

Chapter 13

Nexus

A. General Information

Nexus is a sufficient connection between a person and a state, and a sufficient connection between an activity, property, or transaction and a state, that allows the state to subject the person and the activity, property, or transaction to its taxing jurisdiction. The Due Process and Commerce Clauses of the United States Constitution and other federal statutes provide limitations on a state's powers to tax out-of-state businesses.

On June 21, 2018, the United States Supreme Court in *South Dakota v. Wayfair, Inc.*, 585 U.S. 162, 138 S. Ct. 2080 (2018), ruled that retailers (including online retailers) without physical presence in a state may be subject to sales and use tax. This decision overturned the Court's longstanding position in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), and *National Bellas Hess, Inc. v. Department of Revenue of Illinois*, 386 U.S. 753 (1967), which allowed states to collect sales and use tax only from retailers with a physical presence.

Below is a summary of South Carolina's economic nexus and physical nexus standards for sales and use tax.

B. Economic Nexus Standards¹

A remote seller (*i.e.*, a retailer without a physical presence in South Carolina) whose gross revenue from sales of tangible personal property,² products transferred electronically, and services delivered into South Carolina exceeds \$100,000 in the previous calendar year or the current calendar year has economic nexus (*i.e.*, substantial nexus) with South Carolina. A remote seller who has economic nexus with South Carolina is responsible for obtaining a retail license and remitting South Carolina sales and use tax.

The \$100,000 economic nexus standard for a remote seller includes:

- the total gross revenue from all sales of tangible personal property delivered into South Carolina, including all taxable retail sales, exempt retail sales, and wholesale sales of tangible personal property;

¹ The Department issued S.C. Revenue Ruling #18-14 to provide written guidance for remote sellers (*i.e.*, persons engaged in the business of selling tangible personal property at retail without a physical presence in South Carolina) regarding sales and use tax registration and remittance in light of *South Dakota v. Wayfair, Inc.*, 585 U.S. 162, 138 S. Ct. 2080 (2018).

² S.C. Code Ann. § 12-36-60 defines "tangible personal property," in part, as "personal property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses. It also includes services and intangibles, including communications, laundry and related services, furnishing of accommodations and sales of electricity, the sale or use of which is subject to tax under [the South Carolina sales and use tax law]." For services that are specifically subject to the sales and use tax, and therefore by definition are "tangible personal property," *see* S.C. Code Ann. §§ 12-36-910(B), 12-36-1310(B), 12-36-920, and 12-36-2645.

- the total gross revenue from all sales of products transferred electronically into South Carolina, whether or not the transfer of such product is subject to the South Carolina sales and use tax; and
- the total gross revenue from all services delivered into South Carolina, whether or not the service is subject to the South Carolina sales and use tax.

Economic Nexus Established in Calendar Year 2017, or from January 1, 2018 through September 30, 2018

Remote sellers who established economic nexus with South Carolina in calendar year 2017, or from January 1, 2018 through September 30, 2018, were required to obtain a retail license from the Department by November 1, 2018 and to remit the sales and use tax for all taxable sales made into South Carolina on and after November 1, 2018. Sales and use tax, penalties, and interest will not be assessed against these remote sellers for taxable sales made into South Carolina before November 1, 2018.

Economic Nexus Established on or after October 1, 2018

Remote sellers who establish economic nexus with South Carolina on or after October 1, 2018, are responsible for remitting the sales and use tax for all taxable sales made into South Carolina beginning the first day of the second calendar month after economic nexus is established.³ These remote sellers must obtain a retail license from the Department by the first day of the second calendar month after economic nexus is established. Sales and use tax, penalties, and interest will not be assessed against these remote sellers for taxable sales made into South Carolina before the first day of the second calendar month after economic nexus is established.

Example: Assume a remote seller establishes economic nexus in South Carolina on December 10, 2019 (*i.e.*, it exceeds \$100,000 in gross revenue from South Carolina). The remote seller must: (1) obtain a retail license by February 1, 2020 (the first day of the second calendar month after economic nexus is established) and (2) collect and remit the sales and use tax for all taxable sales made into South Carolina on and after February 1, 2020.

Failure to Timely Register and Remit Tax

Remote sellers who establish economic nexus with South Carolina as noted above, but who do not timely obtain a retail license from the Department are subject to sales and use tax assessment, penalties, and interest for all taxable sales made into South Carolina beginning with the date the remote seller was required to obtain a retail license.

For more information regarding economic nexus in South Carolina, *see* Exhibit A (SC Revenue Ruling #18-14, “Retailers Without a Physical Presence – Remote Sellers – Economic Nexus”) and Exhibit B (Remote Sellers Frequently Asked Questions) at the end of this chapter.

³ This is approximately 30 days from the end of the month in which economic nexus is established.

C. Physical Nexus Standards⁴

Physical presence can be established by a retailer maintaining a place of business in South Carolina. This includes any retailer having or maintaining, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agent operating within South Carolina under the authority of the retailer or its subsidiary, regardless of whether the business or agent is located here permanently or temporarily or whether the retailer or subsidiary is admitted to do business in South Carolina.

South Carolina Revenue Ruling #14-4 is the Department's most recent guidance on physical presence nexus for sales and use tax purposes. However, it is important to note that because developments in this area are constantly taking place, any response in SC Revenue Ruling #14-4 is subject to change due to a future statute, regulation, court decision, or advisory opinion.

The following pages contain a list of examples of how physical presence can be established in South Carolina. Each example is based on the following assumptions:

- The business is selling tangible personal property at retail to residents or others in South Carolina;
- Each specific example by itself is the only possible nexus creating activity or relationship a business has in South Carolina; and
- The activities described are not “de minimis.”

A business that performs any of the below activities or has any of the below property or personnel in the state has physical nexus with South Carolina, even if the activity is the sole activity in South Carolina.

⁴ A retailer that does not have economic nexus with South Carolina may still be responsible for collecting and remitting state and local sales and use tax if the retailer established physical nexus with South Carolina. The discussion and examples in Section C only involve retailers who do not have economic nexus with South Carolina as discussed in Section B above.

