United States Government Accountability Office

Report to Congressional Requesters

November 2022

# REMOTE SALES TAX

# Federal Legislation Could Resolve Some Uncertainties and Improve Overall System

Accessible Version

GAO-23-105359

# GAO Highlights

Highlights of GAO-23-105359, a report to congressional requesters

November 2022

# REMOTE SALES TAX

## Federal Legislation Could Resolve Some Uncertainties and Improve Overall System

### Why GAO Did This Study

Electronic commerce (e-commerce) sales have grown rapidly over the past quarter century. 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.

Two fundamental objectives of tax policy are (1) to raise revenue sufficient to fund projected government spending, and (2) to do so in a manner consistent with three long-standing and widely accepted criteria for a good tax system: equity; economic efficiency; and a combination of simplicity, transparency, and administrability. In the more than 4 years since the *Wayfair* decision, concerns have been raised regarding the extent to which the overall remote sales tax system aligns with these criteria.

GAO was asked to examine the effects of states' expanded authority to collect remote sales tax. This report examines (1) the current landscape of state remote sales tax requirements, (2) the number of businesses subject to these requirements and the amount of revenue states have generated as a result, (3) the types of costs businesses have incurred complying with these requirements, and (4) the extent to which the overall remote sales tax system aligns with the criteria for a good tax system.

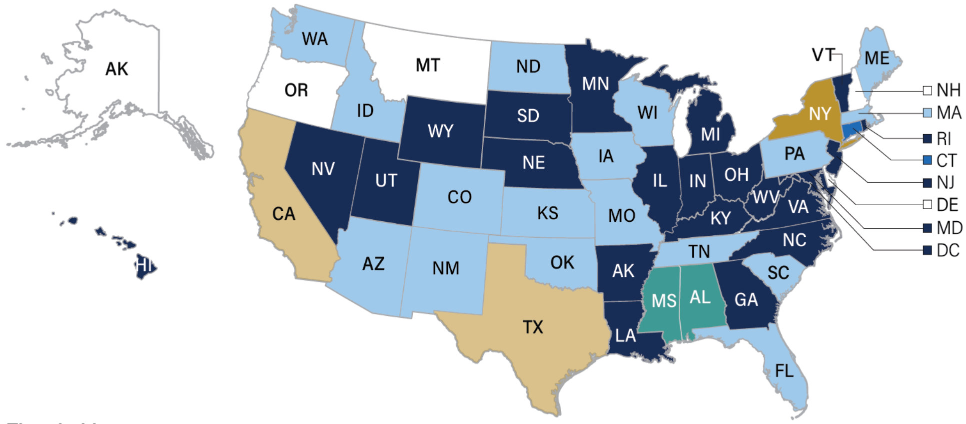
To conduct this work, GAO administered a survey to revenue agencies in all 45 states with a statewide sales tax and the District of Columbia. Forty-three states and the District of Columbia responded, for a response rate of more than 95 percent. GAO also interviewed multiple organizations representing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

### What GAO Found

The 2018 U.S. Supreme Court decision, *South Dakota v. Wayfair*, held that states could require out-of-state (or remote) businesses to collect sales taxes even without a physical presence, such as a store or warehouse in the state. States responded quickly with new remote sales tax requirements, resulting in a complex patchwork of requirements with wide variation. For example, states established different monetary and transactional (or economic nexus) thresholds exempting some small businesses from remote sales tax requirements and different rules for calculating those thresholds.

View GAO-23-105359. For more information, contact James R. McTigue, Jr. at (202) 512-6806 or McTigueJ@gao.gov.

**Sales Tax Economic Nexus Thresholds for Remote Sellers, as of September 2022**




Threshold

- Not applicable; no statewide sales tax
- $100,000
- $100,000 and 200 transactions
- $100,000 or 200 transactions
- $250,000
- $500,000
- $500,000 and 100 transactions

Source: GAO analysis of state laws. | GAO-23-105359

**Data table for Sales Tax Economic Nexus Thresholds for Remote Sellers, as of September 2022**

| Threshold | States |
|---|---|
| Not applicable; no statewide sales tax | Alaska, Delaware, Montana, New Hampshire, Oregon |
| $100,000 | Arizona, Colorado, Florida, Idaho, Iowa, Kansas, Maine, Massachusetts, Missouri, New Mexico, North Dakota, Oklahoma, Pennsylvania, South Carolina, Tennessee, Washington, Wisconsin |
| $100,000 and 200 transactions | Connecticut |
| $100,000 or 200 transactions | Arkansas, District of Columbia, Georgia, Hawaii, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Nebraska, Nevada, New Jersey, North Carolina, Ohio, Rhode Island, South Dakota, Utah, Vermont, Virginia, West Virginia, Wyoming |
| $250,000 | Alabama, Mississippi |
| $500,000 | California, Texas |
| $500,000 and 100 transactions | New York |

Source: GAO analysis of state laws. | GAO-23-105359

Based on state-reported data, GAO estimates 2021 nationwide remote sales tax collections to be about $30 billion. Businesses reported that they incurred software costs to expand their multistate tax collection capabilities, audit and assessment costs associated with increased tax jurisdiction exposure, and costs to stay current with legal requirements in multiple jurisdictions.

GAO found that the overall remote sales tax system raises concerns regarding all three criteria for a good tax system. For example:

- An accepted principle of equity is that similarly situated taxpayers should receive similar treatment. GAO found that post-*Wayfair* multistate sellers must grapple with the patchwork of different requirements across the taxing jurisdictions with which they have economic nexus, whereas brick-and-mortar sellers generally must grapple only with the requirements of the jurisdictions in which they are physically located, regardless of the states in which their customers live.

- Economic efficiency is achieved where resources are used to provide the greatest possible benefit or well-being to society. GAO found that remote sellers made behavioral changes arising from the need to divert resources away from business operations and investments and toward tax compliance, such as limiting the number of states into which they sell or the amount of sales into some states to avoid some states' remote sales tax requirements.

- Simplicity, transparency, and administrability are interrelated but distinct features of a good tax system. GAO found that businesses are devoting substantial amounts of time and resources to multistate remote sales tax compliance; that the numerous requirements and variations across taxing jurisdictions made it difficult for businesses to understand their remote sales tax obligations; and that the administrative costs are borne in large part by businesses collecting from purchasers on behalf of the taxing jurisdictions.

GAO identified various proposals for remote sales tax reform, ranging from incremental to comprehensive. Whereas the proposals for comprehensive reform are intended to be adopted on a nationwide basis, some of the proposals for incremental reform may be adopted by states independent of one another or on a broader multistate basis.

For example, one proposal for incremental reform is that a state adopt a single statewide point of registration, filing, administration, and audit. One proposal for comprehensive reform is that states be required, as a condition of taxing remote sales, to participate in an interstate collaborative mechanism through which states agree on uniform standards and centralized processes.

Some states and multistate organizations have taken some steps toward implementing some of the proposed incremental reforms, but a comprehensive approach has yet to be adopted. While individual state actions may assist certain businesses in complying with a particular state's remote sales tax requirements, they do not alleviate the multistate complexities that exist. To date, there is no comprehensive approach in place that addresses multistate complexities and includes all states seeking to tax remote sales.

In addition, substantial uncertainty currently exists regarding to what extent remote sales taxation is legally permissible for states and localities. For example, uncertainty exists regarding what connection (or nexus) a business must have with a state before the state may require the business to collect sales taxes on its behalf; when remote sales tax requirements violate the Constitution's prohibition on state laws that discriminate against or impose an undue burden on interstate commerce; and under what circumstances locally-administered remote sales tax requirements are constitutionally permissible.

One effect of this uncertainty is that legal disputes over state and local authority to require sales tax collection have developed. Such disputes can be expensive for parties to litigate and can lead to prolonged and uncertain outcomes for all involved. Without a comprehensive approach in place, courts are left to address these issues on a piecemeal basis.

While the right of states to levy taxes, and to empower their localities to do the same, is a well-founded principle of state sovereignty, under the Constitution's Commerce Clause, Congress has the authority to regulate interstate commerce. The Supreme Court has stated that Congress has the "ultimate power to resolve" issues with taxation of remote sales. Federal legislation which puts nationwide parameters in place for state taxation of remote sales could help address the uncertainties and multistate complexities and improve the overall system.

## What GAO Recommends

GAO is recommending that Congress consider working with states to establish nationwide parameters for state taxation of remote sales. Such parameters should balance state interests with the need to address multistate complexities. The parameters should improve the overall system's alignment with the criteria for a good tax system and help address existing uncertainties regarding what remote sales taxation is legally permissible by states and localities.

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**Abbreviations**

| | |
|---|---|
| BLS | Bureau of Labor Statistics |
| E-commerce | electronic commerce |
| SSUTA | Streamlined Sales and Use Tax Agreement |

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Congressional Requesters

At the state and local levels, sales tax serves as a major source of funding for many government programs and services.[1] However, state and local governments' ability to collect taxes on sales to their residents has been shrinking over time with the rapid growth in electronic commerce (e-commerce).

Data from the U.S. Census Bureau show that e-commerce sales have steadily increased over the past quarter century and, according to some studies, have replaced brick-and-mortar sales to some extent.[2] Until recently, however, the Supreme Court had interpreted the Commerce Clause of the U.S. Constitution as prohibiting states from taxing sellers without a physical presence in the state.[3] This meant 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. Purchasers were required to report online and other remote purchases on annual state tax returns, but without sales tax being collected at the point of sale, purchaser compliance was negligible and difficult to enforce.[4]

As remote sales began to make up a larger portion of total sales, some states worried about revenue loss and enacted sales tax collection

[1]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 out-of-state sellers to collect and remit use taxes under certain circumstances. For this report, and in keeping with common usage, we generally use the term "sales tax" to refer to both situations.

[2]See, e.g., W. G. Jens, Jr.; J. C. Patin; and L. Turpin, Jr., "Can Charging Sales Taxes on Internet Sales Save Brick-and-Mortar Stores?" *Journal of Accounting, Ethics & Public Policy*, vol. 21, no. 2 (2020): 263.

[3]*See*, Quill v. North Dakota, 504 U.S. 298, 317–318 (1992).

[4]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, https://www.house.leg.state.mn.us/hrd/pubs/usetax.pdf, accessed May 24, 2022.

requirements for remote sellers, even those that did not have a physical presence in the state. However, these requirements were generally unenforceable under Supreme Court precedent to the extent the remote sellers lacked a physical presence in the taxing state.[5] In its June 2018 landmark decision, *South Dakota 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.[6]

The *Wayfair* majority and dissenting opinions both cited our prior work on remote sales tax issues, published in November 2017.[7] The majority cited 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.[8] The dissent cited our findings on the costs and challenges business would likely face if states were given this authority.[9] The majority acknowledged that the burden of nationwide sales tax collection "may pose legitimate concerns," particularly for small businesses. It noted, however, that "Congress may legislate to address these problems."[10] Over the course of several decades, numerous federal bills have been introduced on this topic. However, none have been enacted to date.

Two fundamental objectives of tax policy are (1) to raise revenue sufficient to fund projected government spending, and (2) to do so in a manner consistent with three long-standing and widely accepted criteria for a good tax system: equity; economic efficiency; and a combination of

[5] *See*, Quill v. North Dakota, 504 U.S. at 317–318; Complete Auto Transit, Inc. v. Brady, 430 U. S. 274, 279 (1977) (holding, in part, a state tax is permissible so long as the tax is applied to an activity with a substantial nexus with the taxing state).

[6] *South Dakota v. Wayfair, Inc*., 585 U.S. ___, 138 S. Ct. 2080 (2018).

[7] 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); and *Sales Taxes: Electronic Commerce Growth Presents Challenges; Revenue Losses are Uncertain*, GAO/GGD/OCE-00-165 (Washington, D.C.: June 30, 2000).

[8] *Wayfair*, 138 S. Ct. at 2088.

[9] *Wayfair*, 138 S. Ct. at 2103.

