTC shipments (**SB 2321**)
- Oregon may increase monthly volume limits for DTC shippers (**SB 406**) and initiate standards to ensure alcoholic beverages aren't delivered to minors (**HB 3245**)
- Wyoming **increased volume limits** and allows retailers to make DTC sales starting July 1, 2021

The dramatic shifts in consumer habits triggered by the coronavirus didn't escape the notice of policymakers; it just takes time for them to react. Expect more developments to come in 2021 and beyond.

COMMUNICATIONS INDUSTRY

As technology advances, many businesses face new tax challenges

The communications tax landscape has been undergoing major transformations in recent years, and 2021 is no different. Streaming subscriptions are up, demand for platforms that support flexible work and virtual learning are high, and new technologies seem to be emerging daily. We live, work, and play in a world where voice, video, SaaS, cloud, IoT, and more make it easier than ever to stay connected – to jobs, to schools, to friends and family, to entertainment … and the list goes on.

Not surprisingly, these shifts are driving big changes across the U.S. communications tax landscape.

States continue to show that where there's a communications capability, there's a way to ensure communications tax may apply. Read on to discover some of the key happenings to date.

Internet Tax Freedom Act:

Passed in 1998, the act imposed a moratorium preventing state and local governments from taxing internet access.

STATES WORK TOWARD ROBUST SOURCES OF REVENUE

First, there's the issue of internet tax. Americans now pay an average of **$50 a month for broadband internet**. But with the **Internet Tax Freedom Act**, states and municipalities are unable to collect communications tax on those services. And as the use of traditional communications services such as voice and private networking continue to decline, tax authorities are devoting more time and attention to other sectors that are growing fast – like streaming.

Average cost for broadband internet:

$50

a month

STATES CATCH UP TO SURGES IN STREAMING

If you thought the stay-home streaming frenzy of 2020 would come to an end when COVID-19 restrictions began to ease, it's time to think again. Rather than going out more and streaming less, households are increasing their use of subscription services at a faster-than-ever rate. Americans are expected to add **50 million new streaming subscriptions** by year's end – up from the addition of 47 million in 2020.

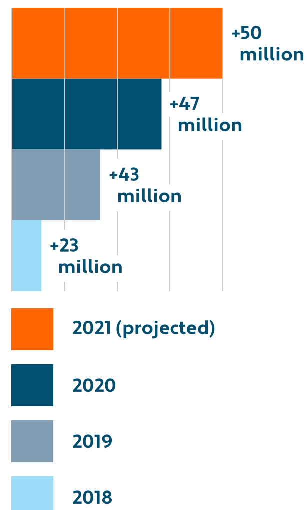
In the midst of this surge, the list of states looking to tax streaming services continues to grow.

In **Georgia**, lawmakers have renewed a push to collect "Netflix tax" after similar proposals were shot down in 2019 and 2020. If passed, **House Bill 594** would raise an estimated $190 million in state and local revenues by collecting tax from Hulu, Amazon Prime Video, and other streaming services. In **Colorado**, recent amendments to the Department of Revenue's tangible personal property rule mean monthly streaming subscription fees are now subject to the state's 2.9% sales tax.

Similar efforts are underway in **Nevada**, where pending legislation could soon put streaming services back into the tax base, and **Kansas** and **Wyoming**, where lawmakers are considering measures to impose sales tax on subscription services.

All this movement is in addition to the wide swath of states and cities – California, Connecticut, Florida, Iowa, Kentucky, North Carolina, Pennsylvania, Washington, Chicago, and the District of Columbia, to name a few – that have already **extended communications taxes to apply to streaming media**.

Additions of U.S. streaming video subscribers year over year:



FRANCHISE FEES FOLLOW STREAMING PROVIDERS

As streaming services continue to increase market share – complete with **bundles** and **TV Guide–style products** that closely resemble traditional cable services – jurisdictions are actively pursuing strategies to level the communications tax playing field. Many are suing major streaming companies in federal court for the right to charge public utility fees.

More than 430 **Tennessee** municipalities and counties are suing for unpaid franchise fees in a joint class action lawsuit that claims Hulu and Netflix failed to apply for a state-issued certificate of franchise authority. If they succeed in their efforts, streaming providers will be liable for a 5% gross revenue fee to the municipalities and counties where they earned revenue.

Meanwhile in **Indiana**, a fight for the right to impose franchise fees on streaming providers has been sent back to the state. And these are just two examples among many: From **Ohio and Nevada to Georgia and Texas**, a growing number of jurisdictions are filing lawsuits in attempts to have streaming providers pay for access to municipal rights-of-way infrastructure.

These decisions will have major impacts for the streaming industry as companies will need to become familiar with yet another complex collection of rates and requirements. And while cable providers had decades to adapt to these communications taxes as they gradually emerged, streaming companies may need to get compliance up to speed within a matter of months.

