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# REMOTE SALES TAX

## Initial Observations on Effects of States' Expanded Authority

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# GAO Highlights

Highlights of [GAO-22-106016](#), a testimony before the Committee on Finance, U.S. Senate

## Why GAO Did This Study

Sales tax is an important revenue source for the 45 states with a statewide sales tax, making up an average of about one-third of states' total tax collections. Over the past quarter century, electronic commerce (e-commerce) sales have grown rapidly. However, until recently states could not require e-commerce and other businesses operating out-of-state to collect taxes on sales to residents of their states unless the business had a physical presence in the state.

GAO was asked to testify on how states and businesses have been affected by the *Wayfair* decision. This statement summarizes GAO's findings from a November 2017 report ([GAO-18-114](#)) and initial observations from ongoing work examining (1) the current landscape of remote sales tax requirements, (2) how state revenue has been affected by these requirements, and (3) what types of costs businesses have incurred in complying with the requirements.

For the part of this statement based on ongoing work, GAO administered a survey to revenue agencies in all 45 states with a statewide sales tax and the District of Columbia. Forty-three states and the District of Columbia responded, for a response rate of 95 percent. GAO also interviewed multiple organizations representing states and businesses, as well as businesses engaged in e-commerce and multistate taxation, selected to represent a broad range of perspectives.

View [GAO-22-106016](#). For more information, contact James R. McTigue, Jr. at (202) 512-6806 or [McTigueJ@gao.gov](mailto:McTigueJ@gao.gov).

June 14, 2022

## REMOTE SALES TAX

### Initial Observations on Effects of States' Expanded Authority

## What GAO Found

In its June 2018 decision, *South Dakota v. Wayfair*, the Supreme Court held that states could require out-of-state businesses (commonly referred to as remote sellers) to collect and remit sales taxes even in the absence of a physical presence, such as a store or warehouse in the state. Following *Wayfair*, states moved quickly to put in place new legal requirements for remote sellers, which often differed by state. As of June 2021, all 45 states with a statewide sales tax and the District of Columbia had adopted requirements governing sales tax collection by remote sellers based on an economic, as opposed to physical presence (such as a certain amount of sales into the state). All but one had also adopted requirements shifting primary tax collection obligations from sellers in an online marketplace to the company facilitating the sale, such as Amazon, eBay, and Etsy. These requirements vary in numerous respects, including effective dates, exemptions for small businesses below certain thresholds, and how those thresholds are calculated.

State revenue agencies responding to GAO's 2022 survey attributed some increases in sales tax revenue to remote sales following the *Wayfair* decision. For example, 33 states provided data on 2021 collections from remote sales, totaling around \$23.1 billion. In addition, 20 states provided data on the portion attributable to marketplace sales, totaling around \$9.5 billion (around 41 percent of total collections from remote sales reported that period).

#### State Remote Sales Tax Revenue Collections from 2018 to 2021

Year	Revenue from all remote sales (in millions)	Number of states reporting	Revenue from remote sales via marketplaces (in millions)	Number of states reporting
2018	\$3,200	21	\$344	5
2019	\$6,735	28	\$1,276	12
2020	\$16,328	31	\$6,529	20
2021	\$23,104	33	\$9,539	20

Source: GAO survey of the 45 states with a statewide sales tax and the District of Columbia. | [GAO-22-106016](#)

Note: This table combines calendar and fiscal year formats provided by states. Some states provided data on marketplace collections only, which may undercount total collections. Marketplaces include companies such as Amazon, eBay, and Etsy which facilitate sales on behalf of third-party sellers.

In November 2017, GAO identified costs associated with multistate sales tax collection: software-related costs, audit and assessment costs, and costs associated with research and liability. GAO confirmed in its ongoing work that remote sellers incurred costs in these categories as they took steps to comply with new remote sales tax requirements. Among other things, businesses incurred costs to establish software for expanded multistate tax collection and audit and assessment costs associated with increased exposure to more tax jurisdictions. Businesses also incurred costs to stay current with legal requirements in multiple jurisdictions but were still exposed to liability risks, including liability for past sales. For example, many states' remote sales tax requirements became effective within about 3 months of *Wayfair*. However, some businesses were unable to comply with these requirements until well after the effective dates, thereby exposing them to liability for sales made after those dates.

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Chairman Wyden, Ranking Member Crapo, and Members of the Committee:

I am pleased to be here today to discuss our work on states' collection of sales taxes from out-of-state businesses, including how states and businesses have been affected by states' expanded taxing authority.<sup>1</sup>

Sales tax is an important revenue source for the 45 states with a statewide sales tax.<sup>2</sup> On average, states receive about one-third of their total tax collections from general sales taxes.<sup>3</sup> Over the past quarter century, electronic commerce (e-commerce) sales have grown rapidly. However, until recently states could not require e-commerce and other businesses operating out-of-state (commonly referred to as remote sellers) to collect taxes on sales to residents of their states unless the business had a physical presence, such as a brick-and-mortar store or a warehouse in the state.<sup>4</sup> Customers were required to report online and other remote purchases on annual state tax returns, but compliance was negligible and difficult to enforce.<sup>5</sup>

As remote sales began to make up a larger portion of total sales, some states worried about revenue loss and enacted sales tax collection requirements for remote sellers, even those that did not have a physical presence in the state. In its June 2018 landmark decision, *South Dakota*

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<sup>1</sup>Generally, "sales tax" refers to the tax collected by in-state sellers on goods and services at the point of sale, while "use tax" refers to the equivalent tax imposed on the purchaser for the privilege of use, ownership, or possession of tangible goods or services. States may require remote sellers to collect and remit use taxes under certain circumstances. For this testimony, and in keeping with common usage, we generally use the term "sales tax" to refer to both situations.

<sup>2</sup>Five states have no statewide sales tax: Alaska, Delaware, Montana, New Hampshire, and Oregon.

<sup>3</sup>In addition to the states with no statewide sales tax, the outliers are the states that have no broad-based individual income tax and thus rely more heavily on sales tax: Florida, Nevada, South Dakota, Tennessee, and Texas.

<sup>4</sup>Under *Quill v. North Dakota* and its antecedents, the Supreme Court interpreted the Commerce Clause of the United States Constitution as prohibiting states from taxing sellers without a physical presence in the state. 504 U.S. 298, 317–318 (1992).