[10] *Wayfair*, 138 S. Ct. at 2098.

simplicity, transparency, and administrability.[11] In the more than 4 years since the *Wayfair* decision, concerns have been raised regarding the extent to which the overall remote sales tax system aligns with these criteria.[12]

You asked us to examine how states and businesses have been affected by the *Wayfair* decision's expansion of state taxing authority. In this report, we examine (1) the current landscape of state remote sales tax requirements, (2) what is known about the number of businesses subject to these requirements and the amount of revenue states have generated as a result, (3) the types of costs businesses have incurred complying with these requirements, and (4) the extent to which the overall remote sales tax system aligns with the criteria for a good tax system.

To examine the current landscape of remote sales tax requirements, 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. All state statutes and regulations cited in this report are the most current available as of September 2022, unless otherwise noted. We also tracked and reviewed related litigation and legislation, where relevant. In addition, we administered a survey in February 2022 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 more than 95 percent. Connecticut and South Carolina declined to respond. Appendix I contains detailed information about our survey methodology.

We also 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

[11]GAO, *Understanding the Tax Reform Debate: Background, Criteria, & Questions*, GAO-05-1009SP (Washington, D.C.: Sept. 1, 2005).

[12]By overall remote sales tax system, we are referring to the totality of state and local requirements governing collection and remittance of sales taxes from remote sellers.

businesses engaged in e-commerce and multistate taxation.[13] We selected interview subjects to represent a broad range of perspectives.

To examine what is known about the number of businesses subject to remote sales tax requirements and the amount of revenue states have generated as a result, we analyzed information reported by the Streamlined Sales Tax Governing Board and a major online retailer, as well as relevant data from the U.S. Census Bureau and the U.S. Bureau of Labor Statistics.[14] We found these data to be sufficiently reliable for our purposes. We also analyzed the results of our survey and collected information through our semi-structured interviews with a broad range of knowledgeable parties. In addition, to estimate national revenue collections from remote sales, we used population data from the U.S. Census Bureau to extrapolate from states that responded to our survey.

To examine the types of costs businesses have incurred complying with remote sales tax requirements, we used our survey of state officials and reviewed existing literature evaluating how businesses have been affected by the *Wayfair* decision. We also collected information through our semi-structured interviews with knowledgeable parties.

To examine the extent to which the overall remote sales tax system aligns with the criteria for a good tax system, we assessed our findings obtained through the methodologies described above against three long-standing and widely accepted criteria for a good tax system: equity; economic efficiency; and a combination of simplicity, transparency, and administrability. These criteria are described in our publication, *Understanding the Tax Reform Debate: Background, Criteria, and Questions*.[15] The publication frames a number of topics that tax experts have identified as those that should be considered when evaluating tax policy.

We conducted this performance audit from August 2021 to November 2022 in accordance with generally accepted government auditing

[13]Specifically, our semi-structured interviews asked all interviewees in each category the same set of open-ended questions, with follow-up questions tailored to the specific information interviewees volunteered in response to our questions.

[14]The Streamlined Sales Tax Governing Board is an organization that administers the Streamlined Sales and Use Tax Agreement (SSUTA), an initiative aimed at simplifying business compliance with state and local sales taxes.

[15]GAO-05-1009SP.

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 our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## Background

In 1932, Mississippi became the first state to impose a statewide sales tax. By the end of that decade—a period of declining revenue from corporate and individual income taxes—23 additional states had done the same. By the late 1960s, 21 more states and the District of Columbia had also adopted a statewide sales tax, with Vermont being the most recent in 1969.

On average, states receive about one-third of their total tax collections from general sales taxes. The outliers are the five states with no statewide sales tax (Alaska, Delaware, Montana, New Hampshire, and Oregon) and six states with no broad-based individual income tax that rely on sales taxes for more than half of their tax revenue (Florida, Nevada, South Dakota, Tennessee, Texas, and Washington).

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.[16] 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 impose sales taxes.[17]

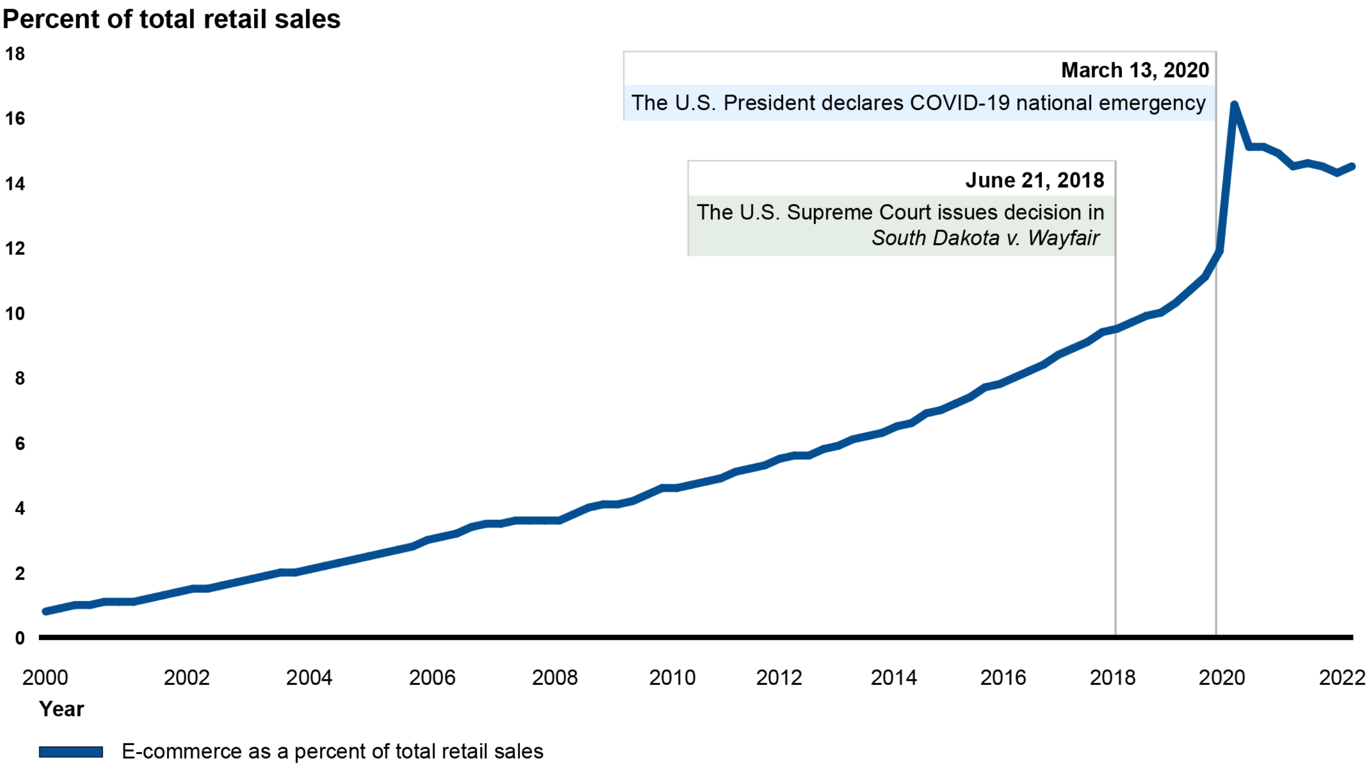
[16]Montana is another state with no statewide sales tax. However, Montana law permits certain resort communities to impose a resort tax on the sale of good and services. Mont. Code Ann. 7-6-1501 to 7-6-1551. Because this is a limited sales tax, for purposes of this report (and consistent with general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

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

While technically imposed on the purchaser, both state and local sales taxes are usually accompanied by a collection requirement—sellers are required to collect the tax at the time of purchase. The tax is levied as a percent of the retail price and remitted to states and localities by the seller. A companion to the sales tax is the use tax—a tax that few purchasers know about or pay. In general, whereas the sales tax is imposed on the sale of goods and services within a state's borders, the use tax is imposed on purchases made by a state's residents from remote sellers. If the remote seller does not collect tax from the purchaser, then the purchaser is generally responsible for paying a use tax at the same rate. Although functionally similar to a sales tax, the use tax is a tax levied on the purchaser for the privilege of use, ownership, or possession of taxable goods and services.

Pre-*Wayfair,* low rates of purchaser compliance with the use tax became increasingly problematic for states as e-commerce sales steadily increased over time (see figure 1).

**Figure 1: E-commerce as a Percent of Total Retail Sales**




Source: GAO analysis of seasonally adjusted U.S. Census Bureau data. | GAO-23-105359

Data table for Figure 1: E-commerce as a Percent of Total Retail Sales

| Year / Quarter | Total Retail Dollars | Total E-commerce Dollars | Share percent |
|---|---|---|---|
| 2022 Q2 | 1,778,625 | 257,283 | 14.5 |
| 2022 Q1 | 1,745,338 | 250,424 | 14.3 |
| 2021 Q4 | 1,684,796 | 244,144 | 14.5 |
| 2021 Q3 | 1,641,669 | 240,368 | 14.6 |
| 2021 Q2 | 1,659,350 | 240,911 | 14.5 |
| 2021 Q1 | 1,575,288 | 234,440 | 14.9 |
| 2020 Q4 | 1,466,535 | 221,421 | 15.1 |
| 2020 Q3 | 1,456,260 | 219,278 | 15.1 |
| 2020 Q2 | 1,290,212 | 211,004 | 16.4 |
| 2020 Q1 | 1,346,403 | 159,853 | 11.9 |
| 2019 Q4 | 1,368,307 | 152,210 | 11.1 |
| 2019 Q3 | 1,361,682 | 146,201 | 10.7 |
| 2019 Q2 | 1,345,207 | 138,200 | 10.3 |
| 2019 Q1 | 1,327,622 | 133,162 | 10.0 |
| 2018 Q4 | 1,326,839 | 131,668 | 9.9 |
| 2018 Q3 | 1,319,644 | 128,222 | 9.7 |
| 2018 Q2 | 1,312,347 | 125,257 | 9.5 |
| 2018 Q1 | 1,299,655 | 121,808 | 9.4 |
| 2017 Q4 | 1,291,752 | 117,867 | 9.1 |
| 2017 Q3 | 1,259,956 | 111,854 | 8.9 |
| 2017 Q2 | 1,247,336 | 108,728 | 8.7 |
| 2017 Q1 | 1,246,977 | 104,503 | 8.4 |
| 2016 Q4 | 1,226,336 | 100,449 | 8.2 |
| 2016 Q3 | 1,213,893 | 97,174 | 8.0 |
| 2016 Q2 | 1,202,685 | 94,381 | 7.8 |
| 2016 Q1 | 1,189,684 | 91,385 | 7.7 |
| 2015 Q4 | 1,187,810 | 88,482 | 7.4 |
| 2015 Q3 | 1,191,950 | 85,775 | 7.2 |
| 2015 Q2 | 1,180,566 | 82,996 | 7.0 |
| 2015 Q1 | 1,161,718 | 80,365 | 6.9 |
| 2014 Q4 | 1,170,412 | 77,724 | 6.6 |
| 2014 Q3 | 1,169,158 | 75,811 | 6.5 |
| 2014 Q2 | 1,161,299 | 73,396 | 6.3 |
| 2014 Q1 | 1,134,311 | 70,372 | 6.2 |
| 2013 Q4 | 1,124,053 | 68,408 | 6.1 |