Netflix
Hulu
Prime Video
Disney Plus
HBO Max
HBO Now
Paramount Plus
- Peacock
Sling TV
YouTube TV
- Redbox
Tubi TV

"Gone are the easy, early days of streaming, where something was either on Netflix or it wasn't ... According to research from NPD Group, the average American household uses seven different subscription or ad-supported services."

MORE STATES ARE COLLECTING COMMUNICATIONS TAXES – AND MORE BUSINESSES ARE ON THE HOOK

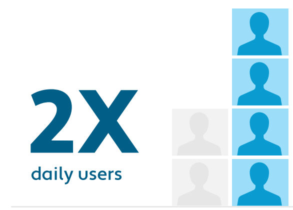
It’s not just Netflix-style entertainment that could soon be responsible for new rates and requirements. When you factor in **other types of streaming** and **videoconferencing platforms**, the communications tax implications increase significantly. These services are also growing at a rapid rate, and they’re capturing the attention of tax authorities.

One popular exercise equipment company is working toward a goal of **113% year-over-year growth** for supplemental subscription access to live and streaming fitness classes. Prominent videoconferencing and collaboration platforms are nearly **doubling their number of daily active users**. And in education, nearly **70% of school districts** are leaning on virtual learning technology to extend remote options for the 2021–22 academic year.

As jurisdictions determine how best to collect revenue from the growing array of voice, video, and SMS-enabled technologies, a broad range of companies that were once liable for sales tax alone are increasingly subject to more complex communications tax.

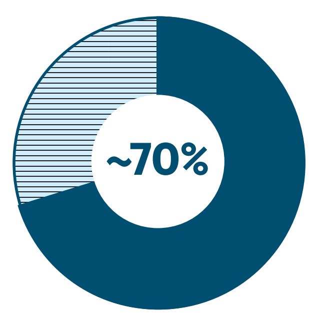
One video communications company has been **collecting communications tax** in California, Maryland, New York City, and Virginia since last October. Other major platforms that support voice and video have also begun to roll out **communications tax disclosures**.

And now in Maryland, an expansion of existing tax law to incorporate digital services will have wide-reaching implications for SaaS products, collaboration platforms, streaming providers, and more. **Senate Bill 787** expands reporting requirements and makes a large variety of transactions subject to sales and use tax. Examples include online classes and instruction, streamed tutorials, live events, access to chat rooms, and online software subscriptions. While filing requirements won’t kick in until **July 15**, businesses are on the hook for taxes going back to March 15, 2021.



Videoconferencing and collaboration platforms are seeing nearly double their daily users.

Nearly 70% of school districts are leaning on virtual learning technology to extend remote options for the 2021–22 year.



FUSF REACHES ALL-TIME HIGH

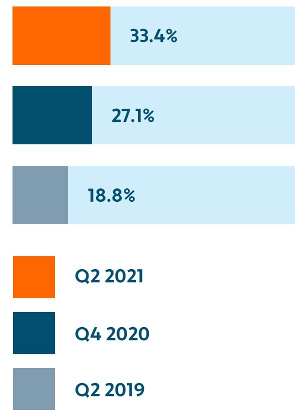
While many of the latest updates apply to streaming services and new technologies, voice service providers also face a significant change. In March, the Federal Communications Commission (FCC) increased the **universal service fund (FUSF)** contribution to 33.4% for the second quarter of 2021. The announcement, made quietly and without fanfare, brings the contribution factor to an all-time high. By comparison, the previous record was **27.1%** during the fourth quarter of 2020. Two years ago, it was at **18.8%**.

Why the big jump? Here again, contributions are not collected on broadband services. Voice services that are subject to the program are being used less frequently and tend to have lower billing costs. With the cost of services subject to FUSF shrinking, there's pressure to increase the rate on what can be taxed to make up the difference.

As a result, the quarterly contribution rate has been steadily climbing for years as consumers turn to broadband and other, newer communication technologies. While the FCC may eventually need to seek new sources of funding, the fee will continue to apply to interstate and international calls, as well as interconnected VoIP in some cases, for the foreseeable future.

As connectivity continues to drive widespread adoption of communication and collaboration technologies, lawmakers will seek new ways to adapt tax policy. These changes are still just a start. Be on the lookout for even more developments – both in the second half of 2021 and in the years to come.

FUSF contribution factor records:



ENERGY INDUSTRY

Clean-energy initiatives increase complexity for suppliers

Excise tax compliance has always been complicated. Energy suppliers and retailers face a highly complex array of rules, rates, and requirements that change constantly.

And now, there are clean-energy initiatives to monitor.