<sup>5</sup>For example, a 2015 study prepared for the Minnesota legislature observed that in the 27 states that allow taxpayers to pay use taxes on their state income tax returns, only about 1 to 2 percent of returns included use taxes. See, Minnesota House of Representatives, "Use Tax Collection on Income Tax Returns in Other States," updated 2015, [www.house.leg.state.mn.us/hrd/pubs/usetax.pdf](http://www.house.leg.state.mn.us/hrd/pubs/usetax.pdf), accessed May 24, 2022.

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*v. Wayfair*, the Supreme Court held that states could require remote sellers to collect and remit sales taxes even in the absence of a physical presence in the state, thereby paving the way for enforcement of these types of state requirements.<sup>6</sup>

The *Wayfair* majority and dissenting opinions both cited our prior work on remote sales tax issues, published in November 2017.<sup>7</sup> The majority cited, among other things, our finding that states could have gained an estimated \$8 to \$13 billion in 2017 if given expanded authority to collect sales taxes from remote sellers without a physical presence in the state.<sup>8</sup> The dissent cited, among other things, our findings on the costs and challenges business would likely face if states were given this authority.<sup>9</sup>

In my statement today, I will draw on data and observations from our 2017 report as well as initial observations from our ongoing work on remote sales taxes since the *Wayfair* decision. I will discuss (1) the current landscape of state remote sales tax requirements, (2) how state revenue has been affected by these requirements, and (3) what types of costs businesses have incurred in complying with these requirements.

For the part of this statement that is based on ongoing work, we reviewed existing literature on state and local requirements implemented in response to (or enforceable as a result of) the *Wayfair* decision, as well as the requirements themselves. We also tracked and reviewed related litigation and legislation, where relevant. Additionally, we administered a survey in February 2022 to revenue agencies in all 45 states with a statewide sales tax and the District of Columbia to learn more about their experiences collecting sales tax from remote sellers without a physical presence in their state. Forty-three states and the District of Columbia responded, for a response rate of 95 percent.

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<sup>6</sup>*South Dakota v. Wayfair, Inc.*, 585 U.S., \_\_\_, 138 S. Ct. 2080 (2018).

<sup>7</sup>GAO, *Sales Taxes: States Could Gain Revenue from Expanded Authority, but Businesses Are Likely to Experience Compliance Costs*, [GAO-18-114](#) (Washington, D.C.: Nov. 16, 2017). We also published reports on this issue in 2001 and 2000: GAO, *Update on State and Local Revenue Loss from Internet Sales*, [GAO-02-83R](#) (Washington, D.C.: Nov. 6, 2001); *Sales Taxes: Electronic Commerce Growth Presents Challenges; Revenue Losses are Uncertain*, [GAO/GGD/OCE-00-165](#) (Washington, D.C.: June 30, 2000).

<sup>8</sup>*Wayfair*, 138 S. Ct. at 2088.

<sup>9</sup>*Wayfair*, 138 S. Ct. at 2103.

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In addition, as of May 2022, we conducted semi-structured interviews with five organizations representing states and state officials, three state revenue agencies, six academic and private entities studying these issues, seven organizations representing businesses, five organizations providing assistance to businesses (including software, legal, and accounting firms), and 14 businesses engaged in e-commerce and multistate taxation. We selected interview subjects to represent a broad range of perspectives.

Information on our objectives, scope, and methodology for the 2017 report can be found in the issued product.<sup>10</sup>

We conducted the work on which this statement is based in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## The Current Remote Sales Tax Landscape

Following the *Wayfair* decision, states moved quickly to put in place new legal requirements for remote sellers, which often differed by state. As of June 2021, all 45 states with a statewide sales tax and the District of Columbia had adopted requirements governing sales tax collection and remittance by remote sellers based on an economic, as opposed to physical, presence (referred to as nexus).<sup>11</sup> In addition, all but Oklahoma had adopted marketplace facilitator requirements shifting primary tax collection obligations from sellers in an online marketplace to the company facilitating the sale, such as Amazon, eBay, and Etsy.<sup>12</sup> These requirements vary in numerous respects, including the following.

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<sup>10</sup>[GAO-18-114](#).

<sup>11</sup>The Supreme Court has interpreted the Constitution's Commerce Clause requirement of substantial nexus as requiring a sufficient connection between a state and a taxpayer in order for the state to impose a tax. For sales tax purposes, following *Wayfair*, substantial nexus could be met through economic, as opposed to physical, means, such as through a certain amount of sales into a state.

<sup>12</sup>Unlike other states, Oklahoma provides marketplace facilitators the option to report on sales into the state as an alternative to collecting and remitting sales taxes. Okla. Stat. title 68, § 1392.

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## Adoption Dates

Some states adopted economic nexus sales tax requirements prior to the *Wayfair* decision.<sup>13</sup> For example, Connecticut, New York, and Minnesota imposed collection and remittance requirements on remote sellers with economic, as opposed to physical, nexus in advance of the Supreme Court considering whether to overturn the physical presence requirement in the case of *Quill v. North Dakota*.<sup>14</sup> However, in 1992 the *Quill* decision upheld the requirement that states could not impose tax collection and remittance obligations on businesses with no physical presence in the state. Subsequently, states left these early economic nexus requirements on the books, but until recently they were largely unenforced or unenforceable.<sup>15</sup>

Similarly, more than a dozen states adopted collection and remittance requirements for remote sellers with economic nexus in the months leading up to the Court's reconsideration of the physical presence requirement in *Wayfair*. When the Court overruled *Quill's* physical presence requirement in June 2018, the District of Columbia and all but two of the remaining 45 states with a statewide sales tax moved quickly to adopt sales tax collection and remittance requirements based on remote

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<sup>13</sup>Also prior to *Wayfair*, states enacted a variety of requirements based on alternative theories of nexus. These included "affiliate" and "click-through" nexus, which apply collection obligations to remote businesses on the basis of affiliated in-state third parties (such as bloggers) acting to promote the business's products. In addition, some states enacted "notice and reporting" requirements, requiring remote sellers not collecting taxes on out-of-state sales to notify customers that they may be liable for use taxes to their home state and to send out-of-state customers an annual summary of purchases for which sales tax was not collected; data from these summaries are shared with state revenue agencies which can use the information for enforcement purposes. States have repealed some, but not all, of these types of requirements since *Wayfair*.

<sup>14</sup>1989 Conn. Pub. Acts 57–59, *codified at* Conn. Gen. Stat. § 12-407(12), (15); 1989 N.Y. Laws 1830, 1923, *codified at* N.Y. Tax Law § 1101(b)(8)(i)(E), (iv); 1988 Minn. Sess. Law Serv. 719, (West), *codified at* Minn. Stat. Ann. § 297A.66, subdiv. 1, (b), subdiv. 2, *previously codified at* Minn. Stat. Ann. § 297A.21, subdiv. 4.