| Year / Quarter | Total Retail Dollars | Total E-commerce Dollars | Share percent |
|---|---|---|---|
| 2013 Q3 | 1,118,381 | 65,982 | 5.9 |
| 2013 Q2 | 1,107,785 | 64,071 | 5.8 |
| 2013 Q1 | 1,108,854 | 62,310 | 5.6 |
| 2012 Q4 | 1,089,173 | 60,884 | 5.6 |
| 2012 Q3 | 1,073,919 | 58,589 | 5.5 |
| 2012 Q2 | 1,064,937 | 56,593 | 5.3 |
| 2012 Q1 | 1,068,883 | 55,316 | 5.2 |
| 2011 Q4 | 1,046,819 | 53,217 | 5.1 |
| 2011 Q3 | 1,029,304 | 50,207 | 4.9 |
| 2011 Q2 | 1,020,669 | 48,864 | 4.8 |
| 2011 Q1 | 1,004,965 | 47,041 | 4.7 |
| 2010 Q4 | 981,346 | 45,076 | 4.6 |
| 2010 Q3 | 953,280 | 43,469 | 4.6 |
| 2010 Q2 | 949,252 | 41,301 | 4.4 |
| 2010 Q1 | 932,895 | 39,284 | 4.2 |
| 2009 Q4 | 919,242 | 38,117 | 4.1 |
| 2009 Q3 | 912,858 | 37,400 | 4.1 |
| 2009 Q2 | 892,284 | 35,279 | 4.0 |
| 2009 Q1 | 888,604 | 34,127 | 3.8 |
| 2008 Q4 | 910,187 | 33,051 | 3.6 |
| 2008 Q3 | 999,159 | 36,287 | 3.6 |
| 2008 Q2 | 1,011,101 | 36,509 | 3.6 |
| 2008 Q1 | 1,007,189 | 36,012 | 3.6 |
| 2007 Q4 | 1,014,852 | 35,784 | 3.5 |
| 2007 Q3 | 1,001,953 | 34,841 | 3.5 |
| 2007 Q2 | 994,838 | 33,524 | 3.4 |
| 2007 Q1 | 985,713 | 31,728 | 3.2 |
| 2006 Q4 | 972,870 | 30,138 | 3.1 |
| 2006 Q3 | 972,764 | 28,842 | 3.0 |
| 2006 Q2 | 967,539 | 27,367 | 2.8 |
| 2006 Q1 | 963,388 | 26,417 | 2.7 |
| 2005 Q4 | 937,255 | 24,364 | 2.6 |
| 2005 Q3 | 934,239 | 23,653 | 2.5 |
| 2005 Q2 | 916,525 | 22,233 | 2.4 |
| 2005 Q1 | 898,561 | 20,801 | 2.3 |
| 2004 Q4 | 891,055 | 19,631 | 2.2 |
| 2004 Q3 | 868,438 | 18,506 | 2.1 |

| Year / Quarter | Total Retail Dollars | Total E-commerce Dollars | Share percent |
|---|---|---|---|
| 2004 Q2 | 855,337 | 17,519 | 2.0 |
| 2004 Q1 | 846,054 | 16,697 | 2.0 |
| 2003 Q4 | 830,674 | 15,588 | 1.9 |
| 2003 Q3 | 827,747 | 14,833 | 1.8 |
| 2003 Q2 | 804,955 | 13,773 | 1.7 |
| 2003 Q1 | 798,238 | 12,738 | 1.6 |
| 2002 Q4 | 791,451 | 12,231 | 1.5 |
| 2002 Q3 | 788,438 | 11,543 | 1.5 |
| 2002 Q2 | 778,692 | 10,742 | 1.4 |
| 2002 Q1 | 771,036 | 9,904 | 1.3 |
| 2001 Q4 | 785,062 | 9,314 | 1.2 |
| 2001 Q3 | 757,402 | 8,335 | 1.1 |
| 2001 Q2 | 764,003 | 8,336 | 1.1 |
| 2001 Q1 | 755,686 | 8,135 | 1.1 |
| 2000 Q4 | 752,210 | 7,840 | 1.0 |
| 2000 Q3 | 746,589 | 7,419 | 1.0 |
| 2000 Q2 | 740,192 | 6,465 | 0.9 |
| 2000 Q1 | 740,394 | 5,691 | 0.8 |

Source: GAO analysis of seasonally adjusted Census Bureau data. | GAO-23-105359

Note: Between the first two quarters of 2020, at the onset of the COVID-19 pandemic, e-commerce sales experienced a sharp increase. However, from the third quarter of 2020 through the second quarter of 2022, e-commerce sales were moving back toward prepandemic trends.

Once the *Wayfair* decision allowed states to require remote sellers to collect and remit sales taxes even in the absence of a physical presence in the state, states moved quickly to put in place new legal requirements for remote sellers. 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).[18] In addition, all but Oklahoma had adopted marketplace facilitator requirements shifting primary tax collection obligations from sellers in an

[18]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.

online marketplace to the company facilitating the sale, such as Amazon, eBay, and Etsy.[19]

# A Complex Patchwork of Requirements Govern the Taxation of Remote Sales

Across state and local taxing jurisdictions, a complex patchwork of requirements are in place governing the taxation of remote sales. These requirements vary in numerous respects, each of which multistate sellers need to be aware of and comply with, including the following.

## Effective Dates

Following the *Wayfair* decision, the dates by which remote sellers had to comply with these requirements varied across the 45 states with a statewide sales tax and the District of Columbia, 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);[20]
- Maine and Vermont imposed remote seller requirements with effective dates that were less than 2 weeks after *Wayfair* (July 1, 2018);[21]

[19]Oklahoma provides marketplace facilitators the option to report on sales into the state as an alternative to collecting and remitting sales taxes. Okla. Stat. tit. 68, § 1392.

[20]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, accessed September 21, 2022.

[21]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 September 21, 2022.

- Mississippi announced it would enforce its remote seller requirements starting about 2 months after *Wayfair* (September 1, 2018);[22] and
- Alabama, Illinois, Maryland, Michigan, and Washington imposed remote seller requirements with effective dates that were about 3 months after *Wayfair* (October 1, 2018).[23]

While most states and the District of Columbia had effective dates for remote sellers within the first year of *Wayfair*, others had effective dates further out, including Missouri, the last, which is set for January 1, 2023.[24]

## 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 2, as of September 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.[25] Three large-population and large-Gross Domestic Product states (California, New York, and Texas) adopted higher monetary thresholds of $500,000.[26] More recently, some states (including Florida, Kansas, and Missouri) adopted monetary

[22]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, but no longer accessible as of September 29, 2022.

[23]Ala. Admin. Code r. 810-6-2-.90.03(3)(a); 35 Ill. Comp. Stat. 105/2; Md. Code. Regs. 03.06.01.33(C); Mich. Comp. Laws § 205.52C; Wash. Rev. Code § 82.08.052(1)(a).

[24]2021 Mo. Laws 982, 1047, 1067.

[25]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.

[26]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).

thresholds without an accompanying transactional threshold.[27] Other states (including Iowa and Maine) eliminated previously-established transactional thresholds in favor of monetary-only thresholds.[28] Some states also raised or lowered their previously-established monetary thresholds, including Tennessee, which moved from $500,000 to $100,000.[29] States differ regarding whether a business meets these thresholds when its sales equal or exceed the stated values.[30] 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.[31]

[27]Fla. Stat. § 212.0596(1)(b); Kan. Stat. Ann. § 79-3702(h)(1)(G); Mo. Ann. Stat. § 144.605(f).

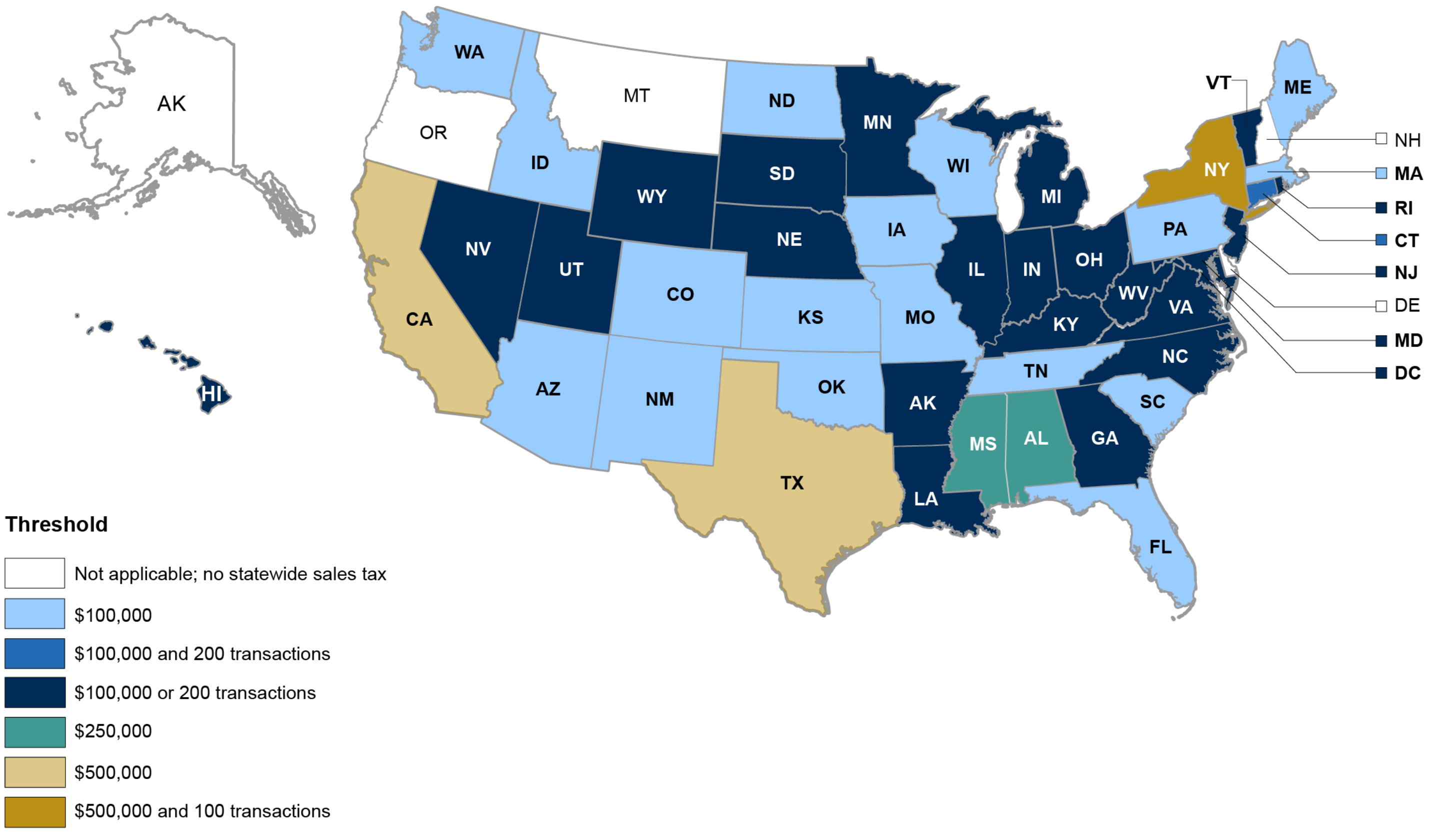
[28]2019 Iowa Acts 535, 539, *codified at* Iowa Code § 423.14A(3)(a); Me. Rev. Stat. Ann. tit. 36, § 1754-B(1-B)(B).

[29]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).

[30]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.

[31]35 Ill. Comp. Stat. 105/2; Ind. Code 6-2.5-2-1.

**Figure 2: Sales Tax Economic Nexus Thresholds for Remote Sellers, as of September 2022**




Source: GAO analysis of state laws. | GAO-23-105359

**Data table for Figure 2: Sales Tax Economic Nexus Thresholds for Remote Sellers, as of September 2022**

| Threshold | States |
|---|---|
| Not applicable; no statewide sales tax | Alaska, Delaware, Montana, New Hampshire, Oregon |
| $100,000 | Arizona, Colorado, Florida, Idaho, Iowa, Kansas, Maine, Massachusetts, Missouri, New Mexico, North Dakota, Oklahoma, Pennsylvania, South Carolina, Tennessee, Washington, Wisconsin |
| $100,000 and 200 transactions | Connecticut |
| $100,000 or 200 transactions | Arkansas, District of Columbia, Georgia, Hawaii, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Nebraska, Nevada, New Jersey, North Carolina, Ohio, Rhode Island, South Dakota, Utah, Vermont, Virginia, West Virginia, Wyoming |
| $250,000 | Alabama, Mississippi |
| $500,000 | California, Texas |
| $500,000 and 100 transactions | New York |

Source: GAO analysis of state laws. | GAO-23-105359

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.

- **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.[32] For example, California's threshold is total sales of tangible personal property for delivery into California.[33] In comparison, Minnesota's threshold is retail sales, made or facilitated, from outside Minnesota to destinations in the state.[34]
- **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.[35] 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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[32]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.