EXAMPLES OF ACTIVITIES CREATING PHYSICAL NEXUS IN SOUTH CAROLINA

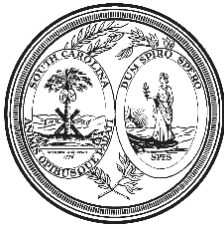
Activities of an Employee or Third Party (e.g., Sales Representative, Independent Contractor or Affiliated Company) • Presence of an employee, representative, or independent contractor soliciting or selling in South Carolina • Authorizing employee or third party to install, deliver, service, or repair merchandise in South Carolina or hiring independent contractor to perform warranty or repair services on tangible personal property in South Carolina • Using an employee or third party to investigate, handle or resolve customer issues, provide training or technical assistance, or otherwise provide customer service to customers in South Carolina • Using a telemarketing firm with a South Carolina office • Collecting delinquent accounts using a collection agency in South Carolina or hiring attorneys or other third parties to file collection suits in South Carolina • In-state representative maintaining an in-home office	• Affiliated with an entity that sells tangible personal property or services to customers in South Carolina, and: ○ the South Carolina affiliate sells similar merchandise and uses common trade names, trademarks, or logs; or ○ uses the South Carolina affiliate to accept returns, take orders, perform customer service, or distribute advertising materials on its behalf • Selling gift cards in affiliated South Carolina stores • Selling tangible personal property from outside South Carolina (e.g., by telephone, over the internet, or otherwise) and: ○ authorizing an employee or third party to solicit sales in South Carolina; or ○ shipping its product for distribution to a third-party distributor located in South Carolina that performs labeling, packaging, and shipping functions • Making remote sales of “canned software,” that constitutes tangible personal property, to South Carolina residents and then sending a representative to customize it to meet the customer’s specific needs or to provide other information technology services
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EXAMPLES OF ACTIVITIES CREATING PHYSICAL NEXUS IN SOUTH CAROLINA

Property in South Carolina • Maintaining or using a place of business in South Carolina for: ○ selling tangible personal property; or ○ storing tangible personal property • Maintaining inventory • Maintaining or using a distribution facility • Maintaining tangible personal property for lease through a representative • Existence of unrelated in-state office (<i>e.g.</i>, advertising) • Operating as mail-order catalog seller with property or solicitors in South Carolina • Drop-shipping catalogs in South Carolina, for mailing to residents within South Carolina • Selling tangible personal property from outside South Carolina (<i>e.g.</i>, by telephone, over the internet, or otherwise) and: ○ delivering merchandise to customers in South Carolina in returnable containers; ○ delivering merchandise to customers in South Carolina by the business' tractor-trailers or railcars and leaving the trailer or railcar with the customer for a certain period of time; or ○ providing in-state telephone and kiosks that allow customers to access inventories and purchase merchandise from remote subsidiaries	Delivery • In-state delivery via company-owned vehicles • Presence of a representative to deliver merchandise in South Carolina • Delivering merchandise in South Carolina by means other than common carrier or the U.S. Postal Service
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Exhibit A

S.C. Revenue Ruling #18-14: Retailers Without a Physical Presence (“Remote Sellers”) – Economic Nexus



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

300A Outlet Pointe Blvd., Columbia, South Carolina 29210
P.O. Box 12265, Columbia, South Carolina 29211

SC REVENUE RULING #18-14

SUBJECT: Retailers Without a Physical Presence ("Remote Sellers") - Economic Nexus
(Sales and Use Tax)

EFFECTIVE DATE: For sales made on or after November 1, 2018, unless a later date is otherwise provided in this advisory opinion.

SUPERSEDES: SC Revenue Advisory Bulletin #01-7 and all previous documents and oral directives in conflict herewith.

MODIFIES: SC Revenue Ruling #14-4 and all previous documents and oral directives in conflict herewith.

AUTHORITY: S.C. Code Ann. Section 12-4-320 (2014)
S.C. Code Ann. Section 1-23-10(4) (2005)
SC Revenue Procedure #09-3

SCOPE: The purpose of a Revenue Ruling is to provide guidance to the public. It is an advisory opinion issued to apply principles of tax law to a set of facts or general category of taxpayers. It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

I. OVERVIEW OF NEXUS AND *WAYFAIR* DECISION

Nexus is a sufficient connection between a person and a state, and a sufficient connection between an activity, property, or transaction and a state, that allows the state to subject the person, and the activity, property, or transaction to its taxing jurisdiction. The Due Process and Commerce Clauses of the United States Constitution and other federal statutes provide limitations on a state's powers to tax out-of-state businesses. Over the years, the courts have provided limitations and guidelines in determining whether certain activities create nexus in a taxing state.

On June 21, 2018, the United States Supreme Court in *South Dakota v. Wayfair, Inc.*, 585 U.S. ___, 138 S. Ct. 2080 (2018), ruled that retailers (including online retailers) without physical presence in a state may be subject to sales and use tax. This decision overturned the Court's longstanding position in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992) and *National Bellas Hess, Inc. v. Department of Revenue of Illinois*, 386 U.S. 753 (1967), which allowed states to collect sales and use tax only on retailers with a physical presence.

South Carolina Code Section 12-36-70 defines “retailer” and “seller” to include persons not maintaining a physical presence in South Carolina, and reads in part:

“Retailer” and “seller” include every person:

(1)(a) selling or auctioning tangible personal property whether owned by the person or others;

* * *

(2)(a) maintaining a place of business or qualifying to do business in this State; or
(b) not maintaining an office or location in this State but soliciting business by direct or indirect representatives, manufacturers agents, distribution of catalogs, or other advertising matter or by any other means, and by reason thereof receives orders for tangible personal property or for storage, use, consumption, or distribution in this State (Emphasis added).

South Carolina has not enforced this provision against retailers without a physical presence because of the constitutional nexus restrictions under *National Bellas Hess* and *Quill*.¹ Because the United States Supreme Court has reversed its longstanding position and eliminated the physical presence requirement, South Carolina will require retailers who do not have a physical presence in South Carolina but who establish an economic presence as outlined below to remit the sales and use tax on a prospective basis beginning **November 1, 2018, unless a later date is otherwise provided in this advisory opinion.**

The purpose of this advisory opinion is to provide written guidance for retailers (*i.e.*, persons engaged in the business of selling tangible personal property at retail) without a physical presence in South Carolina regarding sales and use tax registration and remittance in light of *Wayfair*.