Across the U.S., states are introducing all kinds of legislative efforts to reduce air pollution and change the way people and goods are transported. And those initiatives are undoubtedly impacting a critical set of excise tax compliance standards. Even companies that have become accustomed to the massive challenge of monitoring fuel tax rate updates across jurisdictions face a rough road ahead.

Numerous excise tax changes occurred in the first half of 2021, and there are still many more transitions to come. Here's a look at some of the latest and most significant happenings on the horizon.

Numerous excise tax changes occurred in the first half of 2021, and there are still many more transitions to come.

STATES PURSUE CLEAN-ENERGY STANDARDS

Across the country, clean-fuel legislation is underway to put a cap on high-carbon energy sources including gasoline and diesel.

In Washington, a new low-carbon fuel standard was passed to help reduce the carbon intensity of transportation fuels in the state. **House Bill 1091** seeks to lower greenhouse gas emissions by boosting electric vehicles and low-carbon biofuels. The long-term **goal is to gradually increase reliance on cleaner fuels and electricity** in the cars, trucks, boats, trains, and aircraft that generate more than 44% of Washington's total carbon emissions. Governor Jay Inslee signed the bill into law on May 17, 2021 (with a partial veto to prevent delay of its implementation).

Likewise, a clean-energy bill in Missouri seeks to establish a minimum biodiesel fuel content mandate. **Senate Bill 96** applies to any diesel fuel sold or offered for sale in the state. Under the legislation, from April 1, 2023, through March 31, 2024, all diesel fuel sold in Missouri for use in internal combustion engines would have to be a 5% blend of biodiesel. The requirement would then ramp up to 10%, but only April through October each year, and only if certain other conditions are met (e.g., a sufficient supply of biodiesel is available). **Proponents of the Missouri-Made Fuels Act** hail the measure as a way to support corn and soybean growers responsible for supplying the state's biodiesel plants. Critics say it will trigger price increases and lead truckers to fuel up elsewhere. Under one scenario, blending could increase the cost of diesel by 9 cents per gallon.

Meanwhile, in Rhode Island, **House Bill 5627** could create a low-emission diesel standard starting December 1, 2021. And in New York, similar objectives are at the heart of **Senate Bill 2962**. Centered on a goal to reduce carbon intensity from on-road transportation by 20% by 2030, the proposed legislation would amend the state's environmental conservation law to require development of a clean-fuel standard. It also leaves room for further reductions to be implemented "based upon advances in technology."

These are a few examples among many as legislative authorities look to decrease climate pollution from gasoline, diesel, and other high-carbon energy sources. Depending on how they all pan out, the industry impacts could be significant.

Some Missouri lawmakers want all diesel fuel sold in the state to be blended with Missouri-grown soybean oil.

The clean fuel standard of 2021:

New York has introduced a plan to reduce carbon intensity from on-road transportation by 20% by 2030.

MULTI-JURISDICTION INITIATIVES TO PUT CAPS ON CARBON EMISSIONS

It's not just legislative changes that stand to affect energy and fuel suppliers. Collaborative cap-and-invest programs are also working to put the brakes on carbon emissions while creating new paths for investment in cleaner transportation systems.

One major bipartisan effort across several states and Washington, D.C., is working on plans to cut greenhouse gases by 26% by 2032. Massachusetts, Connecticut, Rhode Island, and the District of Columbia have committed to being the first to launch the **Transportation & Climate Initiative Program**, which will require fuel suppliers to purchase gasoline and diesel "allowances." The auctioned allowances could generate approximately $300 million annually for investments in clean transportation projects and programs.

Eight more states have said they'll continue to develop the regional program as well as state-specific projects to reduce emissions and create clean transportation options.

Participating jurisdictions are currently working to create a model rule to serve as the foundation for implementing the program – and they're looking for feedback. Any organizations and individuals in **impacted industries are encouraged to submit input in the public portal**.

Massachusetts, Connecticut, Rhode Island, and the District of Columbia are the first jurisdictions to launch the Transportation and Climate Initiative Program.

HYDROGEN-POWERED AND ELECTRIC VEHICLE EXCISE TAXES COME ONTO THE SCENE

In recent years, the electric and hydrogen-powered vehicle markets have been supported by tax credits and incentivized tax rates designed to spur development. But now, it's looking like excise tax may come into play.

In a move to get ahead of hydrogen vehicle production that might one day **reduce gas tax revenues**, Iowa started collecting a **hydrogen fuel excise tax for vehicles powered by hydrogen** on January 1, 2020. At least one other state is considering options for taxing this transportation power source, too. The new hydrogen excise tax is currently at $0.65 per diesel gallon equivalent, or 2.49 pounds of hydrogen.

In Minnesota, **Senate Bill 1602** could impose a kilowatt-based electric fuel tax on charging stations used to power electric vehicles that drive on the state's public highways.

Whether other states will follow suit remains to be seen, but it's definitely a trend worth watching.