[33]Cal. Rev. & Tax. Code § 6203(c)(4)(A).

[34]Minn. Stat. § 297A.66, subdiv. 1, (c)(2).

[35]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).

## Registration Timing

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.[36] 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).

## 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.[37] 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.

## Local Sales Taxes

Local sales taxes add an additional layer of complexity to tax compliance for remote sellers. As discussed above, while 45 states have a statewide sales tax, 38 have local sales taxes (including Alaska which has no statewide sales tax). In all, estimates from tax policy specialists range from 10,000 to 12,000 for the number of local jurisdictions in the country

[36]The Sales Tax Institute provides training, consulting services, and educational resources regarding sales and use taxes designed for finance, accounting, and tax professionals.

[37]Md. Code Ann. Tax-Gen. § 11-101(c-6)(1).

that impose sales taxes, each with potentially different taxing authorities, rates, bases, and rules.

The Streamlined Sales and Use Tax Agreement (SSUTA) is an initiative aimed at simplifying business compliance with state and local sales taxes.[38] 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.[39] 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. Since *Wayfair*, many localities have begun imposing sales tax requirements based on economic nexus on remote businesses.

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 more than 300 local tax authorities, Alaska has more than 100, Colorado has 70, and Louisiana has 64. Each of these states has a centralized

[38]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.

[39]In the Supreme Court's *Wayfair* decision, the Court noted that South Dakota's SSUTA membership was one among several features that appeared "designed to prevent discrimination against or undue burdens upon interstate commerce." *Wayfair*, 138 S. Ct. at 2099–2100.

system to streamline registration and filing for remote businesses.[40] 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 September 2022, approximately 48 percent of such localities in Alaska and 80 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.[41] Alabama state law also requires that local tax bases follow those set by the state.[42]
- **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 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

[40]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.

[41]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.

[42]Ala. Code §§ 11-51-200, 40-12-4.

varying local rates.[43] 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.[44]

- **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 into which they sell.

An additional complexity involves the open legal questions regarding localities imposing sales tax collection and remittance requirements on remote sellers. The *Wayfair* decision did not explicitly address whether or how the Court's ruling might apply to localities and whether local imposition of remote sales tax requirements may run afoul of due process and commerce clause principles. Several lawsuits have been filed arguing that locally-administered remote sales tax requirements should be invalidated on constitutional grounds, in part because of the complexities described above.[45] As of September 2022, no court has ruled on these issues.

## States Attribute Increases in Revenue to Post-*Wayfair* Remote Sales, although the Total

[43]According to an official with Alabama's Department of Revenue, in some instances (determined on a case-by-case basis), limited physical presence in the state, such as inventory or a home office employee, may not constitute physical presence for nexus purposes. In those instances, the business would not be disqualified from collecting at the flat rate for remote sellers.

[44]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.

[45]See e.g., Complaint, *Wayfair v. City of Lakewood*, No. 2022-cv-30710 (D. Colo.), *filed on* June 22, 2022; Complaint, *Halstead Bead v. Lewis*, No. CV 21-2106, 2022 WL 1618880 (E.D. La. May 23, 2022) (dismissed on procedural grounds, appeal filed to the 5th Circuit). In the Colorado case, the plaintiff argues, in part, that the city's imposition of tax obligations is unconstitutional because it unduly burdens and discriminates against interstate commerce. In the Louisiana case, the plaintiff argued that the state's parish-by-parish requirements violated both the Commerce Clause and the Fourteenth Amendment's Due Process Clause.

# Number of Businesses Subject to Remote Sales Tax Requirements is Uncertain

## No Nationwide Data Exist on the Number of Businesses Subject to Remote Sales Tax Requirements but Some Data Provide an Estimate of a Portion of the Population

Based on our review of existing data sources and interviews with organizations representing states and state officials as well as academic and private entities studying these issues, we found that no nationwide data are available on the total number of businesses subject to remote sales tax requirements. However, we analyzed several data sources that provide estimates of a portion of this population.

### Survey of State Revenue Departments

In February 2022, we administered a survey to revenue departments in the 45 states with a statewide sales tax and the 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 more than 95 percent.[46]

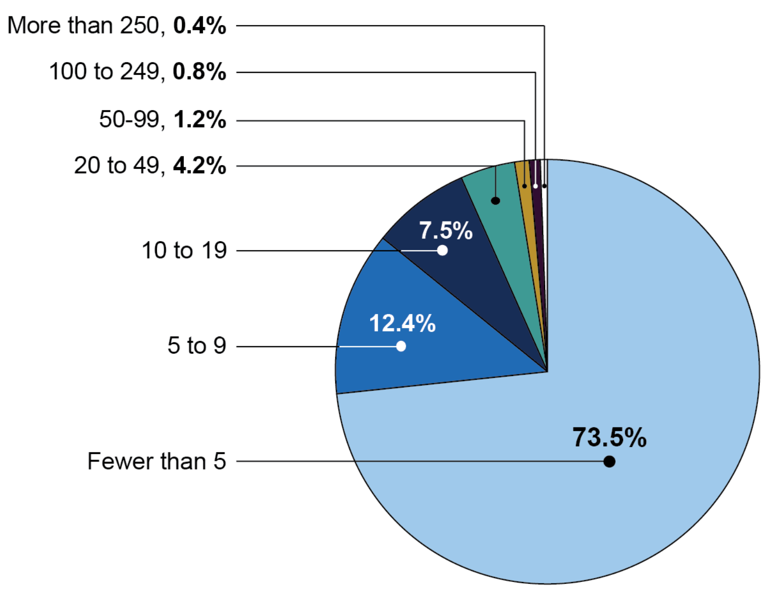
We asked states whether they could provide data on the amount of sales tax revenue they had collected between 2018 and 2021 from remote sellers (which we defined as out-of-state sellers with economic but not physical nexus) both directly and via marketplace facilitators. We also asked states for the number of businesses that remitted sales tax. Twenty-eight states provided data on the number of remitting remote businesses in 2021, averaging about 10,000 each. The state reporting the greatest number of remitting businesses indicated that at least 53,700 remote sellers remitted sales taxes in 2021. We assumed that these 53,700 remote sellers are selling into multiple states, even though they were just reported to us by one state, and thus represent a floor on the number of businesses subject to and complying with remote sales tax requirements.

[46]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.

## U.S. Bureau of Labor Statistics

The U.S. Bureau of Labor Statistics (BLS) estimates that there were about 68,000 e-commerce and mail-order sellers primarily engaged in retail using “non-store means” during the last quarter of 2021. This figure likely undercounts the number of businesses subject to remote sales tax requirements in some respects and overcounts it in others. Specifically, this figure excludes remote sellers that are classified into other categories based on businesses characteristics separate from sales channel, such as categories based on product type, including clothing, electronic, and appliance stores. The figure also likely includes some businesses that might not be subject to the requirements, such as small businesses that may not have sufficient sales volume to exceed state economic nexus thresholds. As shown in figure 3, BLS data indicate that about 74 percent of these businesses had fewer than five employees, while just 1.2 percent had 100 or more employees.

**Figure 3: Remote Businesses, by Number of Employees**




Source: GAO analysis of Bureau of Labor Statistics data from the first quarter of 2021. | GAO-23-105359

**Data table for Figure 3: Remote Businesses, by Number of Employees**

| Employees size class | Percentage |
|---|---|
| Fewer than 5 | 73.54% |
| 5 to 9 | 12.39% |
| 10 to 19 | 7.48% |
| 20 to 49 | 4.18% |
| 50 to 99 | 1.23% |
| 100 to 249 | 0.79% |
| > 250 | 0.40% |

Source: GAO analysis of Bureau of Labor Statistics from the first quarter of 2021. | GAO-23-105359

### Streamlined Sales and Use Tax Agreement

According to a representative of the SSUTA organization, at least 18,000 remote sellers were registered with the organization as of June 2022, up from 16,000 in October 2021. This figure represents the number of remote sellers that are selling into one or more of the 24 SSUTA-member states that have opted to register with the SSUTA organization. It does not include remote sellers that have opted to not register with the SSUTA organization, including those that sell predominantly into non-SSUTA member states or have elected to register directly with individual states into which they sell rather than via SSUTA.

### Amazon

Amazon (one of the world's largest marketplace facilitators) has reported that, pursuant to state marketplace facilitator requirements, it is collecting sales taxes on behalf of its sellers in each with such requirements. In September 2021, Amazon reported that its sellers include more than 500,000 small- and medium-sized businesses in the United States alone. This figure excludes sellers which Amazon classifies as large businesses. In addition, it excludes businesses that are subject to remote sales tax requirements but that are not selling via Amazon.

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

In response to our survey of state revenue departments, 22 states provided data on the amount of sales tax revenue they had collected from remote sellers (selling both directly and via marketplace facilitators) for the 2018 reporting period. As shown in table 1, this amount totaled around $3.2 billion and increased each year following the *Wayfair* decision.[47] For the 2021 reporting period, 33 states provided data in response to this question, totaling around $23.3 billion.[48]

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.[49] 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).[50] For the 2021 reporting period, 21 states provided data in response to this question, totaling around $9.8 billion (or around 42 percent of total collections from remote sales reported for that period).

[47]States provided data in either calendar or one of several fiscal year formats. For purposes of this report, we combine these responses into four reporting periods (2018 to 2021) based on the calendar or fiscal year that states reported.

[48]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.

[49]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.

[50]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.

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

| Year | Revenue from all remote sales | | Revenue from remote sales via marketplaces | |
|---|---|---|---|---|
| | Total revenue (dollars in millions) | Number of states reporting | Total revenue (dollars in millions) | Number of states reporting |
| 2018 | $3,222 | 22 | $344 | 5 |
| 2019 | $6,841 | 29 | $1,276 | 12 |
| 2020 | $16,485 | 31 | $6,707 | 21 |
| 2021 | $23,336 | 33 | $9,755 | 21 |

Source: GAO analysis of results from our survey of revenue departments in the 45 states with a statewide sales tax and the District of Columbia. | GAO-23-105359

Note: This table combines calendar and fiscal year formats provided by states. Some state data may include local sales tax revenue. In addition, 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 in this table reflect analysis updated during our review of survey responses and related information between June and September 2022. Appendix I provides more detailed information on our survey methodology.

Extrapolating by population from states that responded to our survey to all 45 states with a statewide sales tax and the District of Columbia, we estimate the 2021 reporting period's national collection total from all remote sellers to be about $30.2 billion with about $16 billion of that from marketplace collections.

## Sales Tax Returns from Remote Sellers and Marketplace Facilitators Generated on Average Substantially More Revenue per Return than All Sales Tax Returns Combined

Based on our analysis of survey results, we found that remote sellers (selling both directly and via marketplace facilitators) brought in, on average, more than twice as much sales tax revenue per return for states as those from all sellers combined and that marketplace facilitators brought in more than 90 times as much.[51] Specifically, as shown in table 2, for states that provided data on their total sales tax collections as well as collections attributed to remote sellers and marketplace facilitators, we found that revenue from all sellers averaged about $50,000 per return in 2021.

In contrast, revenue from remote sellers (selling directly and via marketplace facilitators) averaged $126,000 per return that year and

[51]These marketplace returns aggregate tax collections across all of the platform's sellers that are required to collect.

revenue from marketplace facilitators averaged $4.9 million per return. Likely contributing to the greater amount of revenue per remote seller compared to that from all sellers are the state thresholds exempting some small remote sellers from filing. This is not true, however, of marketplace returns, which generally reflect all sellers on the marketplace, regardless of size.

**Table 2: Average State Sales Tax Revenue Collected per Sales Tax Return, by Seller Type**

| Year | All sellers | Remote sellers | Marketplace facilitators | Number of states reporting |
|---|---|---|---|---|
| 2020 | $44,000 | $118,000 | $4,600,000 | 13 |
| 2021 | $50,000 | $126,000 | $4,900,000 | 13 |

Source: GAO analysis of results from our survey of revenue departments in the 45 states with a statewide sales tax and the District of Columbia. | GAO-23-105359

Note: Figures rounded to nearest 1,000.