For purposes of this advisory opinion, a retailer with no physical presence in South Carolina is referred to as a “remote seller” (*e.g.*, marketplace,² online, catalog, or mail order retailer). In addition, a remote seller includes any related entity assisting the remote seller in sales, storage, distribution, payment collection, or in any other manner with respect to the remote seller.³

¹ See S.C. Revenue Procedure #92-2, “Filing Requirements Where Nexus Is an Issue;” S.C. Information Letter #92-19, “Nexus - *Quill Corp. v. North Dakota*,” and S.C. Information Letter #90-29, “Nexus - Economic Presence.”

² A “marketplace” is a person engaged in the business of facilitating a retail sale of tangible personal property by (1) listing or advertising, or allowing the listing or advertising of, the products of another person in any marketplace where sales at retail occur and (2) collecting or processing payments from the purchaser, either directly or indirectly through an agreement or arrangement with a third party, regardless of whether the marketplace receives compensation or other consideration in exchange for its services. A marketplace includes any related entity assisting the marketplace in sales, storage, distribution, payment collection, or in any other manner with respect to the marketplace.

A marketplace may be physical or electronic and includes, but is not limited to, any space, store, booth, catalog, website, television broadcast, or similar place, medium, or forum.

³ See the definition of the term “person” in Code Section 12-36-30, which includes “any group or combination acting as a unit.”

The prospective treatment outlined in this advisory opinion is limited to remote sellers and does not apply to retailers who have a physical presence in South Carolina or retailers currently licensed with the Department for sales and use tax purposes.

Note: This advisory opinion reflects the Department’s official position at this time. Since developments in this area are taking place, any guidance is subject to change due to a future statute, regulation, court decision, or advisory opinion. Any change in South Carolina’s position as set forth in this document that is not the result of a court case or change in statute or regulation will be prospective. Any change that is the result of a court case will apply to all periods open under the statute unless the court states otherwise and any change in statute or regulation will be applicable as of the effective date established by the General Assembly.

II. SUBSTANTIAL NEXUS STANDARDS FOR REMOTE SELLERS

In accordance with Code Section 12-36-70 and the principles of *Wayfair*, a remote seller whose gross revenue from sales of tangible personal property,⁴ products transferred electronically, and services delivered into South Carolina exceeds \$100,000 in the previous calendar year or the current calendar year has economic nexus (*i.e.*, substantial nexus) with South Carolina and is responsible for obtaining a retail license and remitting South Carolina sales and use tax.

III. CALCULATION OF THE \$100,000 ECONOMIC NEXUS STANDARD

The \$100,000 economic nexus standard for a remote seller includes:

- ◆ the total gross revenue from all sales of tangible personal property delivered into South Carolina, including all taxable retail sales, exempt retail sales, and wholesale sales of tangible personal property;
- ◆ the total gross revenue from all sales of products transferred electronically into South Carolina, whether or not the transfer of such product is subject to the South Carolina sales and use tax; and,
- ◆ the total gross revenue from all services delivered into South Carolina, whether or not the service is subject to the South Carolina sales and use tax.

Example 1 – Sales on Own Website: Assume a remote seller makes sales into South Carolina via his own website. His annual South Carolina sales total \$100,001. These sales consist of \$75,000 in taxable retail sales and \$25,001 in exempt retail sales and wholesale sales. Since the remote seller’s total gross revenue from all sales into South Carolina exceeds \$100,000, the remote seller meets South Carolina’s economic nexus standard and he is required to obtain a retail license and remit the sales and use tax to the Department.

⁴ Code Section 12-36-60 defines “tangible personal property,” in part, as “personal property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses. It also includes services and intangibles, including communications, laundry and related services, furnishing of accommodations and sales of electricity, the sale or use of which is subject to tax under [the South Carolina sales and use tax law].” For services that are specifically subject to the sales and use tax, and therefore by definition are “tangible personal property,” *see* Code Sections 12-36-910(B), 12-36-1310(B), 12-36-920, and 12-36-2645.

Example 2 – Sales on Own Website and Via a Marketplace: Assume a remote seller makes sales on his own website. He also lists his products for sale on a marketplace that has economic nexus with South Carolina. The remote seller sells \$75,000 of items into South Carolina via his own website. A marketplace makes sales of \$50,000 of products owned by the remote seller into South Carolina, and the marketplace collects or processes customer payments from these marketplace sales.

The calculation of the remote seller's economic nexus standard includes the gross revenue from property owned by the remote seller but sold via the marketplace. Since the remote seller's total gross revenue from South Carolina exceeds \$100,000 (\$75,000 + \$50,000), the remote seller meets South Carolina's economic nexus standard. He is required to obtain a retail license and remit the sales and use tax to the Department on his "gross proceeds of sales"⁵ of \$75,000.

Since South Carolina's economic nexus standard is based on "gross revenue," revenue from the sales made via the marketplace in this example (Example 2) is included in the calculation for determining if the remote seller has established economic nexus with South Carolina. However, under South Carolina sales and use tax law, the sales made via the marketplace are sales by the marketplace, and the marketplace is required to obtain a retail license and collect and remit the sales and use tax on the marketplace's "gross proceeds of sales," which includes the \$50,000 in sales of products owned by the remote seller but sold by the marketplace.

IV. REGISTRATION AND TAX REMITTANCE BY REMOTE SELLERS WITH ECONOMIC NEXUS

In accordance with Code Section 12-36-70, Code Section 12-4-320, and the principles of *Wayfair*, remote sellers with economic nexus must remit the sales and use tax for all taxable sales made into South Carolina on and after **November 1, 2018**, as provided below. Remote sellers who are not currently licensed for sales and use tax purposes with the Department should follow the guidelines below.

A. Guidelines for Timely Registration and Remittance of Tax

1. Economic Nexus in Calendar Year 2017, or from January 1, 2018 through September 30, 2018

Remote sellers having economic nexus with South Carolina in calendar year 2017, or from January 1, 2018 through September 30, 2018, are responsible for remitting the sales and use tax for all taxable sales made into South Carolina on and after **November 1, 2018**. These remote sellers must obtain a retail license from the Department by November 1, 2018. Sales and use tax, penalties, and interest will not be assessed against these remote sellers for taxable sales by these remote sellers before November 1, 2018.