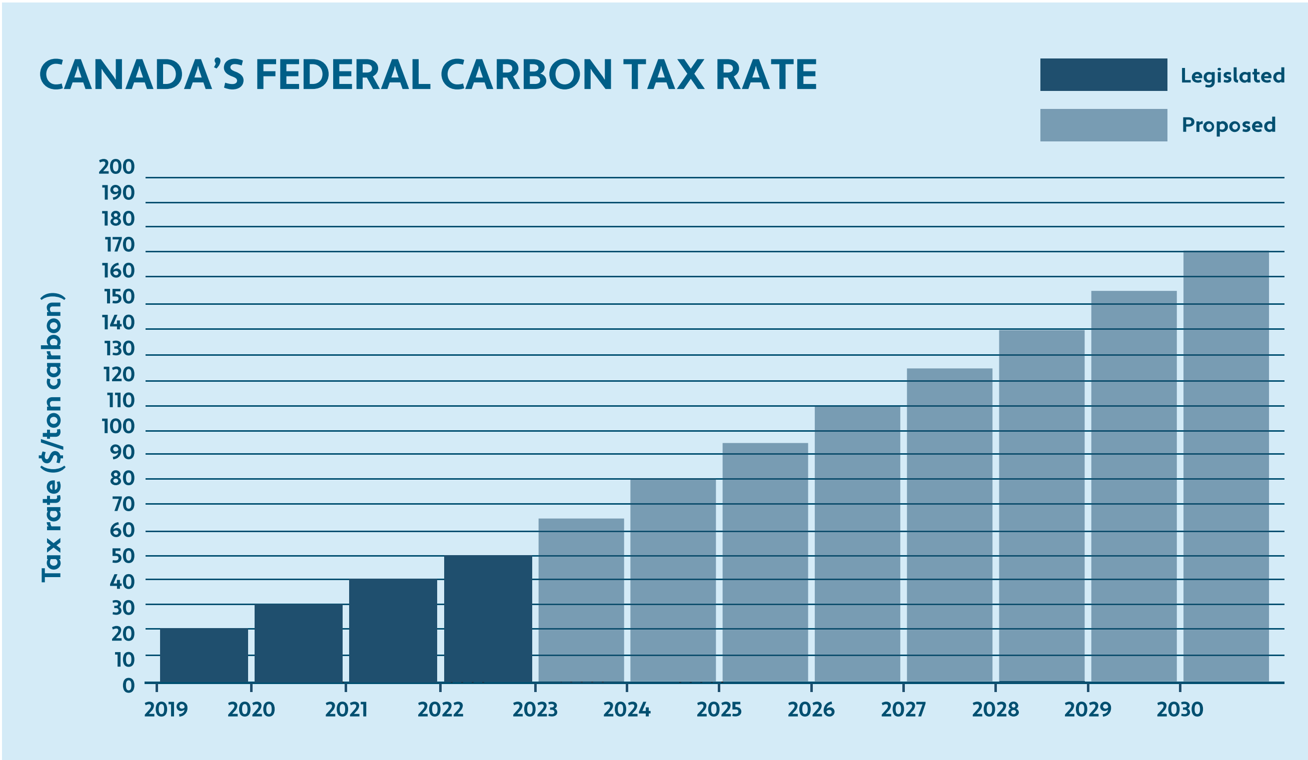
Iowa is now collecting a hydrogen fuel excise tax of 65¢ per diesel gallon equivalent.

TAX RATES CONTINUE TO CHANGE EVERYWHERE

Among the constant fuel tax rate changes that are standard for the industry, several environmentally driven updates could prove particularly challenging for suppliers in 2021 and beyond.

In Congress, a proposal from U.S. Senator Dick Durbin would amend the Internal Revenue Code to establish a carbon fee aimed at reducing greenhouse gas emissions. Among other measures, the **Clean Future Fund Act** would apply a fee of $25 per metric ton of CO_2 equivalent to upstream sources, with a $10-per-year increase above the consumer price index. The bill would also establish an independent federal agency to oversee the use of funds from carbon fee revenues for clean-energy projects beginning in 2023. While some analysts are predicting the bill has a **1% chance of being enacted**, at the very least it's an indication of where federal legislation could be headed.

In April, **Canada's carbon price** increased to $40 per ton of industrial greenhouse gas emissions – or 8.8 cents per liter of gasoline. The hike is part of a broader plan by the federal government to raise the carbon price by $10 per ton each year until 2022, followed by a $15-per-ton annual increase until a final goal of $170 per ton of carbon pollution is reached in 2030. By that time, analysts anticipate an increase of 39.6 cents per liter of gasoline compared to what Canadians were paying before the tax was first introduced in 2018.