<sup>15</sup>For example, in 1992 the Connecticut Department of Revenue published a notice stating that because its remote seller statutory requirements were "virtually identical" to those struck down in *Quill*, the department would not enforce those requirements. Conn. Dept. of Rev., Special Notice 92(19) (1992). In contrast, a Tennessee tax was ruled unconstitutional under *Quill* as applied to a bank without a physical presence in the state. *J.C. Penny Nat'l Bank v. Comm'r of Revenue Johnson*, 19 S.W.3d 831 (Tenn. Ct. App. 1999), *cert. denied*, 531 U.S. 927 (2000).

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sellers' economic nexus, each doing so by the end of 2019. Florida and Missouri were the last to follow suit with legislation in 2021.<sup>16</sup>

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## Effective Dates

Following the *Wayfair* decision, the dates by which remote sellers had to comply with these requirements varied across states, ranging from the day *Wayfair* was decided (June 21, 2018) to January 1, 2023. Consequently, remote sellers had to be aware of multiple dates on which one or more states' requirements became effective. In addition, they had to be ready to comply with some states' requirements in a very short time frame, many within about 3 months of *Wayfair*. For example,

- New York announced that its remote seller requirements became immediately effective once *Wayfair* was decided (June 21, 2018);<sup>17</sup>
- Maine and Vermont imposed remote seller requirements with effective dates that were less than 2 weeks after *Wayfair* (July 1, 2018);<sup>18</sup>
- Mississippi announced it would enforce its remote seller requirements starting about 2 months after *Wayfair* (September 1, 2018);<sup>19</sup> and
- Alabama, Illinois, Maryland, Michigan, and Washington imposed remote seller requirements with effective dates that were about 3 months after *Wayfair* (October 1, 2018).<sup>20</sup>

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<sup>16</sup>2021 Fla. Laws ch. 2021-2, *codified at* Fla. Stat. § 212.0596; 2021 Mo. Laws 982, 1047, *codified at* Mo. Ann. Stat. § 144.605(f).

<sup>17</sup>New York State Department of Taxation and Finance, "Registration requirement for businesses with no physical presence in New York State," [https://www.tax.ny.gov/pubs\\_and\\_bulls/publications/sales/nexus.htm](https://www.tax.ny.gov/pubs_and_bulls/publications/sales/nexus.htm), accessed May 18, 2022.

<sup>18</sup>2016 Vt. Acts & Resolves 285, 302. Maine announced it would enforce its remote seller requirements for sales made on or after July 1, 2018. Maine Revenue Services, "Guidance for Remote Sellers," <https://www.maine.gov/revenue/taxes/sales-use-service-provider-tax/guidance-documents/remote-sellers>, accessed May 24, 2022.

<sup>19</sup>Mississippi Department of Revenue, "Sales and Use Tax Guidance for Online Sellers," <http://www.dor.ms.gov/Business/Documents/Online%20Seller%20Guidance.pdf>, accessed May 5, 2022.

<sup>20</sup>Ala. Admin. Code § 810-6-2-.90.03(3)(a); Ill. Comp. Stat. 105/2; Md. Code. Reg. 03.06.01.33(C); Mich. Comp. Laws § 205.52C; Wash. Rev. Code § 82.08.052(1)(a).

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Other states' had effective dates for remote sellers further out, including Georgia on January 1, 2019; California on April 1, 2019; and Missouri, which is set for January 1, 2023.<sup>21</sup>

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## Economic Thresholds

Another variation that businesses face is that states have established different monetary and transactional thresholds exempting some small businesses from remote sales tax requirements. In addition to differing threshold values, states vary regarding how the thresholds are calculated, including which sales are included and the time periods over which the sales occur.

- **Threshold value.** As shown in figure 1, as of April 2022, 22 states and the District of Columbia had adopted economic nexus threshold values of \$100,000 in sales or 200 transactions into the state each year.<sup>22</sup> Three large-population and large-Gross Domestic Product states (California, New York, and Texas) adopted higher monetary thresholds of \$500,000.<sup>23</sup> More recently, some states (including Florida, Kansas, and Missouri) adopted monetary thresholds without an accompanying transactional threshold.<sup>24</sup> Other states (including Iowa and Maine) eliminated transactional thresholds in favor of monetary-only thresholds.<sup>25</sup> Some states also raised or lowered their monetary thresholds, including Tennessee which moved from \$500,000 to \$100,000.<sup>26</sup> States differ regarding whether a business meets these thresholds when its sales equal or exceed the stated

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<sup>21</sup>2018 Ga. Laws 259, 261; Cal. Rev. & Tax. Code § 6203(f)(1); 2021 Mo. Laws 982, 1047, *codified at* Mo. Ann. Stat. § 144.605(f).

<sup>22</sup>The South Dakota law at issue in *Wayfair* had a threshold of more than \$100,000 worth of goods or services delivered into the state or 200 or more transactions for the delivery of goods and services into the state on an annual basis. The Court concluded that this quantity of business, along with the taxpayers being large national companies with extensive virtual presence, satisfied the requirement to have a substantial nexus with the state. *Wayfair*, 138 S. Ct. at 2089.

<sup>23</sup>Cal. Rev. & Tax. Code § 6203(c)(4)(A); N.Y. Tax Law § 1101(b)(8)(iv); 34 Tex. Admin. Code § 3.286(b)(2)(B).

<sup>24</sup>Fla. Stat. § 212.0596(1)(b); Kan. Stat. Ann. § 79-3702(h)(1)(G); Mo. Ann. Stat. § 144.605(f).