⁵ "Gross proceeds of sales" is defined in Code Section 12-36-90. Generally, "gross proceeds of sales" is the value proceeding or accruing from the sale, lease, or rental of tangible personal property and, therefore, is the total amount charged in conjunction with the sale or rental of tangible personal property. However, *see* Code Section 12-36-90(2) for charges that are not included in "gross proceeds of sales." For purposes of this advisory opinion, "gross proceeds of sales" applies to sales tax transactions and use tax transactions.

2. Economic Nexus Established on or after October 1, 2018

Remote sellers who establish economic nexus with South Carolina on or after October 1, 2018, are responsible for remitting the sales and use tax for all taxable sales made into South Carolina beginning the **first day of the second calendar month after economic nexus is established**.⁶ These remote sellers must obtain a retail license from the Department by the first day of the second calendar month after economic nexus is established. Sales and use tax, penalties, and interest will not be assessed against these remote sellers for taxable sales made into South Carolina before the first day of the second calendar month after economic nexus is established.

Example: Assume a remote seller establishes economic nexus in South Carolina on December 10, 2018 (*i.e.*, it exceeds \$100,000 in gross revenue from South Carolina). The remote seller must: (1) obtain a retail license by February 1, 2019 (the first day of the second calendar month after economic nexus is established) and (2) collect and remit the sales and use tax for all taxable sales made into South Carolina on and after February 1, 2019.

B. Failure to Timely Register and Remit Tax

Remote sellers who establish economic nexus with South Carolina as noted above, but who do not timely obtain a retail license from the Department are subject to sales and use tax assessment, penalties, and interest for all taxable sales made into South Carolina beginning with the date the remote seller was required to obtain a retail license.

V. VOLUNTARY REGISTRATION AND TAX REMITTANCE BY REMOTE SELLERS WITHOUT ECONOMIC NEXUS

Remote sellers who are not required to collect and remit the South Carolina sales and use tax may voluntarily obtain a retail license from the Department at any time and remit the sales and use tax for all taxable sales made into South Carolina. The collection and remittance of the sales and use tax by the remote seller applies to all taxable sales made in South Carolina on and after the effective date of the retail license. The voluntary filer must continue to collect and remit the tax for all tax periods until the remote seller notifies the Department that the retail license is being closed.

VI. SUBMITTING AN APPLICATION FOR A RETAIL LICENSE

Remote sellers who have established economic nexus with South Carolina, or who wish to voluntarily collect and remit the South Carolina sales and use tax, must obtain a retail license.

The Department's online portal for obtaining a retail license can be found at MyDORWAY.dor.sc.gov. Remote sellers using the online portal may submit the electronic application, along with the \$50 fee, **beginning September 28, 2018**.

⁶ This is approximately 30 days from the end of the month in which economic nexus is established.

The Department's paper application for a remote seller's retail license is South Carolina Form DOR-111RS, "Remote Seller Sales and Use Tax Registration." This form is on the Department's website (dor.sc.gov). Remote sellers using this form may submit the paper application, along with the \$50 fee, at any time.

A remote seller who has obtained a retail license from the Department must file a sales and use tax return (paper or electronic) and report its total gross proceeds of sales for each month it is licensed beginning with the effective date of the retail license.

VII. ADDITIONAL INFORMATION

1. Filing Requirements

Remote sellers licensed with the Department must file a monthly sales and use tax return. Each monthly return is due by the 20th day of the following month. Returns must be filed for all months, even in those months the taxpayer has no sales into South Carolina or has no tax due. Exception: If a remote seller's total state and local sales and use tax due does not exceed \$100 for any month, then the remote seller may file quarterly upon approval by the Department.

2. Information for Remote Sellers

Remote sellers may obtain additional information on the Department's website (dor.sc.gov). The website provides information on the sales and use tax base, local sales and use taxes, exemptions and exclusions, obtaining a retail license, forms, and frequently asked questions.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/W. Hartley Powell

W. Hartley Powell, Director

September 18 ____, 2018
Columbia, South Carolina

Exhibit B

Remote Sellers Frequently Asked Questions

Exhibit B

Remote Sellers Frequently Asked Questions

These FAQs are divided into the following categories:

- A. General Questions
- B. Economic Nexus Standard for Remote Sellers
- C. Effective Date for Obtaining a Retail License and Remitting the Sales and Use Tax – Economic Nexus
- D. Effective Date for Obtaining a Retail License and Remitting the Sales and Use Tax – Physical Nexus
- E. Local Tax Nexus, Collection, and Remittance
- F. Taxable Transactions
- G. Exemptions and Exclusions
- H. State and Local Tax Rates
- I. Retail Licenses and Filing Requirements
- J. South Carolina Purchasers

Note: The establishment of economic nexus with South Carolina requires an understanding of various terms – most of which are defined in the South Carolina sales and use tax law. The definitions for the terms “remote seller,” “marketplace facilitator,” “gross revenue,” and “tangible personal property” are summarized in these FAQs.

A. GENERAL QUESTIONS

1. Q. What is the effect of the *Wayfair* decision in South Carolina?

A. On June 21, 2018, in *South Dakota v. Wayfair*, the U.S. Supreme Court overturned the 1992 case of *Quill v. North Dakota*, ruling that out-of-state sellers with no physical presence in a state can be required to collect and remit sales and use taxes in states where they meet certain economic thresholds.

In South Carolina, a remote seller whose gross revenue from sales delivered into South Carolina exceeds \$100,000 in the previous calendar year or the current calendar year has economic nexus (*i.e.*, substantial nexus) with South Carolina and is responsible for obtaining a retail license and remitting South Carolina sales and use tax.

South Carolina's economic nexus standard applies to sales made by remote sellers on and after November 1, 2018. For more details as to the effective date of South Carolina's economic nexus standards, see the section of these frequently asked questions entitled: "Effective Date for Obtaining a Retail License and Remitting the Sales and Use Tax."

2. Q. Who is a "remote seller"?

A. A remote seller is an out-of-state retailer (*i.e.*, a person engaged in the business of selling tangible personal property at retail) that has no physical presence in South Carolina.