On a much broader scale, numerous changes across states, counties, and cities will also need to be closely monitored. In Washington, for instance, a **hazardous substance tax** that applies to petroleum products will increase to $1.14 per barrel on July 1, 2021. Other examples include a per-gallon **storage tank increase in Alabama** that went into effect May 1 and a required **Motor Fuel Transportation Infrastructure Assessment rate in Vermont** that's scheduled to change in July.

Amid all these transitions, one thing is certain: Fuel excise tax will continue to change constantly, at every level of jurisdictional oversight. Be on the lookout for many more developments to come.

$0.012

$0.01

Increase in fee per gallon of motor fuel first withdrawn from bulk in Alabama or delivered into Alabama

HOSPITALITY INDUSTRY

Pandemic does little to ease complexity of hotel taxes

Hotels and other lodging providers are generally responsible for collecting and remitting a full spectrum of taxes: sales and use tax, yes, but also hotel, lodging, and/or occupancy taxes; communications taxes; excise taxes; beverage alcohol taxes; and more. It can take a small army of staff to ensure the proper taxes are applied at the proper rate to each transaction at each location, and that returns are filed timely and accurately to the proper tax authorities.

"It can take a small army of staff to ensure the proper taxes are applied at the proper rate to each transaction at each location, and that returns are filed timely and accurately to the proper tax authorities."

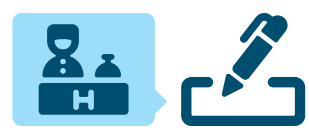
The fact that taxes are subject to change presents another hurdle: Lodging providers must keep an ear to the ground for news of proposed and actual changes in tax law. That alone can be a full-time job.

Hotel stays are subject to a host of taxes

While the exact tax burden varies by lodging type and location, a typical hotel stay is generally subject to the following taxes:

- State sales tax
- Local sales tax(es) (e.g., county, city, special district, or jurisdiction tax)
- State hotel occupancy tax
- Local hotel occupancy tax(es)

Lodging taxes often go by different names in different tax jurisdictions. For example, Texas levies a **hotel occupancy tax** while New Hampshire has a **meals and rooms (rentals) tax**. The **following taxes** may apply to lodging charges in Washington state: transient rental tax, special hotel/motel tax, convention and trade center tax, and tourism promotion area charges, plus state and local sales tax, of course.



Below are a few examples of different lodging tax nomenclature:

- *Occupancy tax*
- *Room tax*
- *Innkeepers tax*
- *Transient accommodations tax*

Even states famous for having no general sales tax tend to levy lodging taxes on transient rentals or short-term stays. New Hampshire is one. And although Oregon has no general sales tax, a **state lodging tax** (currently 1.5%) applies to the amount charged for occupancy of transient lodging. On top of that, cities and counties in Oregon may have local lodging taxes.

In addition to the state lodging tax, two taxes apply to hotels, motels, and short-term rentals in **Portland**: a 6% City of Portland tax (of which 5% goes to the city's general fund and 1% funds Travel Portland) and a 5.5% Multnomah County tax (comprising a 2.725% Convention Center Phase I tax, a 2.5% Convention Center Phase II tax, and a 0.275% hotel operator's tax).

That's not all. Hotels, motels, and booking agents are also assessed a 2% Portland Tourism Improvement District fee. This is paid by the lodging provider on taxable rent but may be passed on to guests if – and only if – separately stated on the guest bill.

For businesses in the hospitality industry, this kind of tax complexity is just the tip of the tax compliance iceberg. In part, that's because ...

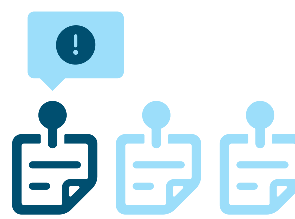
HOTEL, LODGING, AND OCCUPANCY TAX RATES ARE SUBJECT TO CHANGE

Like sales and use tax rates, hotel, lodging, and occupancy tax rates can and do change frequently.

Sometimes, the state tax authority administers local occupancy taxes and posts notices about rate changes. Examples of this can be seen posted on the **Washington Department of Revenue** website and can be found by drilling down into local tax notices on the **Alabama Department of Revenue** site (like these notices for the **City of Cullman** and the **Town of Highland Lake**).

However, it's often necessary to visit city or county websites for the most up-to-date information about collecting, remitting, and reporting local lodging taxes. That's the case in **San Francisco, California**, and **Dallas, Texas**.

Another complicating factor: Many other types of taxes typically apply to hotel stays, and hotel operators are usually responsible for collecting and remitting them.



Examples of reasons a notice may be posted:

- *Tax discontinued*
- *Rate increase/decrease*
- *Discount change*
- *New levy*

HOW MANY OTHER TAXES AND TAX TYPES APPLY TO A HOTEL STAY?

The short answer is: a lot.