## State Revenue from Remote Sales Is Limited by Some Noncompliance

Although no nationwide data exist on either the number of businesses subject to remote sales tax requirements or on the number of businesses not in compliance, through our interviews we were told that many businesses are not in compliance with remote sales tax requirements. Businesses and other organizations described this as happening for a variety of reasons including not understanding their collection obligations, not being aware of those obligations, the complexity or cost of compliance, and a hope that the requirements will not be permanent.[52] For example, a researcher from a private firm studying these issues told us he found that the vast majority of remote sellers were not in compliance as of August 2021. Researchers with another organization studying tax issues told us that that many remote sellers do not know that they need to remit sales taxes to some states that they are selling into.

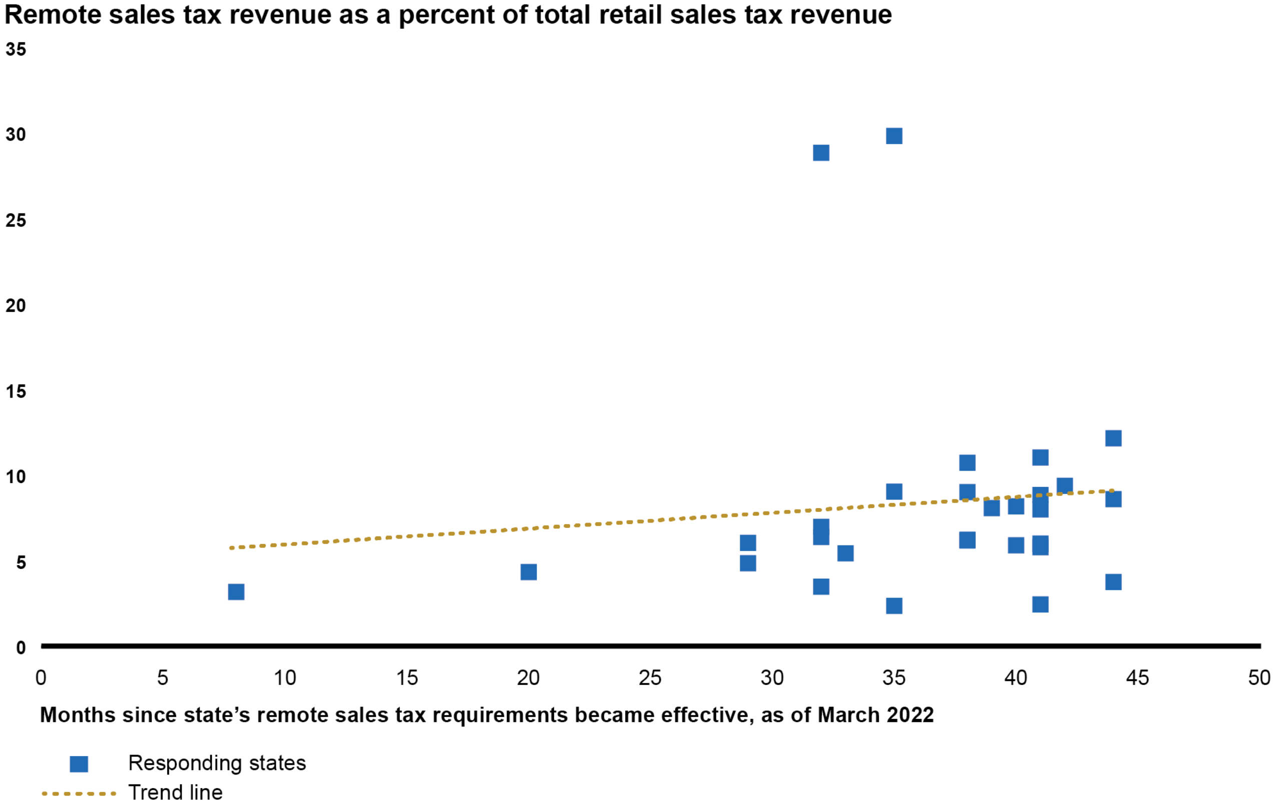
[52]Specifically, these types of statements were expressed during interviews we held with two organizations assisting businesses, two organizations representing businesses, two private entities studying these issues, and four individual businesses.

## Survey Data Indicate That Remote Sales Tax Revenue May Continue to Increase, but Likely at a Slower Rate

Based on our survey data, we found that the percentage of a state's sales tax revenue collected from remote sales generally increased the longer a state's remote sales tax requirements were in effect.[53] Specifically, 29 states provided us data on both total sales tax revenue and revenue from remote sales for 2021 and prior years. These data generally showed an increase in the portion of sales tax revenue attributable to remote sales each year following the date on which a state's remote sales tax requirements became effective. Figure 4 illustrates this point for revenue collected in 2021.

[53]For this analysis, we based the amount of time that a state's remote sales tax requirements were in effect on state responses to the following survey question: Following the *Wayfair* decision, what were (or are) the first dates by which remote sellers (i.e., out-of-state sellers with economic but not physical nexus) were required to comply with your state's sales tax collection obligations?

Figure 4: 2021 Remote Sales Tax Revenue as a Percent of Total Sales Tax Revenue




Source: GAO analysis of results from our survey of revenue departments in the 45 states with a statewide sales tax and the District of Columbia. | GAO-23-105359

Data table for Figure 4: 2021 Remote Sales Tax Revenue as a Percent of Total Sales Tax Revenue

| Months since state's remote sales tax requirements became effective, as of March 2022 | Remote sales tax revenue as a percent of total sales tax revenue |
|---|---|
| 44 | 3.79% |
| 44 | 8.64% |
| 44 | 12.19% |
| 42 | 9.41% |
| 41 | 5.83% |
| 41 | 6.04% |
| 41 | 8.04% |
| 41 | 8.88% |
| 41 | 11.07% |
| 41 | 2.48% |

| Months since state's remote sales tax requirements became effective, as of March 2022 | Remote sales tax revenue as a percent of total sales tax revenue |
|---|---|
| 40 | 8.21% |
| 40 | 5.94% |
| 39 | 8.11% |
| 38 | 10.76% |
| 38 | 9.05% |
| 38 | 6.22% |
| 38 | 6.27% |
| 35 | 29.87% |
| 35 | 2.40% |
| 35 | 9.08% |
| 33 | 5.47% |
| 32 | 6.43% |
| 32 | 3.52% |
| 32 | 28.88% |
| 32 | 7.02% |
| 29 | 4.89% |
| 29 | 6.08% |
| 20 | 4.37% |
| 8 | 3.21% |

Source: GAO analysis of results from our survey of revenue departments in the 45 states with a statewide sales tax and the District of Columbia. | GAO-23-105359

This increase in revenue may reflect changes in consumer behavior coupled with states' expanded authority to tax remote sales. As shown in figure 1 (above), e-commerce as a percent of total retail sales has been steadily increasing since well before the *Wayfair* decision, and experienced a sharp uptick at the onset of the COVID-19 pandemic before moving back toward prepandemic trends. Until *Wayfair*, however, states were largely unable to collect sales tax revenue from these e-commerce sales.

Increasing business compliance with remote sales tax requirements may also be a contributing factor. The upward trend in remote sales tax revenue suggests that compliance has increased since *Wayfair*, and likely will continue to increase. With it, a greater share of state sales tax revenue attributable to remote sales is also likely, assuming the volume of remote sales remains the same or increases. As remote sellers adjust to their new sales tax obligations, the growth in the share of revenue from remote sales is likely to slow and parallel the overall growth of e-commerce in the economy.

## Businesses Incurred Several Types of Costs, Some of Which Varied Based on Business Size, Sales Type, Sales Channel, and Destination

In November 2017, we identified potential costs associated with multistate sales tax collection and grouped them into three categories: software-related costs, audit and assessment compliance costs, and costs associated with research and liability.[54] In our work for this report, we found that post-*Wayfair* businesses have incurred costs in each of these categories as they took steps to comply with remote sales tax requirements. Some of these costs have varied based on business size, sales type, sales channel, and destination.

### Businesses Incurred Software Costs to Expand Multistate Tax Collection

Businesses and other organizations said purchasing or developing software is essential for multistate tax collection, given the legal complexities involved. Regardless of business size, 12 of the 14 businesses we spoke with either used or planned to use software for multistate tax collection to automate functions such as

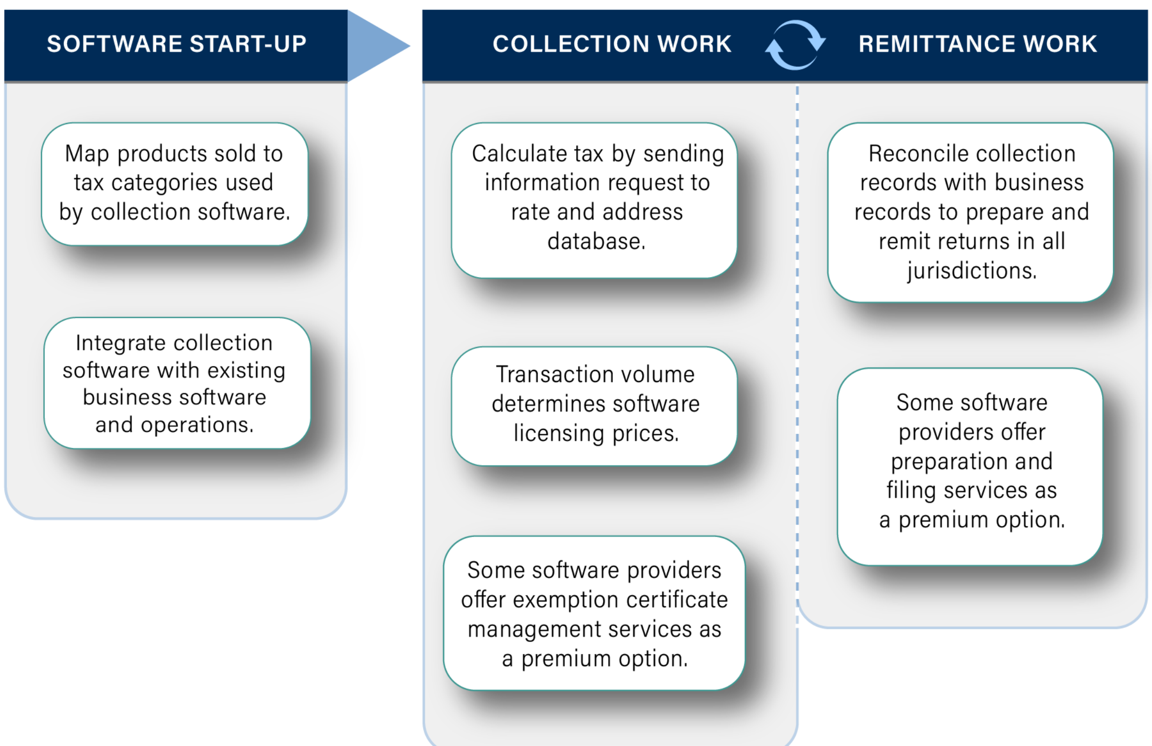
- tracking sales into a state to inform nexus determinations,
- determining the correct sales tax rate for each sale,
- collecting and remitting the tax, and
- managing sales tax exemption certificates, which enable certain buyers—such as governments, nonprofits, and wholesalers—to purchase an item tax free.

The other two businesses we interviewed sell only via marketplace facilitators.

[54] GAO-18-114.

Businesses typically incur one-time start-up costs for software for multistate tax collection. They also incur ongoing usage costs for collection and remittance, as depicted in figure 5. Ongoing usage costs are typically based on the amount of sales a seller makes and the number of states into which it sells.[55] Of the 14 businesses we spoke with, nine reported purchasing new sales tax software and spending money to integrate it with existing systems. Businesses that had not previously collected sales tax also faced higher software-related costs to set up collection systems. In addition, businesses reported incurring costs to test the new software and train staff to use it.

**Figure 5: Start-up, Collection, and Remittance Activities for Multistate Tax Collection Software**




Source: GAO analysis of software provider information. | GAO-23-105359

**Text of Figure 5: Start-up, Collection, and Remittance Activities for Multistate Tax Collection Software**

1) Software startup

[55]GAO-18-114.

a) Map products sold to tax categories used by collection software.

b) Integrate collection software with existing business software and operations.