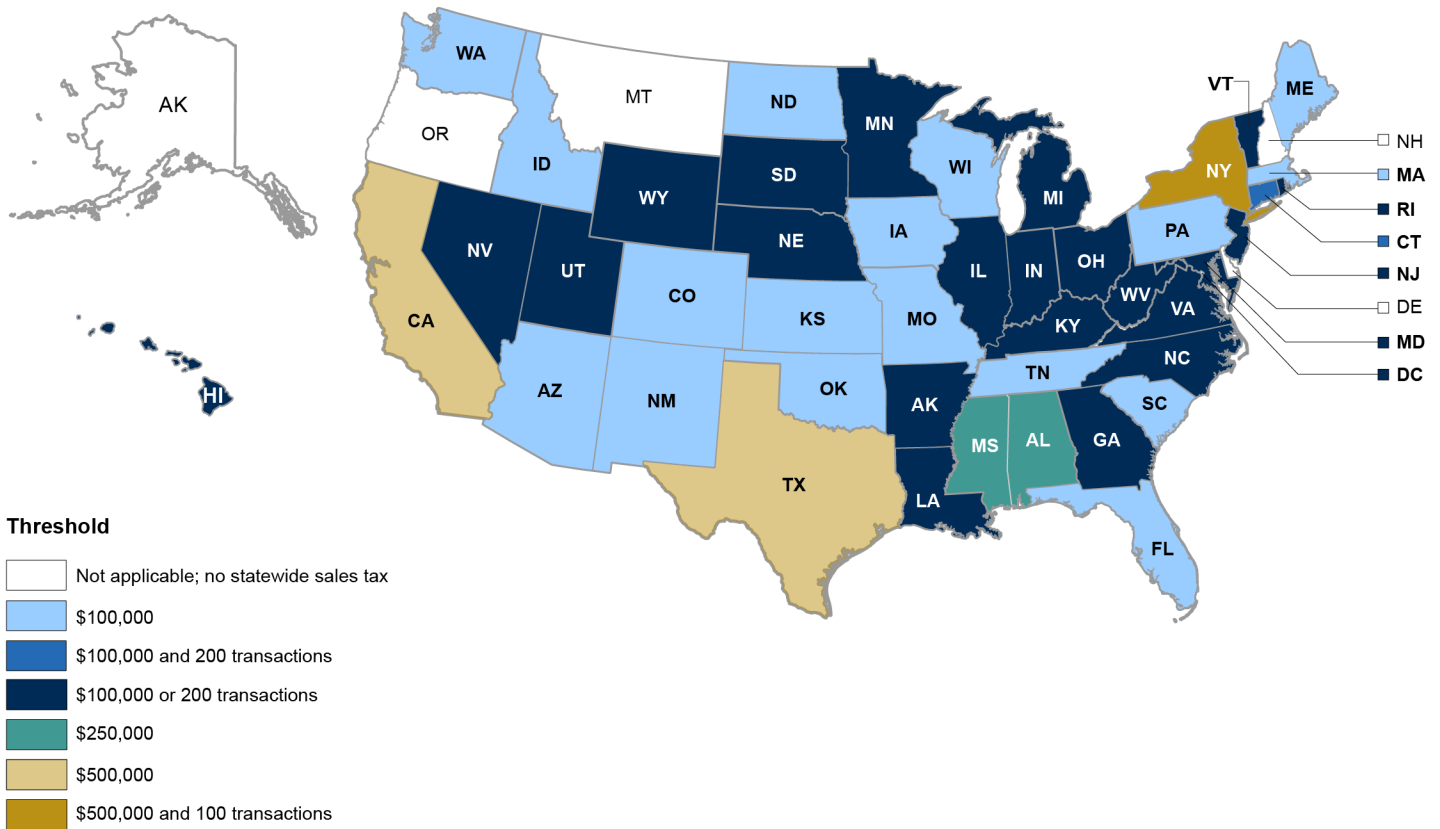
<sup>25</sup>2019 Iowa Acts 535, 539, *codified at* Iowa Code § 423.14A(3)(a); Me. Rev. Stat. title 36, § 1754-B(1-B)(B).

<sup>26</sup>2020 Tenn. Pub. Acts ch. 759, at 4, *codified at* Tenn. Code Ann. § 67-6-524(b). The prior threshold had been set by regulation in 2016 at \$500,000. Tenn. Comp. R. & Regs. 1320-05-01.129(2).



values.<sup>27</sup> For example, both Illinois and Indiana have thresholds of \$100,000 or 200 transactions; but in Illinois the \$100,000 threshold is met when sales equal this amount whereas in Indiana it is met when sales exceed this amount.<sup>28</sup>

**Figure 1: Sales Tax Economic Nexus Thresholds for Remote Sellers, as of April 2022**



Source: GAO analysis of state laws. | GAO-22-106016

Note: Economic nexus thresholds exempt from remote sales tax requirements those small businesses whose sales into a state fall below a certain level. States differ regarding which sales must be included in the calculation of these thresholds, the time periods over which the sales occur, and whether a business meets a threshold when its sales equal or exceed the stated value, among other variations.

<sup>27</sup>In addition, as discussed below, different sales are counted toward the monetary threshold in all states, so \$100,000 of the same sales into two states—each with a \$100,000 threshold—could be above the threshold in one state but below it in the other.

<sup>28</sup>35 Ill. Comp. Stat. 105/2; Ind. Code 6-2.5-2-1.

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- **Type of sales.** Some states use total gross sales, but others use retail sales as a basis for determining whether numeric thresholds have been reached.<sup>29</sup> For example, California’s threshold is total sales of tangible personal property for delivery into California.<sup>30</sup> In comparison, Minnesota’s threshold is retail sales, made or facilitated, from outside Minnesota to destinations in the state.<sup>31</sup>
  - **Treatment of tax-exempt sales.** Six states—Arkansas, Florida, Missouri, New Mexico, North Dakota, and Oklahoma—include only taxable sales in their threshold calculations, excluding all tax-exempt sales.<sup>32</sup> In contrast, other states include some or all tax-exempt sales in their threshold calculations. Furthermore, the types of sales states exempt from sales taxes vary considerably state-to-state. In some states, only sales of tangible personal property are taxed while all other sales are tax exempt. In other states, some or all services are also taxed. In addition, some states impose taxes on the sale of certain digital products.
  - **Treatment of marketplace sales.** In some states, sales made via a marketplace facilitator are excluded from the threshold calculation for remote sellers, while in others marketplace sales are included in that calculation.
  - **Measurement period.** In some states thresholds are calculated based on sales made during the prior or current calendar year. In other states, measurement periods differ. Examples include the prior 12 months, the prior four sales tax quarters, and the 12-month period ending on the last day of the most recently completed calendar quarter.

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<sup>29</sup>At least one state, New Mexico, includes leases and licenses—in addition to sales—in determining whether its threshold of \$100,000 of total taxable receipts is met. N.M. Stat. Ann. § 7-3.3.

<sup>30</sup>Cal. Rev. & Tax. Code § 6203(c)(4)(A).

<sup>31</sup>Minn. Stat. § 297A.66, subdiv. 1, (c)(2).

<sup>32</sup>Ark. Code Ann. § 26-52-111(a); Fla. Stat. § 212.0596(1)(b); Mo. Ann. Stat. § 144.605(f); N.M. Stat. Ann. § 7-3.3; N.D. Cent. Code 57-39.2-02.2; Okla. Stat. title 68, § 1392(A), (G)(1).