According to this fascinating **hotel tax matrix**, a hotel in Chicago may be responsible for collecting and remitting any or all of the following taxes:

AMUSEMENT TAX

(e.g., pay-per-view television, green fees, weight room fees)

BOTTLED WATER TAX

(e.g., restaurant or room service sale of food and nonalcoholic beverages)

GROUND TRANSPORTATION TAX

(e.g., transportation performed by hotel for a fee)

HOTEL TAX

(e.g., early departure fees, resort fees)

LEASE TRANSACTION TAX

(e.g., rollaway bed charge, tangible personal property rental of DVDs, video games)

LIQUOR TAX

(e.g., retail or restaurant sale of liquor, beer, and wine)

NONTITLED USE TAX

(e.g., cleaning supplies, in-room amenities and coffee provided free of charge, owned uniforms)

PARKING TAX

(e.g., mandatory valet service fees, guest option valet service, or charges for self-parking at hotel)

REAL PROPERTY TRANSFER

(e.g., sale of buildings, land, or other real property)

RESTAURANT TAX

(e.g., hotel-prepared meals, vending machine sales)

TELECOM TAX

(e.g., local phone charges, in-room fax charges)

AND POSSIBLY MORE

This is just one city in one state. Hotels with properties throughout the United States and the world need to deal with a host of other taxes.

The inconstant nature of tax and fee collection obligations can't be overstressed. For example, on April 22, 2021, Washington lawmakers sent the governor a **bill** that would authorize lodging businesses to collect separately stated per-night parking and business improvement area special assessments from guests. It doesn't *require* them to collect such special assessments – it just allows them to do so. It also states that these special assessments are *not* subject to sales and use tax or business and occupation tax.

The inconstant nature of tax and fee collection obligations can't be overstressed.

Taxes on streaming services add another layer of complexity

Six years ago, the Marriott hotel chain unveiled a limited **trial of a new in-room entertainment package**. Guests who purchased the hotel's premium Wi-Fi package could "stream their content through our high-definition TVs whether it is Netflix, Hulu, or Pandora." How times have changed.

It's now standard for lodging establishments to provide streaming services for guests. Some may allow guests to connect to their own Netflix (or other streaming) accounts, others may require guests to choose from a set library of downloadable or streamed content. There may be tax implications either way, especially if the charges are listed separately on the invoice. And the requirements can be drastically different from one jurisdiction to another.

In Illinois cities such as **Chicago** and **Evanston**, for example, an amusement tax of 5% to 9% for streaming video may be required. But across the country in **California jurisdictions**, the same streaming video could be subject to utility user tax. And, in **Iowa**, if a streaming service is bundled with other products, such as premium Wi-Fi or access to in-room dining and other services, the entire package could be liable for streaming taxes.

And then there's Florida, where a **communications services tax with both state and local components** – which applies in lieu of sales tax – has been extended to apply to streaming video and audio services. This is due in part to the broad language included in the state's statute, which makes it relatively easy to apply existing language to new technologies.

There may be tax implications [with streaming services for guests] ... especially if the charges are listed separately on the invoice. And the requirements can be drastically different from one jurisdiction to another.

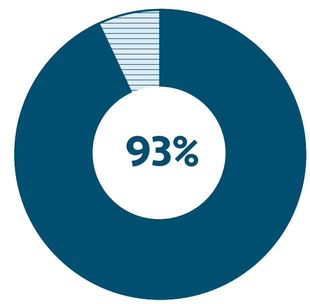
The Iowa Department of Revenue rules define "pay television service" as:

"Distributing the signals of one or more television broadcasting stations, or other television programming to subscribers, and using any transmission path."

Many other types of "**Netflix taxes**" are underway in Colorado, Georgia, Maine, and Nevada, adding to an already growing list of states and cities where streaming services have been taxed for months or even years. Whether collected by providers as a surcharge or ultimately passed on to the end user – the guest – these taxes will have noticeable impacts on billing and invoicing across the hospitality industry.

Beyond the different types of taxes, tax compliance in the hospitality industry can be complicated by other factors. Like marketplace facilitator laws.

93% of U.S. consumers are planning to either increase or maintain their multiple streaming subscriptions.



Marketplace laws may increasingly affect hospitality businesses

The first states to adopt marketplace laws often focused on companies like Amazon, and as a result, not all marketplace laws reference the hospitality industry.

Yet marketplaces dominate lodging, as anyone who's ever booked a hotel room through Expedia or Hotels.com knows. And of course, marketplaces like Airbnb and Vrbo have transformed the short-term rental industry. So increasingly, states are refining their marketplace laws to address these industries.

In some states, like Indiana, the **marketplace facilitator law** applies to lodging marketplaces. Indiana **innkeeper's taxes** must be collected either by a retailer merchant (i.e., the innkeeper), a marketplace facilitator like an online travel agency (OTA), or a peer-to-peer property rental application.