3. Q. Is a "marketplace facilitator" without a physical presence in South Carolina a "remote seller"?

A. Yes. Code Section 12-36-70 defines "retailer" and "seller" in part as every person operating as a marketplace facilitator. Code Section 12-36-71 defines a "marketplace facilitator" as a person engaged in the business of facilitating a retail sale of tangible personal property by (1) listing or advertising, or allowing the listing or advertising of, the products of another person in any marketplace where sales at retail occur and (2) collecting or processing payments from the purchaser, either directly or indirectly through an agreement or arrangement with a third party, regardless of whether the person receives compensation or other consideration in exchange for his services. A marketplace facilitator includes any related entities assisting the marketplace facilitator in sales, storage, distribution, payment collection, or in any other manner, with respect to the marketplace.

A marketplace may be physical or electronic and includes, but is not limited to, any space, store, booth, catalog, website, television or radio broadcast, or similar place, medium, or forum.

For more information on marketplace facilitators, *see* Code Section 12-36-71 and SC Revenue Ruling #19-6, "Marketplace Facilitators and Third Parties Whose Products are Sold Via a Marketplace – Guidance and Tax Obligations."

4. Q. Are remote sellers currently licensed in South Carolina affected by the *Wayfair* decision?
 - A. No. Remote sellers voluntarily licensed in South Carolina prior to the *Wayfair* decision must continue to collect and remit sales and use tax as long as they are licensed with South Carolina or meet South Carolina's economic nexus standard.
5. Q. Are remote sellers responsible for remitting the sales and use tax on sales into South Carolina prior to the *Wayfair* decision?
 - A. No. If a remote seller is not currently licensed with the Department and is subject to South Carolina sales and use tax only as a result of the U.S. Supreme Court's decision in *Wayfair*, the remote seller is not required to collect and remit sales and use tax on sales that occurred prior to November 1, 2018.
6. Q. May a remote seller who does not meet the economic nexus standard for South Carolina voluntarily obtain a retail license and begin collecting the South Carolina sales and use tax?
 - A. Yes. A remote seller who does not meet South Carolina's economic nexus standard may voluntarily obtain a retail license and remit sales and use tax at any time.

B. ECONOMIC NEXUS STANDARD FOR REMOTE SELLERS

1. Q. What is the economic nexus standard in South Carolina that will require a remote seller to obtain a retail license and begin collecting and remitting the South Carolina sales and use tax for deliveries into South Carolina?
 - A. In South Carolina, a remote seller whose gross revenue from sales delivered into South Carolina exceeds \$100,000 in the previous calendar year or the current calendar year has economic nexus (*i.e.*, substantial nexus) with South Carolina and is responsible for obtaining a retail license and remitting South Carolina sales and use tax.
2. Q. What is "gross revenue"?
 - A. "Gross revenue" includes:
 - the total gross revenue from all sales of tangible personal property delivered into South Carolina, including all taxable retail sales, exempt retail sales, and wholesale sales of tangible personal property;
 - the total gross revenue from all sales of products transferred electronically into South Carolina, whether or not the transfer of such product is subject to the South Carolina sales and use tax; and
 - the total gross revenue from all services delivered into South Carolina, whether or not the service is subject to the South Carolina sales and use tax.

Example 1 – Sales on Own Website: Assume a remote seller makes sales into South Carolina via his own website. His annual South Carolina sales total \$100,001. These sales consist of \$75,000 in taxable retail sales and \$25,001 in exempt retail sales and wholesale sales. Because the remote seller's total gross revenue from all sales into South Carolina exceeds \$100,000, the remote seller meets South Carolina's nexus standard and he is required to obtain a retail license and remit the sales and use tax to the Department.

Example 2 – Sales by Own Website and Via a Marketplace: Assume a remote seller makes sales via his own website as well as via a marketplace. The remote seller sells \$75,000 of items into South Carolina via his own website. A marketplace facilitator makes sales of \$50,000 of products owned by the remote seller and the marketplace facilitator collects or processes customer payments from these marketplace sales.

The calculation of the remote seller's economic nexus standard includes the gross revenue from property owned by the remote seller but sold via the marketplace. Because the remote seller's total gross revenue from South Carolina exceeds \$100,000 (\$75,000 + \$50,000), the remote seller meets South Carolina's nexus standard. He is required to obtain a retail license and remit the sales and use tax to the Department on his "gross proceeds of sales" of \$75,000.

Because South Carolina bases its economic nexus standard on "gross revenue" and not "gross proceeds of sales," revenue from the sales made via the marketplace in this example (Example 2) are included in the calculation for determining if the remote seller established economic nexus with South Carolina. However, under South Carolina sales and use tax law, the sales made via the marketplace are sales by the marketplace facilitator and the marketplace facilitator must report and remit the sales and use tax on the marketplace facilitator's "gross proceeds of sales," which includes the \$50,000 in sales of products owned by the remote seller but sold by the marketplace facilitator.

3. Q. What is the difference between "gross revenue" and "gross proceeds of sales?"
 - A. For many remote sellers, gross revenue and gross proceeds of sales will be the same.

In general, gross revenue is all revenue from sales into South Carolina, regardless of whether the revenue is subject to the South Carolina sales and use tax. Gross revenue is used solely for determining if a remote seller has economic nexus with South Carolina. It does not determine liability for the tax.

Gross proceeds of sales is the basis or measure for the sales and use tax. It only applies to the sale of tangible personal property as defined in the South Carolina sales and use tax law.

Example 1 – Gross Revenue and Gross Proceeds are the Same: Assume a remote seller sells t-shirts in South Carolina for \$25 and charges \$5 for shipping via the U.S. Postal Service. The "gross revenue" and "gross proceeds of sales" are the same for this transaction - \$30.

Example 2 - Gross Revenue and Gross Proceeds are Different: Assume a remote seller sells software in three different ways. His gross revenue from South Carolina is as follows:

Disks and Flash drives	\$ 55,000
ASP (SaaS)	\$ 25,000
Downloads	<u>\$ 30,000</u>
Total	\$110,000

Because software sold on disks and flash drives and via an ASP (SaaS) are subject to the South Carolina sales and use tax, and software sold via downloads are not, “gross revenue” and “gross proceeds of sales” are different. Gross revenue for the remote seller in this example is \$110,000 and gross proceeds of sales is \$80,000 (\$55,000 + \$25,000). The remote seller meets South Carolina’s economic nexus standard because his “gross revenue” from South Carolina in the prior year or the current year exceeds \$100,000, but he is only required to report \$80,000 in “gross proceeds of sales” on his sales and use tax return. The South Carolina sales and use tax will be based on the \$80,000 in “gross proceeds of sales.”