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## When a Business Must Register After Exceeding a Threshold

Once a business exceeds the economic nexus threshold in a state, requirements vary widely regarding when the business must register with the state for sales tax collection purposes. For example, according to a May 2022 analysis by the Sales Tax Institute, in some states (such as Maine, Mississippi, South Dakota, and Wisconsin) a business must register as soon as it makes the next transaction into the state after exceeding the threshold.<sup>33</sup> Other time frames noted in the analysis include the day the threshold is exceeded (California), the first of the month after it is exceeded (Hawaii and Maryland), the first of the second month after it is exceeded (South Carolina and Nebraska), and the first of January after it is exceeded (Alabama, Michigan, New Mexico, and Rhode Island).

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## Other Definitions

In addition to the differences described above, states vary in other definitions related to remote sales tax requirements. For example, some states have a narrow definition of what constitutes a marketplace facilitator, which generally requires direct or indirect processing or collection of the customer's payment. This includes Maryland, which defines a marketplace facilitator as one that facilitates a retail sale by a marketplace seller by listing or advertising the sale in a marketplace, collects payment from the buyer, and transmits payment to the marketplace seller.<sup>34</sup> In contrast, other states have broader definitions of marketplace facilitators. For example, a business may fall within one of these states' definitions of marketplace facilitator if it provides a product listing on its website, even though it is not associated with the financial aspects of seller transactions.

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## Local Sales Taxes

Local sales taxes add an additional layer of complexity to tax compliance for remote sellers. Of the 45 states with a statewide sales tax, 37 also have local sales taxes. In addition, while Alaska does not have a statewide sales tax, it does have local sales taxes.<sup>35</sup>

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<sup>33</sup>The Sales Tax Institute provides training, consulting services, and educational resources regarding sales and use taxes designed for finance, accounting, and tax professionals.

<sup>34</sup>Md. Code Ann. Tax-Gen. § 11-101(c-6)(1).

<sup>35</sup>Montana is another state with no statewide sales tax. However, Montana law permits certain resort communities to impose a resort tax on the sale of good and services. Mont. Code Ann. 7-6-1501 to 7-6-1551. Because this is limited, for purposes of this report (and consistent with general practice in the field), we do not include Montana in our count of states with local sales taxes.

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Local sales tax authority varies widely. In some states, only selected jurisdictions may impose a sales tax, while in others a broad range of jurisdictions—such as counties, municipalities, and various local authorities—may opt, either by ordinance or local referendum, to impose a sales tax. Tax policy specialists have estimated that approximately 30,000 local jurisdictions in the U.S. have the authority to impose sales taxes and that between 10,000 and 12,000 do.<sup>36</sup>

The Streamlined Sales and Use Tax Agreement (SSUTA) is an initiative aimed at simplifying business compliance with state and local sales taxes.<sup>37</sup> As a condition of membership, member states must have state-level administration of state and local sales taxes, uniformity across state and local tax bases (with some exceptions), and databases for businesses to identify local rates and boundaries. Of the 38 states with local sales taxes, 20 are SSUTA members and have agreed to these simplification measures.<sup>38</sup> Of the 18 states with local sales taxes that are not SSUTA members, the majority, according to tax policy specialists, have independently put in place systems to levy all taxes, both state and local, at the state level, administered by a single state tax agency and using the same tax base.

However, some states have given authority to local governments to establish and administer their own sales taxes, separate and apart from the state tax. These states are generally the most complex in terms of local sales tax compliance. In these states, tax bases and filing schedules can differ across the jurisdictions within a state. As a result, businesses must file separate tax returns and remittances with each jurisdiction. Moreover, each jurisdiction may audit the same business. Since *Wayfair*, many localities have begun imposing sales tax requirements based on economic nexus on remote businesses.

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<sup>36</sup>Arthur R. Rosen and Susan K. Haffield, “Sales and Use Taxes: Streamlined Sales Tax System,” *Bloomberg Law*, Portfolio 1270-1st (2022); [GAO-18-114](#).

<sup>37</sup>The SSUTA is administered by the Streamlined Sales Tax Governing Board, which is comprised of representatives from each of the 24 SSUTA member states. The initiative formally began in March 2000 as a cooperative effort undertaken by several states to find solutions for complexity in state and local sales tax systems.

<sup>38</sup>In the Supreme Court’s *Wayfair* decision, the Court noted that South Dakota’s SSUTA membership was one among several feature that appeared “designed to prevent discrimination against or undue burdens upon interstate commerce.” *Wayfair*, 138 S. Ct. at 2099–2100.

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Four states are often cited by tax policy specialists as presenting substantial challenges for remote sales tax collection: Alabama, Alaska, Colorado, and Louisiana. Each of these states has numerous localities that administer their own unique sales taxes. According to our review of state documentation and other third-party legal analysis, Alabama has over 300, Alaska has over 100, Colorado has 70, and Louisiana has 64. Each of these states has a centralized system to streamline registration and filing for remote businesses.<sup>39</sup> In addition, municipal leagues in Alaska and Colorado developed model laws to standardize some local requirements.

Despite these efforts, several complexities remain for local sales tax compliance:

- **Limited local participation in some centralized systems.** In Alaska and Colorado, not all localities that administer their own sales taxes participate in the centralized system. As of April 2022, approximately 48 percent of such localities in Alaska and approximately 74 percent in Colorado had joined the states' centralized systems, according to the systems' websites. Consequently, businesses selling into these states must be aware of which localities have joined the centralized systems and must register with and remit separately to those that have not.
- **Varying tax rates and bases.** In Alaska, Colorado, and Louisiana, remote businesses must still contend with varying tax bases and rates across localities. In contrast, remote businesses selling into Alabama collect sales tax at a flat 8 percent combined state and local rate, with the funds then apportioned to state and local coffers.<sup>40</sup> Alabama state law also requires that local tax bases follow those set by the state.<sup>41</sup>
- **Limited business access to some centralized systems.** The centralized systems in Alabama, Alaska, and Louisiana are designed for remote businesses only, not those with substantial nexus for other reasons, such as physical presence. If the activity of a remote

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<sup>39</sup>These systems are Alabama's Simplified Sellers Use Tax program, Alaska's Remote Seller Sales Tax Commission, Colorado's Sales and Use Tax System, and Louisiana's Sales and Use Tax Commission for Remote Sellers.

<sup>40</sup>Louisiana previously had a flat 8.45 percent combined state and local sales tax rate which remote businesses could voluntarily collect and remit, but this changed effective July 2020.