Georgia just revised the definition of "innkeeper" to include marketplace facilitators. On and after July 1, 2021, **"marketplace innkeepers" are responsible for the collection and remittance of state and local lodging taxes in Georgia**.

The Indiana Department of Revenue defines "marketplace facilitators" as:

Businesses or people who:

1. *own, operate, or otherwise control a "marketplace;" and*
2. *facilitate a retail transaction*

Starting January 1, 2022, **marketplace facilitators that have economic nexus with West Virginia must collect and remit applicable hotel occupancy taxes for bookings** in the state. A marketplace facilitator establishes economic nexus if, in the current or immediately preceding calendar year, it:

Makes or facilitates West Virginia sales on its own behalf or on behalf of one or more hotel or hotel operators **equal to or exceeding $100,000 in gross revenue**

OR

Makes or facilitates West Virginia sales on its own behalf or on behalf of one or more hotel or hotel operators **in 200 or more separate transactions**

Facilitators must separately state hotel occupancy tax on all bills, invoices, and records.

However, **Washington's marketplace facilitator law** does *not* apply to businesses that provide travel agency services or enable consumers to purchase lodging in a hotel (or similar facility) for a period of less than 30 days. And in **New York**, marketplace facilitators are *not* required to collect the tax on hotel occupancy.

BOOKING FEES MAY ALSO BE SUBJECT TO TAX

Making matters more interesting, states may also require a marketplace facilitator to collect and remit tax on other fees as well. That's the case in Pennsylvania, where as of January 22, 2019, "a booking agent that facilitates the short-term booking of an occupancy on behalf of an operator located in Pennsylvania **must … charge, collect, and remit hotel occupancy tax on the 'accommodation fee,'** which is an amount charged by the booking agent in excess of the discount room charge."

Prior to January 22, 2019, booking agents (aka, OTAs) weren't considered hotel operators in the Keystone State and therefore didn't have a state tax collection obligation. They now need two licenses to collect hotel occupancy tax in Pennsylvania: a sales, use, and hotel occupancy tax license and a booking agent license.

Changing rates, taxes on streaming services, and marketplace facilitator laws are just some of what complicates tax compliance for the hospitality industry.

Discount room charge	**$100.00**
Accommodation fee	**+$20.00**
Total rent charge	**$120.00**
6% PA Hotel Occupancy Tax	**+ $7.20**
TOTAL AMOUNT DUE	**$127.20**

In this example, the booking agent calculates tax and bills the customer as follows:

1. *The operator must remit $6 (.06 tax rate x $100 Discount Room Charge) under their Sales, Use and Hotel Occupancy Tax License.*

2. *The booking agent must remit $1.20 (.06 tax rate x $20 Accommodation Fee) under their Booking Agent License.*

TOBACCO INDUSTRY

Vaping companies face a fierce new frontier of excise tax requirements

When the initial version of our 2021 sales tax changes report launched at the end of 2020, many of the most prominent tobacco headlines were centered on traditional cigarette sales. With less time and money going to entertainment and outings, Americans were lighting up more often – and some states were responding with per-pack **cigarette tax increases as high as 150%**. There were still plenty of discussions around e-cigarettes and refillable liquids, though nothing extensive.

Then PACT Act amendments went into effect, and everything changed.

Vaping and e-cigarette companies have been scrambling for months to comply with numerous new requirements – and likely will be for a while.

$3.33

$1.33

Oregon cigarette tax increase per pack of 20 cigarettes

$1.00

$0.50

Oregon tax cap increase on large cigars

PACT ACT TRANSFORMS COMPLIANCE REQUIREMENTS

When the **Prevent All Cigarette Trafficking (PACT) Act was expanded** to include all electronic nicotine delivery systems, it meant vaping companies would now need to comply with a host of registration and reporting requirements – and they'd need to do it fast.

The amendment that was signed into law on December 27, 2020, known as the Preventing Online Sales of E-Cigarettes to Children Act, substantially alters how companies sell and ship vaping products. It expanded the interpretation of "cigarette" to include electronic nicotine delivery systems, or ENDS. Vape pens, refillable devices, and electronic pipes are all included in the new definition, as are e-cigarettes, e-hookahs, and e-cigars. Even more notably, the amendment covers all vape liquids, system components, and accessories whether they're sold separately or as part of a kit.

In other words ...

Thousands of companies were newly subjected to an intricate web of excise tax complexities, swiftly and suddenly. Any business that sells, ships, transfers, or even advertises smokeless tobacco products is now on the hook for licensing, reporting, and more. And they had just three months (until March 27, 2021) to get up to speed on all the requirements.

First, there are the registration requirements. Any business that sells or advertises vaping products must now register with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) – *and* with the tobacco tax administrator in each jurisdiction where products are shipped. The requirement applies to both direct-to-consumer sales as well as wholesale distribution, and is an important one to get right. For each instance of noncompliance, a business can be fined up to $5,000.