2) Collection Wordk

a) Calculate tax by sending information request to rate and address database.

b) Transaction volume determines software licensing prices.

c) Some software providers offer exemption certificate management services as a premium option.

3) Remittance Work

a) Reconcile collection records with business records to prepare and remit returns in all jurisdictions.

b) Some software providers offer preparation and filing services as a premium option.

Source: GAO analysis of software provider information. | GAO-23-105359

We found that some software-related costs varied based on business size, sales type, sales channel, and destination.

- **Business size.** Pre-*Wayfair*, small businesses were less likely than large businesses to have software for multistate tax collection or to have in-house expertise in multistate tax collection. Following *Wayfair*, small businesses often had to incur substantial one-time start-up costs to purchase such software and integrate it into their existing systems. They were also more likely to rely on software for that expertise than large businesses. For example, two large businesses and an organization representing businesses told us that large businesses generally incurred only software usage and not start-up costs as a result of the increased number of tax jurisdictions they were subject to post-*Wayfair*. In contrast, a small business with about $20 million in annual gross receipts told us it incurred start-up costs of about $8,000 to purchase new tax collection software and $43,000 to integrate the software with its existing systems. Another business with about $42 million in annual gross receipts reported spending about $200,000 on software integration.
- **Sales type.** Most states include tax-exempt sales in their economic nexus threshold calculations. This means remote sellers making only

tax-exempt sales must still incur the expense to track those sales to determine whether state thresholds have been exceeded and to register and file once thresholds are exceeded even where there is no sales tax to be remitted. In addition, in many instances, where a business makes a tax-exempt sale, it is required by states to collect a tax exemption certificate from the purchaser.[56] The certificate serves as proof that the sale was legally exempt from tax. However, those certificates and their associated management and processing requirements vary considerably across taxing jurisdictions.

Prior to *Wayfair*, a remote seller may have had to comply with the certificate management requirements of a small number of jurisdictions. Since *Wayfair*, however, that number has risen substantially. One business we spoke with that makes predominately tax-exempt sales told us it spends about half of its time managing exemption certificates. Software can assist businesses making tax-exempt sales by helping to determine which sales are exempt in each jurisdiction, whether a business's sales have exceeded a jurisdiction's threshold, and—through premium services offered by some software providers—management of exemption certificates.

- **Sales channel.** Businesses selling via marketplace facilitators generally do not need to incur software-related costs because the marketplace facilitators handle sales tax compliance for all sales made through them. However, selling via a marketplace facilitator is not without its costs, as marketplace sellers must pay a fee to the marketplace facilitator do so. Moreover, if the marketplace seller also sells via other channels, such as a catalogue or its own direct-to-consumer website, then the seller may require software to manage those sales. Lastly, because some states include marketplace sales in their economic nexus threshold calculations, where a business sells via a marketplace and other channels, they may require software to track all of their sales and determine which jurisdictions' thresholds they have exceeded.
- **Sales destination.** Some software-related costs are reduced or eliminated for certain remote sellers that sell into SSUTA member states and register with the SSUTA organization.[57] In addition, some non-SSUTA-member states, such as Pennsylvania and Illinois, have

[56]Tax exemption certificates enable certain buyers—such as governments, nonprofits, and wholesalers—to purchase an item tax free which would otherwise be subject to sales tax.

[57]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.

made software available at a free or reduced rate to remote sellers making sales into the state.

Businesses and other organizations told us software has limitations that can increase business costs. For example, a private entity studying these issues explained some software is not detailed enough to handle local sales tax collection. Further, existing software will not tell a business 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, six businesses that we spoke with reported incurring additional costs post-*Wayfair* to obtain legal and tax support. 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 multiple 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 period in question and remit back taxes with accrued interest and penalties. Another business told us that it transitioned to selling only via marketplace facilitators to avoid the cost and risks of purchasing and using software for multistate tax collection.

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

Businesses faced increased costs for audits and assessments as they were exposed to more tax jurisdictions post-*Wayfair*. Costs of sales tax audits and assessments include making staff available, developing justifications for tax claims, and complying with document or information requests.

Multiple businesses told us they were concerned about being audited for remote sales tax collections and were incurring costs to prepare for audits. An attorney whose firm advises and represents businesses in sales tax matters confirmed seeing an increase in sales tax audits since *Wayfair*, both by states and localities. With remote sellers subject to the sales tax laws of multiple tax jurisdictions, they face the possibility of being audited by more than one jurisdiction at the same time. We learned through our interviews that this was a concern and has occurred.

In most cases, businesses can appeal audit assessments they disagree with. However, we learned through our interviews that some small businesses are reluctant to appeal 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, appellate 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.[58] Letter audits are one example. For these audits, a revenue office sends a letter to a business stating that the office suspects it owes sales taxes. 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 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 jurisdiction, it would start to receive a large number of notices, which it referred to 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 register to begin collecting for the state. Managing notices from multiple states can be costly in terms of both research and response, but businesses told us they feared ignoring notices could trigger more of them and potentially an audit, which could result in higher costs.

[58]GAO-18-114.

We found that audit and assessment compliance costs varied based on business size, sales type, sales channel, and destination.

- **Size.** Small businesses were less likely to be able to manage potentially costly audits and assessments in multiple states simultaneously, given their reduced resources, including staff time, and their likelihood to have little-to-no in-house expertise in multistate taxation.
- **Sales type.** Six businesses making tax-exempt sales told us they had to dedicate large amounts of staff time to obtaining, reviewing, and storing exemption certificates to minimize risks of errors and avoid potential audit liabilities from certificate mismanagement.
- **Sales channel and destination.** Businesses selling via marketplace facilitators and businesses selling into SSUTA member states may have some degree of audit and assessment protection. According to the Multistate Tax Commission, most state marketplace facilitator requirements provide that the facilitator rather than the seller is subject to audit and liability for failure to properly collect sales tax, unless the facilitator can show that the failure to collect was due to the seller providing erroneous information to the facilitator. In addition, where businesses selling into SSUTA member states receive services from an SSUTA-certified software provider, the software provider is responsible for resolving any notices or audits by the SSUTA member states.

## Post-*Wayfair* Research and Liability Costs Increased for Businesses Subject to New Taxing Jurisdictions

Consistent with the findings we reported in November 2017, we found businesses incurred research costs to understand their new compliance obligations across different state and local taxing jurisdictions. We also found that liability costs rose as businesses' exposure to taxing jurisdictions increased. These costs increased the most for small businesses that did not have established legal teams, software systems, or outside counsel to assist with compliance-related questions.

Two businesses and three organizations assisting or representing businesses told us that businesses faced a steep learning curve following *Wayfair* to research and understand their new tax obligations across the state and local jurisdictions into which they sold. All but one of the 14 businesses we spoke with told us they spent a substantial amount of time conducting research in-house or with assistance from tax professionals, such as accountants, attorneys, or sales tax specialists, to determine their new tax liabilities, and that the research was ongoing. This research included determining which jurisdictions the business had nexus in and when that nexus began.

Eight entities we spoke with, including businesses, organizations representing or assisting businesses, private entities studying these issues, and organizations representing states and state officials, explained that frequent changes to the state and local tax requirements or limited information in some state publications (including guidance and forms) contributed to business research costs.

Three businesses based in states with no statewide sales tax told us they had no prior in-house experience with multistate tax collection or software and had to rely on the services of tax professionals for activities such as registrations and staff compliance training.

In our 2017 report, we identified liability for past sales as one of several areas where liability costs were most likely to occur. 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.[59]

Several tax policy specialists told us that they were unaware 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.[60] While some states implemented transition periods by establishing effective dates after the *Wayfair* decision, businesses and organizations that assist businesses told us that state effective dates generally provided insufficient time for businesses to understand the new requirements, let alone implement

[59] *Wayfair*, 138 S. Ct. at 2099.

[60] GAO-18-114.

systems to comply with them. Some businesses said they were unable to start complying until well after some states' effective dates.

For example, two organizations that assist businesses and a private firm studying remote sales tax issues told us that some businesses took an incremental, risk-based approach when selecting which jurisdictions to register with first due to the cost of registering simultaneously in all new jurisdictions where they had nexus. One business based in a state without a statewide sales tax told us that it registered first in half of the jurisdictions where it had nexus and paid out-of-pocket for the taxes owed, including penalties and interest for past tax liability; two of those jurisdictions waived the penalties and interest and allowed the business to collect going forward. The business told us it then registered a year later with the remaining jurisdictions once it had the time and resources to do so, but at a considerable liability risk given it had already established nexus in those jurisdictions.

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.[61] In addition, through Washington's voluntary disclosure program, eligible businesses may have their past tax liability reduced, including penalties and the audit lookback period.

We found that small businesses generally faced greater research and liability costs as a proportion of their resources. Small businesses were less likely to be engaged in multistate tax collection prior to *Wayfair* or to have pre-existing software or in-house expertise in this area. As a result, they faced disproportionately higher costs to understand their obligations and manage their liabilities.

Although states have established economic nexus thresholds exempting some small businesses from remote sales tax requirements, small businesses told us that when they near a threshold they often do not know whether or when they will cross it and must monitor their business activity to determine if they must comply.

[61] Ala. Code § 40-23-199.

For example, if a state threshold requires a business to register and collect if its aggregated sales of taxable tangible personal property, services, or specified digital products exceed $100,000 in a given calendar year, that business may need to record information on which sales were made into that state, which specific items sold qualify as "taxable tangible personal property, services, or specified digital products" and the amount of those aggregated sales while also removing any exempt sales or sales made through a digital marketplace.[62] This challenge is exacerbated by the wide variation across state thresholds.

Moreover, three organizations told us that many small businesses exceed thresholds, particularly transactional thresholds. For example, a business selling a product at $5 each into a state with a 200 transaction threshold may exceed that threshold with only $1,000 in goods sold.

## The Overall Remote Sales Tax System Lacks Key Elements of a Good Tax System

State revenue from remote sales has increased each year following *Wayfair*. However, the question remains whether it is being generated in a manner consistent with the three criteria for a good tax system: equity; economic efficiency; and a combination of simplicity, transparency, and administrability. We assessed the overall remote sales tax system against these criteria and found that the system raises concerns regarding all three. The weight one places on each of these criteria is a value judgment for policymakers to consider and will vary among individuals and across policy goals. Some of the criteria, such as equity and transparency, are more subjective while others, such as economic efficiency, can be defined more objectively. Furthermore, there are trade-offs to consider among these criteria and sometimes the criteria can conflict with each other.

[62]*See*, Ark. Code. Ann. § 26-52-111. Arkansas imposes collection and remittance requirements on remote sellers when, in the previous or current calendar year, the remote seller's aggregate sales of tangible personal property, taxable services, digital codes, or specified digital products subject to Arkansas sales or use tax within or delivered to locations within the state exceed $100,000 or 200 transactions. However, sales made through a marketplace facilitator are not considered sales for purposes of determining whether a marketplace seller exceeds this threshold.

## Equity

The success of a tax system that relies on voluntary compliance hinges very much on participants' perception of its equity, or fairness.[63] However, equity is a subjective criterion, and opinions vary widely regarding what constitutes an equitable tax system. Nevertheless, some principles have gained acceptance as useful for addressing this question, including the principles of horizontal and vertical equity. Horizontal equity states that those similarly situated should receive similar treatment. Vertical equity states that those differently situated should receive different treatment. In paving the way for remote sales tax collection, the *Wayfai*r decision touched on issues related to both horizontal and vertical equity. Through our review, we found that concerns related to both persist.

- **Horizontal equity.** The *Wayfair* decision stated that the physical presence requirement treated economically identical actors differently for arbitrary reasons.[64] The Court explained that the physical presence requirement put both local businesses and many interstate businesses with physical presence at a competitive disadvantage relative to remote sellers because the latter could avoid the regulatory burdens of tax collection and offer de facto lower prices.[65] Following *Wayfair*, this competitive disadvantage is no longer present.