<sup>41</sup>Ala. Code §§ 11-51-200, 40-12-4.

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business results in establishment of nexus for other reasons, the business may lose access to the simplified system and have to contend with a separate, more complex one. For example, in Alabama, this would mean the business is no longer able to collect at the flat rate for remote sellers, and must instead manage the state's varying local rates. In Louisiana, this would mean no longer being able to register with and remit through the centralized system for remote sellers, and instead having to do so with each locality individually.<sup>42</sup>

- **Local audit challenges.** While the centralized systems in Alabama, Alaska, and Louisiana perform all audit functions on behalf of member localities, Colorado's centralized system does not. Consequently, businesses are subject to audit by each local taxing jurisdiction they sell into.

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## States Attribute Some Increases in Sales Tax Revenue to Post-*Wayfair* Remote Sales

In our November 2017 report, we estimated that states would gain additional revenue if given expanded authority to collect sales tax from remote sellers without a physical presence in the state.<sup>43</sup> At the time, based on our analysis of nearly 1,000 internet retail companies, we estimated that about 80 percent of the potential revenue from requiring all internet retailers to collect sales tax was already being collected. Many of the largest internet sellers were established retail chains or consumer brands with a physical presence, such as retail stores, in all, or nearly all, of the 45 states (plus the District of Columbia) that have a statewide sales tax. Our estimates of additional revenue states could have gained in 2017 if given the ability to collect from remote sellers the remaining taxes that they were already owed from purchasers ranged from more than \$1 billion for more populated states like California and Texas to about \$20 million for less populated states such as Vermont and Wyoming. We estimated the average gain could be about \$200 million per state. As a result of *Wayfair*, all states now have expanded authority to collect this revenue from remote sellers without a physical presence in the state.

In our ongoing work, we administered a survey in February 2022 to revenue departments in the 45 states with a statewide sales tax and the

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<sup>42</sup>In 2021, Louisiana enacted a law proposing a constitutional amendment to create a new administrative body which would have consolidated all state and local sales tax filings for both in-state and remote businesses. 2021 La. Acts. No. 131. However, Louisiana voters rejected the amendment in November 2021.

<sup>43</sup>[GAO-18-114](#).

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District of Columbia to learn more about their experiences collecting sales taxes following the *Wayfair* decision. Of the 46 surveys we administered, 43 states and the District of Columbia responded, for a response rate of 95 percent.<sup>44</sup>

Among the questions we asked states was whether they could provide data on the amount of sales tax revenue they had collected between 2018 and 2021 from remote sellers (which we defined as out-of-state sellers with economic but not physical nexus) both directly and via marketplace facilitators. As shown in table 1, for the 2018 reporting period, 21 states provided data in response to this question. These states reported a total of around \$3.2 billion in 2018 revenue collections. This total increased each year following the *Wayfair* decision.<sup>45</sup> For the 2021 reporting period, 33 states provided data in response to this question. These states reported a total of around \$23.1 billion in 2021 revenue collections.<sup>46</sup>

In our survey, we also asked states about the amount of revenue from remote sellers that they could attribute to sales made through marketplace facilitators.<sup>47</sup> For the 2018 reporting period, five states provided data in response to this question, totaling around \$344 million (or approximately 11 percent of total collections from remote sales reported for that period).<sup>48</sup> For the 2021 reporting period, 20 states provided data in response to this question, totaling around \$9.5 billion (or around 41 percent of total collections from remote sales reported for that

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<sup>44</sup>In our discussion of survey questions and responses that follow, we treat the District of Columbia as a state to simplify our reporting of the results.

<sup>45</sup>States provided data in calendar and fiscal year formats. For purposes of this testimony, we combine these responses into four reporting periods (2018 to 2021) based on the calendar or fiscal year that states reported.

<sup>46</sup>Some states provided collections data for remote sellers remitting directly separately from collections data for those remitting via marketplace facilitators. In these cases, we combined the two sets of data.

<sup>47</sup>Some states indicated that where marketplace facilitators sold their own goods in addition to facilitating sales by others, they were unable to remove the former from their collections data. In addition, some states' marketplace data may include revenue from third-party sellers with a physical presence in some of the states into which they sell. We include these responses in the total collections reported here.

<sup>48</sup>Not all responding states had laws requiring marketplace collection of sales taxes in 2018, which may explain the relatively few number of states that responded for this period with collections data.

period). In our November 2017 report, we estimated that, of the additional revenue states could gain if given expanded authority to collect sales taxes from remote sellers without a physical presence in the state, nearly half would result from collections on marketplace sales.<sup>49</sup>

**Table 1: State Remote Sales Tax Revenue Collections from 2018 to 2021**

Year	Revenue from all remote sales		Revenue from remote sales via marketplaces	
	Total revenue (in millions)	Number of states reporting	Total revenue (in millions)	Number of states reporting
2018	\$3,200	21	\$344	5
2019	\$6,735	28	\$1,276	12
2020	\$16,328	31	\$6,529	20
2021	\$23,104	33	\$9,539	20

Source: GAO survey of revenue departments in the 45 states with a statewide sales tax and the District of Columbia. | GAO-22-106016