4. Q. For purposes of calculating the South Carolina economic nexus standard, when is a sale deemed to occur?
 - A. Generally, sales by remote sellers are deemed to occur upon delivery in South Carolina.
5. Q. What is “tangible personal property” for purposes of determining South Carolina’s economic nexus standard?
 - A. “Tangible personal property” is personal property that may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses. It also includes services and intangibles, the sale or use of which is subject to tax under South Carolina’s sales and use tax law. The services specifically subject to the South Carolina sales and use tax are:
 - communications,
 - laundry and related services,
 - furnishing of accommodations, and
 - electricity.

For the services that are specifically subject to the sales and use tax, and therefore by definition are “tangible personal property,” see Chapters 2 and 3 of this manual.

6. Q. Does South Carolina have a separate economic nexus standard for local sales and use tax?
 - A. No. If a retailer has substantial nexus with South Carolina, the retailer has substantial nexus with each local jurisdiction in South Carolina for purposes of local sales and use taxes administered and collected by the Department.
7. Q. What are examples that explain common types of sales that are included when determining South Carolina's economic nexus standard?
 - A. The examples below best illustrate the computation of the economic nexus standard for remote sellers selling various types and amounts of tangible personal property. The economic nexus standard is based upon "gross revenue." The examples assume the person is a remote seller (*i.e.*, is an out-of-state seller with no physical presence in South Carolina) that only makes the sales listed in each specific example and the product is owned by that remote seller, unless otherwise stated.

Part A – Taxable, Exempt, and/or Wholesale Sales by Remote Seller

Type of Sales Made Via Online, Catalog, or Phone Order	Gross Revenue from SC in Previous Calendar Year	Does Remote Seller Meet SC Economic Nexus Standard?
Example 1: <u>All taxable sales</u> Remote seller sells common household items via his own website or through his own catalog and telephone sales operations (<i>e.g.</i>, furniture, pet supplies, cosmetics, jewelry, etc.).	Over \$100,000	Yes Remote seller must obtain a retail license and collect and remit SC sales and use tax on all taxable retail sales.
	\$100,000 or less	No Remote seller is not required to, but may voluntarily, obtain a retail license and collect and remit SC sales and use tax.
Example 2: <u>All nontaxable sales</u> Remote seller sells only items that are exempt from SC sales and use tax (<i>e.g.</i>, sales to federal government, sales of medicine by prescription, etc.).	Over \$100,000	Yes Remote seller must file “zero tax due” sales tax returns; seller may request quarterly or annual filings in lieu of monthly filings.
Example 3: <u>All wholesale sales</u> Remote seller only sells items for resale (<i>i.e.</i>, wholesale sales). Wholesale sales are not subject to SC sales and use tax.	Over \$100,000	Yes However, since the remote seller is <u>not</u> a retailer (<i>i.e.</i> , does not make retail sales), he is <u>not</u> required to obtain a retail license or collect SC sales and use tax.
Example 4: <u>Both taxable and nontaxable sales</u> Remote seller sells some items that are taxable and some items that are exempt from SC sales and use tax.	Exempt = \$ 99,000 Taxable = \$ <u>1,001</u> Total = \$100,001	Yes Remote seller must obtain a retail license and collect and remit SC sales and use tax on all taxable retail sales.
Example 5: <u>Sales exempt from State tax, but subject to local tax</u> Taxpayer sells unprepared food, which is exempt from SC state sales and use tax, but is subject to local sales and use taxes in certain counties.	Over \$100,000	Yes See DOR website for local tax chart of counties imposing tax on unprepared food.

Part B – Sales Via a Marketplace

Type of Sales of Tangible Personal Property in SC	Gross Revenue from SC in Previous Calendar Year	Does Remote Seller Meet SC Economic Nexus Standard?
Example 6: <u>Both sales via own website and sales via marketplace sales</u> Remote seller sells via his own website. He also lists his products for sale on a marketplace where the marketplace facilitator has economic nexus with South Carolina and collects or processes the customer's payment.	Own website sales = \$99,000 Sales of the remote seller's product by a marketplace facilitator = \$300,000	Yes Sales of a remote seller's product by a marketplace facilitator (<i>i.e.</i>, \$300,000) and by his own website (<i>i.e.</i>, \$99,000) are used in computing the SC economic nexus standard of the remote seller. However, the remote seller is only responsible for reporting and remitting the SC sales and use tax on the \$99,000 in sales he made via his own website. The marketplace facilitator is responsible for reporting and remitting the SC sales and use tax on the \$300,000 from sales of the remote seller's products made via the marketplace.
Example 7: <u>All marketplace sales</u> Remote seller <u>only</u> sells via another person's marketplace.	Over \$100,000	Yes While the remote seller has economic nexus with SC (<i>i.e.</i>, over \$100,000 in sales via another person's marketplace), the remote seller is not making retail sales under SC law and therefore is not a retailer. The remote seller is not required to obtain a retail license or collect SC sales and use tax.
	\$100,000 or less	No
Example 8: <u>Marketplace Facilitator is the remote seller</u> Marketplace Facilitator sells items that it owns, and items owned by many others via its website.	Over \$100,000	Yes Marketplace Facilitator must obtain a retail license and collect and remit SC sales and use tax on all taxable retail sales, including all taxable retail sales of items owned by others.