  However, we found that multistate sellers must now grapple with the patchwork of different requirements across the taxing jurisdictions with which they have economic nexus, whereas brick-and-mortar sellers generally must grapple only with the requirements of the jurisdictions in which they are physically located, regardless of the states in which their customers live. Thus, while *Wayfair* may have addressed one aspect of horizontal equity, the expansion of state requirements in the wake of the decision may have caused others to arise. However, brick-and-mortar retailers enjoy different access to markets and

[63]Although the criteria for a good tax system are focused largely on the taxpayer experience, any tax system includes a range of key participants beyond just taxpayers. In the case of sales taxes, business are not the taxpayers, but because they are required to collect and remit the sales taxes, they are substantially affected by the tax system. Therefore, the criteria for a good tax system are applicable when evaluating the effects of a tax system on its key participants, including businesses colleting and remitting sales taxes.

[64]*Wayfair*, 138 S. Ct. at 2085.

[65]*Wayfair*, 138 S. Ct. at 2094.

different customer bases than remote sellers which may serve as a reason for some degree of differential treatment.

- **Vertical equity.** The *Wayfair* decision acknowledged that the burden of nationwide sales tax collection may pose legitimate concerns, particularly for small businesses. The decision stated, however, that eventually software available at a reasonable cost may make it easier for small businesses to cope with these problems.[66] It further noted that South Dakota afforded small businesses a reasonable degree of protection by requiring them to collect the tax only if they did a considerable amount of business in the state (referring to its economic nexus threshold) and by adopting the SSUTA.[67]

  However, as discussed above, following *Wayfair*, we found that businesses and organizations said setting up and using multistate tax collection software generally comes at a considerable cost for many businesses, including some small businesses selling online with customers in multiple states. In addition, three organizations told us that many small businesses exceed economic nexus thresholds (particularly where transactional thresholds are in place). Small businesses also told us that when they near a threshold they often do not know whether or when they will cross it and must monitor their business activity to determine if they must comply. We also learned that a substantial amount of work exists to continually determine whether various thresholds are met, a challenge exacerbated by the wide variation across thresholds.

## Economic Efficiency

Economic efficiency is achieved where resources are used to provide the greatest possible benefit or well-being to society. Taxes can impose efficiency costs by altering tax system participants' behavior, inducing them to shift resources from higher-valued uses to lower valued uses in an effort to reduce tax liability.

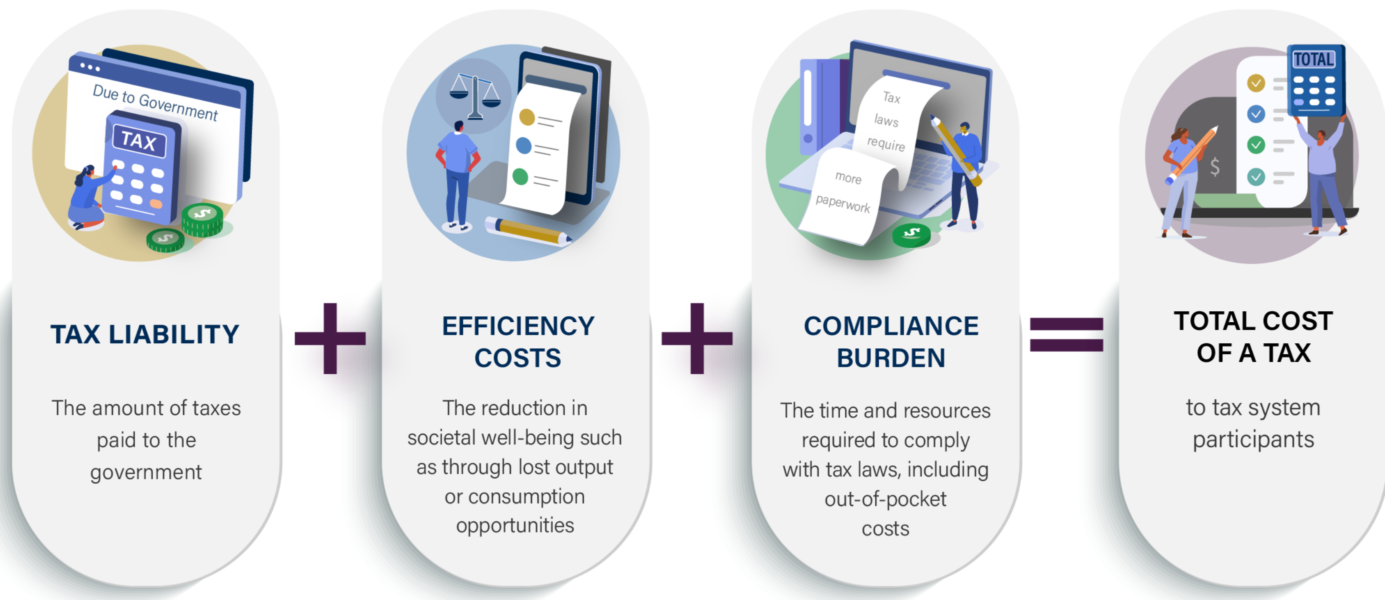
While sales and other taxes help pay for important government programs and services, the benefits must be weighed against the costs. For tax system participants, these costs include not only the amount of taxes paid, but also the efficiency costs and costs of compliance, as shown in

[66] *Wayfair*, 138 S. Ct. at 2098.

[67] *Wayfair*, 138 S. Ct. at 2098.

figure 6. A good tax system minimizes efficiency costs to ensure resources are used in the most beneficial way to society.

**Figure 6: Components of the Total Cost of a Tax to Tax System Participants**




Source: GAO analysis of tax reform principles. | GAO-23-105359

**Text of Figure 6: Components of the Total Cost of a Tax to Tax System Participants**

- Tax Liability:
  The amount of taxes paid to the government
- Efficiency Costs:
  The reduction in societal well-being such as through lost output or consumption opportunities
- Compliance Burden:
  The time and resources required to comply with tax laws, including out-of-pocket costs
- These 3 components equals the Total Cost of a TAX:
  to tax system participants

Source: GAO analysis of tax reform principles. | GAO-23-105359

Estimating the magnitude of efficiency costs is difficult. Therefore, we present reported gains and losses without estimating the net balance. For example, through our interviews we were told that tax administrators are better positioned from an economic efficiency standpoint now than they were pre-*Wayfair* in terms of their ability to collect taxes from remote sellers. Similarly, according to some studies, brick-and-mortar retailers are better positioned post-*Wayfair* to compete on a more level playing field with all sellers collecting sales tax. On the other hand, we were also told that remote sellers have made numerous behavioral changes arising from the need to divert resources away from business operations and investments and toward tax compliance. For example, we were told of businesses

- limiting the number of states into which they sell or the amount of sales into some states to avoid some states' remote sales tax requirements,
- changing the types of products they sell to make it less complex to comply with remote sales tax requirements,
- choosing to only sell via marketplaces and not other channels to avoid collecting remote sales taxes, and
- going out of business due in part to remote sales tax compliance issues.

## Simplicity, Transparency, and Administrability

Simplicity, transparency, and administrability are interrelated but distinct features of a good tax system.

- **Simplicity.** Simple tax systems impose less of a compliance burden on participants than more complex systems. Compliance burden is the value of participants' time and resources, including any out-of-pocket costs paid to tax preparers and other tax advisors, spent to ensure compliance with tax laws. Among the goals of tax policy is to minimize compliance burden.

  As with efficiency costs, we have previously reported that compliance burden is difficult to measure. However, in interviews businesses told us they are devoting substantial amounts of time and resources to multistate remote sales tax compliance, including record keeping, learning about the requirements, planning, preparing and filing tax returns, and responding to tax administrator notices and audits. In some instances, businesses have attempted to fulfill these responsibilities on their own, but often they have retained the services of software companies and others to assist them.

  Indeed, an organization representing businesses told us that, in many cases, business compliance costs exceed the amount of sales taxes collected. For example, one business we spoke with told us it incurred

$1,500 in monthly compliance costs to remit less than $500 in sales taxes. Another business told us it spent $2.25 in compliance costs per $1 of sales taxes collected across 33 states over a 39-month period. We did not attempt to define the amount of time and resources that would be reasonable to allocate to compliance activities, which would likely vary greatly by business.

- **Transparency.** Transparency refers to participants' ability to understand how their liabilities are calculated, the logic behind the tax laws, what their own tax burden and that of others is, and the likelihood of facing penalties for noncompliance. Transparent tax systems impose less uncertainty on participants, allowing them to better plan their decisions about employment, investment, and consumption.

  In response to our survey of state revenue departments, nearly all states reported that they took steps to help remote sellers understand their new collection obligations. For example, they reported issuing guidance and FAQs on the new requirements; conducting outreach to remote sellers; and offering classes, informational phone lines, or email support.

  Nevertheless, during the interviews we conducted with businesses, organizations that represent and assist business, and private entities studying remote sales tax issues, concerns were frequently raised regarding the transparency of state and local sales tax systems, particularly where multiple systems were involved. For example, we were told that the numerous requirements and variations across taxing jurisdictions made it difficult for businesses to understand their remote tax obligations.

  In addition, we were told that frequent changes to these requirements have made tax planning difficult and have increased business uncertainty about future tax liabilities. Furthermore, we were told that some revenue department websites and publications contain outdated, unclear, or insufficient information.

  As a result, almost all of the businesses we spoke with told us they generally rely on software and other paid third parties to calculate and manage their remote sales tax obligations. However, in doing so, the businesses, which remain liable for the tax, have limited transparency regarding the tax laws and how their tax liabilities are calculated. Some businesses also reported to us that software has some limitations, such as sometimes making errors when managing remote sales tax compliance on their behalf.

- **Administrability.** Administrable tax systems allow governments to collect taxes as cost effectively as possible. Prior to *Wayfair*, remote sales tax collection was, for all practical purposes not administrable, because states were largely unable to collect from purchasers the taxes due on out-of-state purchases. From the tax administrator perspective, administrability has improved post-*Wayfair* because states now have a more effective mechanism through which to collect these taxes, as opposed to relying on purchasers reporting use tax on their own tax returns for unpaid sales tax.

  Indeed, in response to our survey of state revenue departments, the majority of responding states told us that increased remote sales tax revenue or increased registrations showed the success of their post-*Wayfair* administrative approaches. Survey responses indicated that, on average, tax returns from remote sellers brought in more than twice as much revenue for responding states as those from all sales tax returns combined and returns from marketplace sales brought in more than 90 times as much. Responses also suggested increasing remote sales tax compliance rates since *Wayfair*.

  However, administrability also refers to the cost of collecting taxes.[68] The more administrable a tax system is, the less costly it is to collect taxes. Tax administrators can incur costs for the resources used to process tax returns, inform tax system participants about their obligations, detect noncompliance, and enforce compliance with tax code provisions. Meanwhile, some administrative costs are borne by others in the form of compliance burden, including record keeping, understanding the laws, and preparing returns. Under the current remote sales tax system, businesses incur substantial compliance costs to collect on behalf of the taxing jurisdictions. Tax administrators, after relying on businesses to collect and remit the tax, generally reported to us that their remote sales tax administration efforts have been a success.[69]

Trade-offs between the criteria listed above are an inherent aspect of any tax system. There is no widely agreed upon optimal remote sales tax system. The existing remote sales tax system raises concerns about inequity; has led some businesses to change their behavior in ways that

[68]In the context of sales taxes, the collection and remittance burden on businesses can be viewed as part of the compliance burden or the administration of the tax. Regardless of where one places these costs and challenges within the criteria for a good tax system, they should be considered when evaluating the system against the criteria.

[69]Specifically, three quarters of survey respondents described their administration efforts as successful.

reduce economic efficiency; presents substantial compliance costs and uncertainty for businesses; and is underpinned by an administrative system whose costs are borne in large part by businesses.

An additional effect relates to state-level tax gaps. A tax gap refers to the difference between the amount of taxes that should be paid voluntarily and on time and what is actually paid. A tax gap is small when voluntary compliance is high. This generally occurs when tax system participants believe a tax system is credible, easy to understand, and treats everyone fairly.