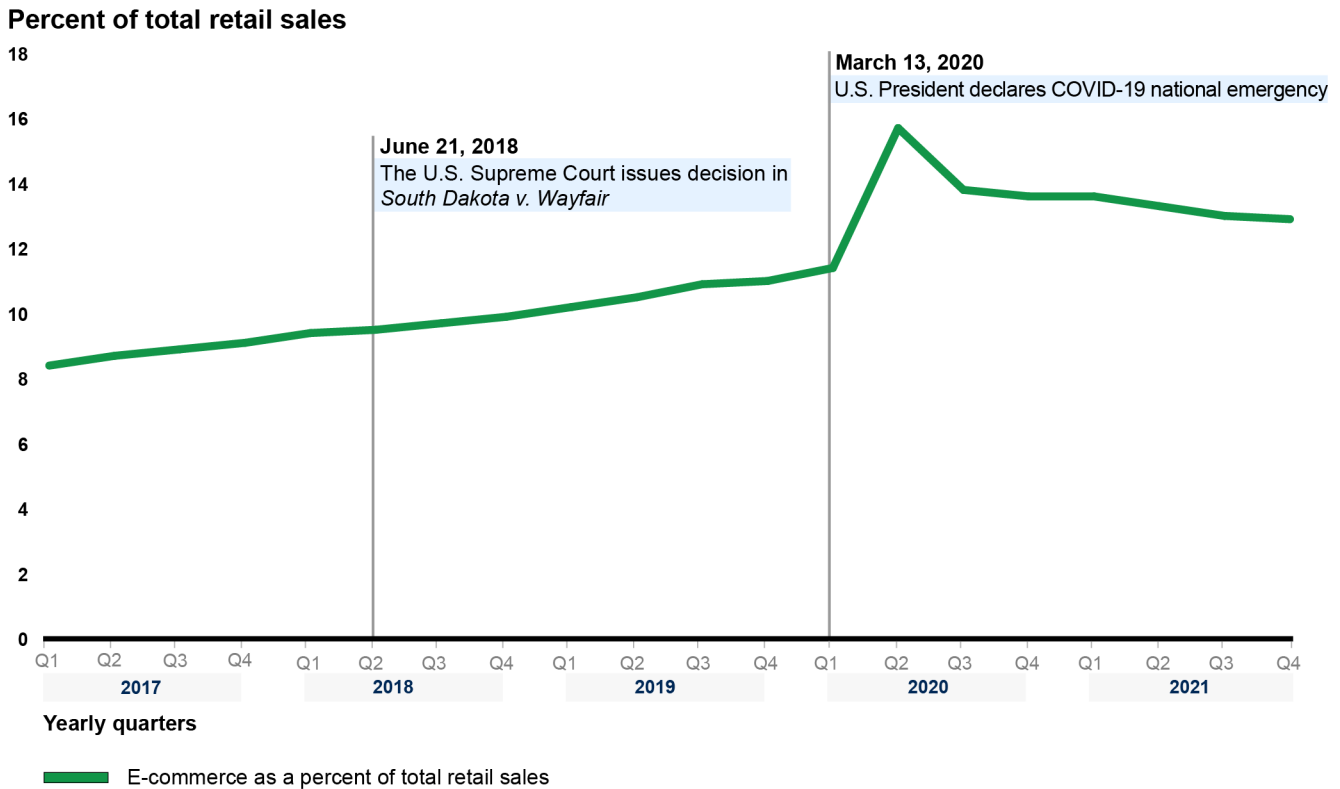
Note: This table combines calendar and fiscal year formats provided by states. Some states provided data on marketplace collections only, which may undercount total collections. Marketplaces include companies such as Amazon, eBay, and Etsy which facilitate sales on behalf of third-party sellers.

Data from the U.S. Census Bureau show that e-commerce sales generally experienced a faster growth rate than overall retail sales between 2017 and the onset of the COVID-19 pandemic in early 2020, and consequently grew as a proportion of total retail sales (see fig. 2). Then, between the first two quarters of 2020, e-commerce sales experienced a sharp increase. However, from the third quarter of 2020 through the fourth quarter of 2021, e-commerce sales were trending back toward pre-pandemic levels.

<sup>49</sup>[GAO-18-114](#).



**Figure 2: E-commerce and Total Retail Sales, 2017 to 2021**



Source: GAO analysis of seasonally adjusted U.S. Census Bureau data. | GAO-22-106016

## Businesses Incurred Several Types of Costs to Comply with Remote Sales Tax Requirements

In our November 2017 report, we identified various costs associated with the typical steps involved in multistate sales tax collection.<sup>50</sup> We grouped these costs into three broad categories: software-related costs, audit and assessment compliance costs, and costs associated with research and liability. In our ongoing work, businesses and organizations that represent or assist businesses reported that businesses incurred costs in each of these categories as they took steps to comply with remote sales tax requirements.

<sup>50</sup>[GAO-18-114](#).

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## Businesses Incurred Costs to Establish Software for Expanded Multistate Tax Collection

Businesses and other organizations we spoke with in our ongoing work stated that purchasing or developing software is essential for multistate tax collection, given the legal complexities involved. Regardless of the size of the business, almost all of the businesses we spoke with used software for multistate tax collection in order to automate a variety of functions such as

- tracking sales into a state to inform nexus determinations,
- determining the correct sales tax rate for each sale,
- collecting and remitting the tax, and
- managing sales tax exemption certificates.<sup>51</sup>

The use of software for multistate tax collection includes one-time start-up costs, such as mapping products sold to tax categories used by the software and by states and integrating the software with existing business software and operations, as well as ongoing usage costs. As we reported in 2017, ongoing usage costs typically increase with the number of states that a seller sells into and with the amount of sales.<sup>52</sup> Furthermore, businesses using customized software might face higher costs, as would businesses that had not previously collected sales tax.

Some software-related costs are reduced, or removed, for certain remote sellers that sell into SSUTA member states and register with the SSUTA organization.<sup>53</sup> A representative of the SSUTA organization told us in October 2021 that SSUTA had an estimated 16,000 registered sellers. Some businesses that we spoke with in our ongoing work said they did not register with the SSUTA organization because it initially required remote sellers to register in all member states regardless of meeting a state's economic nexus threshold. The SSUTA organization has since revised this requirement. In addition, some non-SSUTA-member states, such as Pennsylvania and Illinois, have also made software available at a free or reduced rate.

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<sup>51</sup>An exemption certificate enables a buyer to purchase an item tax free which would ordinarily be subject to sales tax. These certificates are often used where the buyer is a nonprofit or government entity or intends to resell the purchased item.

<sup>52</sup>[GAO-18-114](#).

<sup>53</sup>To qualify for free or reduced cost services, remote sellers must meet certain criteria, such as having less than \$50,000 of payroll in the past year or not having a fixed place of business for more than 30 days in a member state.

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In general, businesses and other organizations we spoke with in our ongoing work stated that currently available software has some limitations. For example, some businesses and organizations expressed concern about how accurate software is at the local level. One organization explained that some software providers lack sufficiently detailed information to handle sales tax collection at the local level. In addition, software will not tell a company in which jurisdictions it must register or which product categories it should use for mapping.

However, businesses are ultimately liable for errors made in tax collection and remission. For example, one business that reported around \$40 million in gross receipts told us it incurred a cost of almost \$250,000 beyond taxes owed due to an error in the software code. The business said it identified a programming error that resulted in a sales tax underpayment to states over a roughly 1-year period. One employee estimated spending 80 hours to identify the error and prepare relevant documentation. According to the business, with paid assistance from an accounting company, it had to file at least 350 amended tax returns for the time period in question and remit back taxes with accrued interest and penalties.

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### Businesses Incurred Audit and Assessment Costs Associated with Increased Exposure to More Tax Jurisdictions

In our November 2017 report, we found that, if states were allowed to require businesses to collect tax on remote sales, audit and assessment related costs for businesses would likely rise given increased exposure to more tax jurisdictions.<sup>54</sup> According to businesses that we spoke with in our ongoing work, state level audits on sales tax collections are taking place. One provider of software for multistate tax collection told us that it is beginning to see some of the first audits of businesses' remote sales tax collections and that it expects audit activity to increase.