Part C – Sales of Services

Type of Sales of Tangible Personal Property in SC	Gross Revenue from SC in Previous Calendar Year	Does Remote Seller Meet SC Economic Nexus Standard?
Example 9: <u>All taxable services</u> Taxpayer sells services subject to the SC sales and use tax (e.g., certain communications services). Services that are subject to tax are those defined as “tangible personal property” under SC sales and use tax.	Over \$100,000	Yes Remote seller must obtain a retail license and collect and remit SC sales and use tax on all taxable retail sales.
	\$100,000 or less	No Remote seller is not required to, but may voluntarily, obtain a retail license and collect and remit SC sales and use tax.
Example 10: <u>All nontaxable services</u> Taxpayer only sells services <u>not</u> subject to the SC sales and use tax (e.g., professional services, security monitoring, etc.). Services not subject to tax are those services <u>not</u> included in the definition of “tangible personal property” under SC sales and use tax law.	Over \$100,000	Yes Since the remote seller is <u>not</u> a retailer (i.e., does not make retail sales of tangible personal property as defined in SC law), he is <u>not</u> required to obtain a retail license or collect SC sales and use tax.

C. EFFECTIVE DATE FOR OBTAINING A RETAIL LICENSE AND REMITTING THE SALES AND USE TAX - ECONOMIC NEXUS

1. Q. What is the effective date for remote sellers to obtain a retail license and begin collecting and remitting sales and use tax in South Carolina following the *Wayfair* decision?
 - A. It depends on the date the remote seller first meets the nexus threshold. Remote sellers who met South Carolina’s economic nexus standard in calendar year 2017, or from January 1, 2018 through September 30, 2018, were required to obtain a retail license from the Department and remit South Carolina sales and use taxes for all taxable sales (deliveries) beginning **November 1, 2018**.

After October 1, 2018, remote sellers who meet South Carolina’s economic nexus standard must obtain a retail license from the Department and remit South Carolina sales and use taxes the first day of the second calendar month after economic nexus is established. (This is approximately 30 days from the end of the month in which economic nexus is established.)

The remote sellers were not required to collect and remit sales and use tax on sales that occurred prior to November 1, 2018.

The following chart illustrates the date a remote seller must obtain a retail license and the date the remote seller must file his first South Carolina sales and use tax return once economic nexus is established.

Date economic nexus threshold is met by remote seller	Date responsible for obtaining a retail license and beginning collection of SC sales and use tax	Due date of first sales and use tax return (Assume a monthly tax filer)
Calendar Year 2017	November 1, 2018	December 20, 2018 for the November 2018 return
From January 1, 2018 to September 30, 2018	November 1, 2018	December 20, 2018 for the November 2018 return
On or after October 1, 2018	First day of second calendar month after economic nexus is established (See below examples)	(See below examples)
October 2023	December 1, 2023	January 22, 2024 for the December 2018 return*
November 2023	January 1, 2024	February 20, 2024 for the January 2024 return
December 2023	February 1, 2024	March 20, 2024 for the February 2024 return
January 2024	March 1, 2024	April 22, 2024 for the March 2024 return*
July 2024	September 1, 2024	October 21, 2024 for the September 2020 return
August 2024	October 1, 2024	November 20, 2024 for the October 2024 return

*Monthly sales and use tax returns are due by the 20th of the following month. Since the 20th of the month in these examples falls on a Saturday or a Sunday, the due date is extended to the next business day.

D. EFFECTIVE DATE FOR OBTAINING A RETAIL LICENSE AND REMITTING THE SALES AND USE TAX - PHYSICAL NEXUS

1. Q. When is physical nexus established?

- A. A retailer has physical nexus with South Carolina if it maintains within South Carolina, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agent operating within South Carolina under the authority of the retailer or its subsidiary, regardless of whether the business or agent is located here permanently or temporarily or whether the retailer or subsidiary is admitted to do business within South Carolina.

2. Q. What is the effective date for a retailer with physical nexus with South Carolina to obtain a retail license and begin collecting and remitting sales and use tax in South Carolina?
 - A. A retailer with physical nexus with South Carolina must begin collecting and remitting the South Carolina sales and use tax for deliveries into South Carolina effective the date physical nexus is established.
3. Q. Is a remote seller who does not meet South Carolina's standard for economic nexus but subsequently establishes physical nexus with South Carolina required to collect and remit the sales and use tax?
 - A. Yes. Once a retailer establishes physical nexus with South Carolina, the retailer must obtain a retail license and begin collecting and remitting the sales and use tax effective the date physical nexus is established.

E. LOCAL TAX NEXUS, COLLECTION, AND REMITTANCE

1. Q. Are local sales and use taxes administered by the Department remitted to the county or city imposing the tax or to the Department?
 - A. All local sales and use taxes administered by the Department are remitted to the Department.
2. Q. Are remote sellers required to collect local sales and use taxes administered by the Department?
 - A. Yes. Remote sellers licensed with South Carolina for sales and use tax purposes must collect and remit to the Department the applicable local sales and use taxes.

Note: Certain counties have local hospitality taxes, which must be reported and paid directly to counties; however, hospitality taxes are rarely imposed on remote sellers.
3. Q. How can a remote seller determine if local sales and use taxes administered and collected by the Department on behalf of local jurisdictions apply to a sale?
 - A. For information on local taxes administered and collected by the Department, visit the Department's website (dor.sc.gov).
4. Q. Does SC require a remote seller to register and file separate returns for local sales and use taxes?
 - A. No. South Carolina state and local sales and use taxes are reported on one return.

F. TAXABLE TRANSACTIONS

1. Q. What sales are taxable in South Carolina?

- A. South Carolina imposes a sales and use tax on all sales of tangible personal property delivered into South Carolina, unless an exemption or exclusion applies.

In addition, the following services are specifically subject to the South Carolina sales and use tax:

- communications,
- laundry and related services,
- furnishing of accommodations, and
- electricity.

Note: See the FAQ section entitled “Exemptions and Exclusions” for examples of sales that are exempt or excluded from sales and use tax.

2. Q. What is the measure of the sales and use tax?

- A. The measure upon which the sales tax is based is “gross proceeds of sales” as defined in Code Section 12-36-90. The measure upon which the use tax is based is “sales price” as defined in Code Section 12-36-130.

Note: See Code Sections 12-36-90 and 12-36-130 for information as to what is included and what is not included in “gross proceeds of sales” and “sales price.”

3. Q. What is an example of “gross proceeds of sales” or “sales price”?

- A. Generally, “gross proceeds of sales” and “sales price” are the total amount charged in conjunction with the sale or rental of tangible personal property.