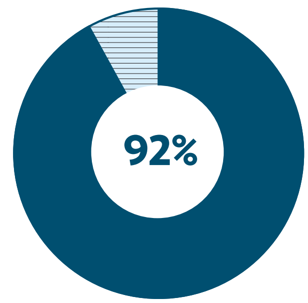
Once registered, companies are also required to file detailed shipping reports on a monthly cadence. And many sellers are also discovering they need various new licenses as part of the compliance process.

This is all in addition to tax collection and remittance. The new PACT Act means vaping companies are liable for both sales tax and excise tax at the federal, state, and local levels. As the number of states that collect excise tax for vaping products swells, collecting and remitting these taxes is becoming a highly involved process.

VAPING TAX COMPLEXITIES ARE COMPOUNDED

In the last four years, the number of states that collect excise tax on vapor products has more than quadrupled, from just six in 2017 to more than 30 (including the District of Columbia) in 2021. And because the rates can vary drastically from one jurisdiction to another, staying up to date is no easy feat.

Vermont imposes "a 92% wholesale tax on e-liquid and devices – the highest tax imposed by any state."



For each instance of noncompliance, a business can be fined up to $5,000.

In **Georgia**, for instance, new legislation imposes a 7% excise tax on consumable vapor products in open systems, as well as a 5-cents-per-fluid-milliliter excise tax on closed-system consumable vapors. In **Colorado**, an escalating tax on vapor products that went into effect on January 1, 2021, will cause the current rate to increase incrementally. By 2027, the tax on smokeless tobacco will reach 62% of the manufacturer's list price, compared to 40% today. And when the **Indiana** budget bill was passed in April, it introduced a two-tier vape tax to kick in on July 1, 2022. Closed-system products, such as prefilled pods, will be subject to a tax rate of 25% of the wholesale cost. But open-system products, such as bottled e-liquid, will be subject to a 15% sales tax at retail checkout.

While these new tax laws are challenging enough on their own, deciphering other existing state rates can be even more complicated.

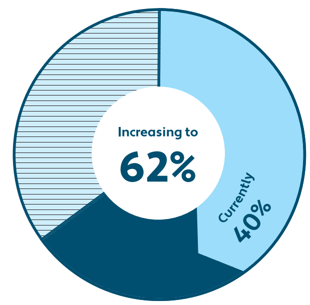
For example, if you serve customers in New Jersey, you might be liable for three different rates depending on what vaping products you sell and how you sell them. The state taxes e-liquid at 10 cents per milliliter in pod- and cartridge-based products, bottled e-liquid at 10% of the retail price, and wholesale devices at 30%.

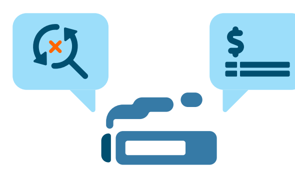
You won't be required to pay excise tax on vapor products in **Arizona**, **Montana**, and **Nebraska** – but you will if you sell heat sticks. These products, which use low heat to create a nicotine-infused vapor, fall under the definitions for cigarettes or other tobacco in these states.

Vaping companies will also need to keep a close eye on the **Tobacco Tax Equity Act of 2021**, which aims to establish the first federal electronic cigarette tax in an effort to apply tax parity across tobacco products.

The array of rules and regulations vape retailers will need to master is vast. But the task is not impossible. With the right systems and plans in place, businesses can achieve full compliance with excise taxes, licenses, and registration requirements. The key is to stay on guard for changes and updates across states in the months and years to come.

In Colorado, an escalating smokeless tobacco tax will reach 62% of the manufacturer's list price by 2027.





The Tobacco Tax Equity Act of 2021 would close loopholes in the tax code, create the first federal electronic cigarette tax, and increase the tobacco tax rate for the first time in a decade.

LOOKING AHEAD TO 2022

In 2020, a microscopic virus disrupted global supply chains and altered the way we do business. In 2021, a container ship blocking the flow of goods through the Suez Canal could be seen from outer space. You can't make this stuff up.

Businesses will have to be both nimble and bold to successfully navigate whatever the rest of 2021 brings. This midyear update covers many key changes but isn't exhaustive. To keep a finger on the pulse of tax matters throughout the year:

- Check out the **Avalara tax resource center**
- Go to the **Avalara Commerce Monitor** for insights our data reveals on manufacturing, retail, and services
- Read the **Avalara blog** for up-to-date tax news
- Visit our **COVID-19 tax info hub** for business recovery
- Visit our **Brexit info hub**

Or give us a call at 877-352-4646. **Automating tax compliance** is an effective way for businesses to track and comply with the ever-changing world of sales and use tax laws.

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