An attorney whose firm advises and represents businesses in sales tax matters told us he has also seen an increase in sales tax audits since *Wayfair*, not just by states but also by localities. Several businesses that we spoke with told us about audits they had undergone related to remote sales taxes since *Wayfair*. For example, one business said that just as it was paying an assessment by one state following an audit, two other states initiated audits of the business and an additional state recently informed the businesses that it will be auditing the business soon.

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<sup>54</sup>[GAO-18-114](#).

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In November 2017, we reported that some businesses told us that, pre-*Wayfair*, they already expended substantial resources responding to audits on sales tax collection and remittance.<sup>55</sup> These costs included making staff available, developing justifications for tax claims, and complying with document or information requests. In our ongoing work, multiple businesses told us they were concerned about being audited for remote sales tax collections. Some predicted that these audits would eventually impose substantial costs on businesses, with the greatest expense being staff time, which they said diverted business resources from operating and growing the business.

In our ongoing work, we learned through our interviews that some small businesses are reluctant to appeal state sales tax assessments for fear of the cost and time involved and the uncertainty of success. Appeals costs often involve travel to the assessing state and hiring an attorney in that state to represent the business's interests. Furthermore, even if a business is successful in its appeal, the state may have further appellate rights and costs continue to mount with each level of review. Currently, if a remote seller sells into all 45 states that have enacted sales tax economic nexus requirements and the District of Columbia, it could be subject to audits by each and by localities in some, and, as applicable, appeals processes in each jurisdiction.

In November 2017, we reported that, in addition to audits, state revenue departments have many low-cost enforcement tools at their disposal which create compliance costs for businesses.<sup>56</sup> Letter audits are one example. For these audits, a revenue office sends a letter to a business stating that the office suspects they owe sales taxes. In our ongoing work, we found that businesses receiving such letters might choose to conduct research to determine whether they actually owe sales tax and draft an official response. We also found that states sent information requests and questionnaires to businesses to learn whether they met the state's economic nexus thresholds.

Several entities we spoke with in our ongoing work told us they have experienced or assisted businesses in responding to similar enforcement tools. For example, an organization that assists businesses in sales tax compliance told us that once a business starts collecting sales tax for a state, it will start to receive a large number of notices, which it referred to

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<sup>55</sup>[GAO-18-114](#).

<sup>56</sup>[GAO-18-114](#).

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as “nuisance notices.” These range from simple administrative matters to notices that a payment is late or not received. In addition, this organization described “nexus notices” sent to businesses by states aiming to establish whether the business met the state’s economic nexus threshold and should begin collecting for the state. Responding to notices from multiple states could be costly, but businesses told us that they feared not responding could trigger more notices and potentially an audit.

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### Businesses Incurred Costs to Stay Abreast of Legal Requirements in Multiple Jurisdictions, but Were Still Exposed to Liability Risks

In November 2017, we reported that if states were given authority to require businesses to collect tax on remote sales, businesses would have to incur costs to understand their new compliance obligations, which could differ by state or tax jurisdiction.<sup>57</sup> We found that the related liability costs would increase along with an increase in exposure to more tax jurisdictions. We also found that these costs would likely increase the most for businesses that did not have established legal teams, software systems, or outside counsel to assist with compliance-related questions. The interviews we conducted for our ongoing work confirmed these findings.

In our 2017 report, we identified several areas where liability costs were most likely to occur, including liability for past sales. We reported that businesses were concerned that, if states were given expanded authority to collect remote sales tax, they could be exposed to retroactive enforcement of sales tax economic nexus requirements already adopted. In the *Wayfair* decision, the Supreme Court noted that South Dakota’s remote sales tax law included features that appeared “designed to prevent discrimination against or undue burdens upon interstate commerce,” including that it was not retroactive.<sup>58</sup> In our ongoing work, several tax policy specialists told us that they were not aware of any state that has retroactively enforced their sales tax economic nexus requirements. However, states are actively enforcing their requirements consistent with the effective dates reported above, many of which range from the day of the *Wayfair* decision to just a few months later.

In our prior work, we identified transition periods as a means to help businesses prepare for new collection obligations.<sup>59</sup> In our ongoing work, businesses and organizations that assist businesses told us that state

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<sup>57</sup>[GAO-18-114](#).

<sup>58</sup>*Wayfair*, 138 S. Ct. at 2099.

<sup>59</sup>[GAO-18-114](#).

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effective dates generally did not provide sufficient time for many businesses to understand the new requirements, let alone implement systems to comply with them. Some businesses said they were not able to start complying until well after some states' effective dates.

Some states have implemented programs to mitigate past tax liability, such as amnesty and voluntary disclosure programs. For example, eligible businesses participating in Alabama's Simplified Sellers Use Tax program are granted amnesty for uncollected remote sales taxes that may have been due on sales made prior to October 1, 2019.<sup>60</sup> In addition, through Washington's voluntary disclosure program, eligible businesses may have their past tax liability reduced, including penalties and the audit lookback period.

In summary, today's remote sales tax laws mean that many more businesses are subject to multistate taxation for remote sales. Following the Supreme Court's *Wayfair* decision, states acted quickly to put requirements in place (or to begin enforcing requirements already in place) to require remote sellers to collect and remit sales tax on types of remote sales for which there had previously been negligible voluntary purchaser compliance. States saw sales tax revenue increase, and some were able to attribute the increases directly to remote sales.

Multistate tax collection has always come with challenges and costs for businesses. Prior to the internet, businesses were typically taxed in new states as they grew and expanded their physical presence, and often, their sales. Today, even a small online seller could have a customer in every state. With every sale, a seller has to determine whether nexus, physical or economic, has been met, and potentially collect and remit tax. Businesses have faced various costs to come into compliance with remote sales tax laws that were adopted or came into effect following *Wayfair*.

We will expand on these topics as we continue to examine the evolving remote sales tax landscape, state revenue generated as a result and related state actions and issues, and the compliance costs borne by businesses.

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<sup>60</sup>Ala. Code § 40-23-199.

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Chairman Wyden, Ranking Member Crapo, and Members of the Committee, this concludes my prepared statement. I look forward to answering any questions you may have.

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## GAO Contact and Staff Acknowledgments

If you or your staff have any questions about this testimony, please contact me at (202) 512-6806 or [mctiguej@gao.gov](mailto:mctiguej@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement.

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