Example: Assume a remote seller sells a computer for \$1,200 and ships it at no additional charge to a South Carolina customer. However, at the time of the purchase of the computer, the South Carolina customer exercises an option and purchases an extended warranty for \$200. The total amount charged in conjunction with the sale of the computer, or the “gross proceeds of sales” or “sales price” of the computer, is \$1,400.

4. Q. Are remote sellers required to remit sales and use tax on sales made via the internet?

- A. Yes. Remote sellers who meet South Carolina’s economic nexus standard are required to remit sales and use tax on all taxable sales into South Carolina, including sales made by the remote seller through his website or catalog and telephone sales operations.

The Internet Tax Freedom Act prohibits South Carolina from imposing sales and use tax on internet access services, but does not prohibit South Carolina from taxing sales made via the internet.

G. EXEMPTIONS AND EXCLUSIONS

1. Q. Are certain sales exempt or excluded from the South Carolina sales and use tax?
 - A. Yes. Sales of various items, and sales to certain entities, are specifically exempted or excluded from State and local sales and use taxes. For example, the following sales are exempt from State and local sales and use taxes:

- Sales to the federal government
- Sales of prescription medicine sold to an individual by prescription
- Sales of clothing, computers, and school supplies during the annual Sales Tax Holiday (the first Friday, Saturday, and Sunday in August)
- Sales of textbooks for use in a course of study at elementary schools, middle schools, high schools, and colleges

In addition, sales of unprepared food (*i.e.*, food that may be purchased with U.S. Department of Agriculture food stamps) are exempt from the State sales and use tax. Whether sales of such unprepared food are exempt from local sales and use tax depends on the type of local sales and use tax being imposed.

Note: For information on all the exemptions and exclusions, or to obtain more details as to the requirements of the above examples, visit the Department's website (dor.sc.gov).

H. STATE AND LOCAL TAX RATES

1. Q. What is South Carolina's current State sales and use tax rate?
 - A. South Carolina imposes the following State tax rates under the sales and use tax law:

General Sales and Use Tax Rate:	6%
Accommodations Tax Rate:	7%
900 and 976 Tax Rate:	11%
Manufactured Home	5% + 2% for amounts over \$6,000 ¹
Maximum Tax Items	5% (Maximum Tax: \$500 or \$300)
Sales to Persons 85 and Older	5%

¹ See South Carolina Code Section 12-36-2110 for information on maximum tax and exemption provisions that apply to certain energy efficient manufactured homes.

2. Q. What are the current tax rates for local sales and use taxes administered and collected by the Department?

A. Most local sales and use taxes administered and collected by the Department are currently imposed at a rate of 1%. For the most current local sales and use tax information, visit our website at dor.sc.gov.

I. RETAIL LICENSES AND FILING REQUIREMENTS

1. Q. What is the fee for a South Carolina retail license?

A. The fee for a South Carolina retail license is \$50 for each retail location. The retail license is valid as long as the sales and use tax account is open.

2. Q. Is the fee for the South Carolina retail license paid annually?

A. No. The \$50 fee is a one-time fee.

Note: If the remote seller subsequently closes his South Carolina retail license, he must pay another \$50 to obtain a new retail license.

3. Q. How do remote sellers obtain a retail license in South Carolina?

A. A remote seller required to obtain a retail license must register directly with the Department. A remote seller may register with the Department online using the Department's tax portal, MyDORWAY, or by submitting a paper application. The Department's online portal for obtaining a retail license can be found at: MyDORWAY.dor.sc.gov.

The Department's paper application for use by remote sellers in obtaining a retail license is South Carolina Form DOR-111RS, "Remote Seller Sales and Use Tax Registration." This form is on the Department's website (dor.sc.gov).

4. Q. When are sales and use tax returns due?

A. Sales and use tax returns are due by the 20th of the month following the end of the month in which the sales occurred. For example, for sales that occur in November, the November return must be filed by December 20th.

5. Q. Can I file quarterly or annually instead of monthly?

A. Yes, provided certain requirements are met and filing on a quarterly or annual basis has been approved by the Department. To determine if you are eligible to file quarterly or annually, please contact the Department's Licenses and Registration Section.

6. Q. Do I need to file a return if I don't make any sales for a particular filing period (*e.g.*, monthly, quarterly, annually)?

A. Yes. A sales and use tax return is due for each filing period the sales and use tax account is open, including filing periods for which the remote seller will file a "zero tax due" return.

7. Q. Do I need to file a return if all my sales are exempt sales for a particular filing period (*e.g.*, monthly, quarterly, annually)?

A. Yes. A sales and use tax return is due for each filing period the sales and use tax account is open, including filing periods for which the remote seller will file a "zero tax due" return.

In the case of a return in which all sales are exempt sales, the remote seller must still report its "gross proceeds of sales" and take a deduction for all exempt sales which will result in a "zero tax due" return.

8. Q. Does the remote seller receive a discount for timely filing and remitting State and local sales and use tax?

A. Yes. If returns are filed and the taxes are paid in full by the due date, the taxpayer is allowed a discount on taxes due. For taxes less than \$100, you may take a 3% discount of the tax. For taxes of \$100 or more, the discount is 2% of the tax.

The maximum discount allowed per taxpayer (all locations included) during the state's fiscal year (July 1 - June 30) is \$3,000. The discount is increased to a maximum of \$3,100 if the retailer files his sales and use tax returns electronically.

Remote sellers not required by law to collect the South Carolina sales and use tax (*i.e.*, do not have physical nexus or economic nexus), but who voluntarily register to do so, are allowed a maximum discount of \$10,000 each fiscal year.

The discount (whether \$3,000, \$3,100, or \$10,000) is calculated from the June return filed in July to the May return filed in June.

J. SOUTH CAROLINA PURCHASERS

1. Q. What is the effect of the *Wayfair* decision on South Carolina purchasers?
 - A. Purchasers in South Carolina may see an increased number of remote sellers charging South Carolina sales and use tax. As before *Wayfair*, if a remote seller does not charge sales or use tax on a taxable item delivered in South Carolina, the purchaser should pay use tax on the purchase price. For example, an individual may report the use tax on his South Carolina individual income tax return or by filing a Form UT-3.

For additional information, see SC Revenue Ruling #18-9, “Use Tax Information for Businesses, Individuals, and Nonprofits.”