As in other areas of tax collection, a tax gap exists for remote sales taxes though its magnitude is unclear. In interviews with businesses, organizations representing or assisting businesses, and private entities studying these issues, we were told about businesses that are not in compliance with remote sales tax requirements for a variety of reasons including not understanding their collection obligations. In our prior work, we found that voluntary compliance is likely to be greater when a tax system aligns with the criteria for a good tax system, which in turn can help to shrink the tax gap.

## Proposed Reforms

Through our interviews and review of proposed federal legislation and relevant literature, we identified various proposals for remote sales tax reform.[70] While no tax system is perfectly equitable, efficient, simple, transparent, and administrable, and while opinions differ regarding the appropriate balance to be struck among these criteria, the reforms we identified each have the potential to increase alignment with the criteria to some extent. These proposals range from incremental to comprehensive. Whereas the proposals for comprehensive reform are intended to be adopted on a nationwide basis, some of the proposals for incremental reform may be adopted by states independent of one another or on a broader multistate basis. Table 3 presents proposals in each of these categories.

[70]We reviewed federal legislation proposed from January 1973 to July 2022 related to state taxation of remote sales.

**Table 3: Types of Past Proposals for Remote Sales Tax Reform**

| Incremental (individual states) | Incremental (multiple states) | Comprehensive (nationwide) |
|---|---|---|
| • Single statewide tax rate and base<br>• Single statewide point of registration, filing, administration, and audit<br>• Exclude tax-exempt sales from threshold calculations<br>• Remove transactional thresholds<br>• Programs to mitigate past tax liability<br>• Free or reduced cost software for sellers<br>• Seller compensation | • Consistent definitions<br>• Consistent thresholds<br>• Consistent programs and processes<br>• Centralized programs and processes | • As a condition of taxing remote sales, require state participation in an interstate collaborative mechanism through which states agree on uniform standards and centralized processes<br>• As a condition of taxing remote sales, require states to adopt certain minimum simplification standards |

Source: GAO analysis of relevant literature, proposed federal legislation from January 1973 to July 2022, and stakeholder interviews. | GAO-23-105359

Some states and multistate organizations have taken some steps toward implementing some of the proposed incremental reforms, but a comprehensive approach has yet to be adopted. For example, some states have implemented programs to mitigate past tax liability, adopted a single statewide tax rate and base, eliminated transactional thresholds, and made software available at a free or reduced cost. While these actions may assist certain businesses in complying with a particular state's remote sales tax requirements, they do not alleviate the multistate complexities that exist. Furthermore, multistate organizations (notably the National Conference of State Legislatures, Multistate Tax Commission, and SSUTA) have taken steps toward addressing multistate complexities, but often with a limited focus on a subset of issues or a minority of states following through on the proposed actions. Pre-*Wayfair*, some states agreed on certain uniform aspects of their sales tax requirements through the SSUTA with a goal of advancing their ability to collect on remote sales. However, no new states have joined the SSUTA since the *Wayfair* decision. To date, an approach has yet to be adopted that comprehensively addresses the multistate complexities and involves all states seeking to tax remote sales.

The right of states to levy taxes, and to empower their localities to do the same, is a well-founded principle of state sovereignty. This principle has allowed states and localities to craft sales tax requirements aimed at advancing their own unique state and local policy goals. However, these requirements were largely developed in a time when it was not possible for a business to sell online into all 46 states with sales taxes. As stated by the National Conference of State Legislatures, with states' expanded authority under *Wayfair* to collect sales tax from remote sellers comes a responsibility to work together as partners in the collection of sales taxes.[71]

At present, however, no federal legislation has been enacted that incentivizes such interstate collaboration and reduces the uncertainty that currently exists regarding what approaches are legally permissible. For example, uncertainty currently exists regarding

- what connection (or nexus) a business must have with a state before the state may require the business to collect sales taxes on its behalf,[72]
- when remote sales tax requirements violate the Constitution's prohibition on state laws that discriminate against or impose an undue burden on interstate commerce, and[73]
- under what circumstances locally-administered remote sales tax requirements are constitutionally permissible.

One effect of this uncertainty is that legal disputes over state and local authority to require sales tax collection have developed. Such disputes

[71]National Conference of State Legislatures, "Policies for the Jurisdiction of the Communications, Financial Services & Interstate Commerce Committee," https://www.ncsl.org/ncsl-in-dc/task-forces/policies-communication.aspx, accessed Sept. 22, 2022.

[72]When eliminating the physical presence requirement in *Wayfair*, the Court said that sufficient nexus exists where a business "avails itself of the substantial privilege of carrying on business in that jurisdiction." The decision concluded that, in the case at hand, nexus was "clearly sufficient" given South Dakota's economic threshold and the contesting businesses being large national companies with extensive virtual presence. *Wayfair*, 138 S. Ct. at 2098. However, the Court did not address whether other thresholds and connections between a state and a business also suffice to establish sufficient nexus.

[73]As long interpreted by the Supreme Court, the Constitution's Commerce Clause not only empowers Congress to regulate interstate commerce, it also limits states' regulation of interstate commerce in the absence of congressional action, a principle known as the dormant Commerce Clause. *See*, Quill, 504 U.S. at 309–312. The *Wayfair* decision stated that the Constitution's dormant Commerce Clause prohibits states from passing laws which discriminate against or impose an undue burden on interstate commerce. However, as the issues were not briefed in the case, the Court did not rule on whether South Dakota's law met this requirement, but noted that the law included features that appeared designed to do so. *Wayfair*, 138 S. Ct. at 2086, 2099. To avoid legal challenges, many states have looked to those features as guidance for how to structure their remote sales tax laws. However, uncertainty remains regarding whether existing remote sales tax requirements may be found to violate this constitutional principle.

can be expensive for parties to litigate and can lead to prolonged and uncertain outcomes for all involved.

Under the Constitution's Commerce Clause, Congress has the authority to regulate interstate commerce, to incentivize interstate collaboration, and to answer these and other questions regarding what remote sales taxation is legally permissible. As stated by the Supreme Court in *Quill*, the issue of remote sales taxation is "not only one that Congress may be better qualified to resolve, but also one that Congress has the ultimate power to resolve."[74] Over the course of several decades, numerous federal bills have been introduced on this topic. However, none have been enacted to date, leaving the courts to address these issues on a piecemeal rather than comprehensive basis.

## Conclusions

Following the Supreme Court's *Wayfair* decision, states acted quickly to compel 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. States and multistate organizations have taken some steps aimed at easing the new compliance burdens faced by remote sellers post-*Wayfair*. However, a comprehensive solution has yet to be adopted, and concerns about the overall system's equity, economic efficiency, complexity, transparency, and administrabiltiy motivate calls for reform. States define their own tax policy and administer their own state tax codes and, with remote seller compliance rates going up, may lack incentives to collaborate on a multistate solution that would better align with the criteria for a good tax system.

Existing software does not appear sufficient to ease the collection and remittance burden on remote businesses, particularly smaller businesses. Further, substantial uncertainty exists regarding what approaches are legally permissible, leaving states and businesses with only courts as a recourse for disputes, leading to costly, prolonged, piecemeal, and uncertain outcomes. Federal legislation which puts nationwide

[74] *Quill*, 504 U.S. at 318.

parameters in place for state taxation of remote sales could help to resolve these uncertainties and multistate complexities and improve the overall system.

## Matter for Congressional Consideration

We are recommending the following matter for congressional consideration:

Congress should consider working with states to establish nationwide parameters for state taxation of remote sales. Such parameters should balance state interests with the need to address the multistate complexities discussed in this report. The parameters should improve the overall system's alignment with the criteria for a good tax system and help address existing uncertainties regarding what remote sales taxation is legally permissible by states and localities. (Matter for Consideration 1)

We are sending copies of this report to the appropriate congressional committees and other interested parties. In addition, the report is available at no charge on the GAO website at https://www.gao.gov.

If you or your staff have any questions about this report, please contact me at (202) 512-6806 or mctiguej@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made contributions to this report are listed in appendix II.

Sincerely yours,

James R. McTigue, Jr.
Director, Strategic Issues
Tax Policy and Administration

*List of Requesters*

The Honorable Ron Wyden
Chairman
Committee on Finance
United States Senate

The Honorable Nydia M. Velázquez
Chairwoman
Committee on Small Business
House of Representatives

The Honorable Sharice L. Davids
Chairwoman
Subcommittee on Economic Growth, Tax, and Capital Access
Committee on Small Business
House of Representatives

The Honorable Ben Cline
House of Representatives

The Honorable Jason Crow
House of Representatives

The Honorable Andy Kim
House of Representatives

# Appendix I: Methodology for Survey of State Revenue Departments

To address each of our objectives, we administered a survey to revenue agencies in all 45 states with a statewide sales tax and the District of Columbia. We selected states for our analysis because most sales taxes are administered at the state level. We identified relevant state contacts by reviewing a listing of state tax officials from the Federation of Tax Administrators and then confirming or supplementing this information by reviewing relevant information on state tax agency websites or similar resources.

Before developing the survey we interviewed organizations representing states and state officials about the efficacy of using a survey to obtain the information desired, including information on the number of businesses subject to remote sales tax requirements and the amount of revenue generated as a result. We also consulted similar research developed by some of these organizations. We developed our survey questions based on our knowledge of the changes to the sales tax landscape since the *Wayfair* decision.

Because this was not a sample survey, it has no sampling errors. However, the practical difficulties of conducting any survey may introduce errors, commonly referred to as nonsampling errors. For example, difficulties in interpreting a particular question, differential sources of information available to respondents, or different estimating methods can introduce unwanted variability into the survey results. To minimize nonsampling errors, we took steps to improve the quality of information gathered. Specifically, we conducted pretests with representatives of three state tax agencies selected based on characteristics that would be common to other states that we planned to survey. One state had localities that establish and administer their own sales taxes. Another had a centralized system to streamline registration and filing for remote businesses. The third had neither of these characteristics.

The pretests were conducted by videoconference to check that (1) the questions were clear and unambiguous, (2) the questionnaire did not place an undue burden on agency officials, and (3) the information and data requested could feasibly be obtained from the systems state tax agencies had in place. We made revisions based on results from these pretests, and also included space in the final questionnaire for respondents to describe any additional information to help us accurately interpret their reported information.

While we did not independently verify information that state officials reported in our survey, we took steps to ensure that the information was sufficiently reliable for the purposes of this report. For example, we examined all surveys to identify the following: large, unexplained variation between reporting periods in sales tax revenue collections or number of filings; state-reported sales tax revenue far greater or far less than revenue reported by other states with similar populations, tax laws, and tax bases; and responses suggesting possible logical inconsistencies or other errors. When these issues were identified, we examined open-ended explanations included in the survey responses as available, and discussed each case as a team. If clarifications reported by respondents suggested they had provided potentially incomplete or approximate tax revenue values, or made a potential reporting error, we determined whether these values were still suitable to include in our report, and included, corrected, or excluded the information accordingly.

In cases where states reported amounts of taxes remitted directly by remote sellers separately from those remitted by marketplace sellers, we determined that the amounts could be summed to derive estimates of gross revenue. We also consulted related data sources from the U.S. Census Bureau and U.S. Bureau of Labor Statistics to help corroborate responses provided by states. On the basis of our data quality review process, we concluded that the survey data were sufficiently reliable for our purposes.

We sent the questionnaire with a cover letter on February 7, 2022, and conducted email and telephone follow-up until May 2, 2022. We sent the questionnaire by email in an attached Microsoft Word form that respondents could return electronically after entering responses. Forty-three states and the District of Columbia responded for a response rate of more than 95 percent. Connecticut and South Carolina declined to respond.

# Appendix II: GAO Contact and Staff Acknowledgments

## GAO Contact

James R. McTigue, Jr. (202) 512-6806 or mctiguej@gao.gov

## Staff Acknowledgments

In addition to the contact named above, Tara Carter (Assistant Director), Emmy Rhine Paule (Analyst-in-Charge), Pedro Almoguera, Brett Caloia, Ann Czapiewski, Rob Gebhart, Serena Lo, Monique Nasrallah, Tyler Spunaugle, and Andrew J. Stephens made significant contributions to this report.

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