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Statement from the Nebraska Department of Revenue Regarding the *South Dakota v. Wayfair* United States Supreme Court Decision

JULY 27, 2018 (LINCOLN, NEB.) – On June 21, 2018, the United States Supreme Court issued its decision in *South Dakota v. Wayfair*. The full U.S. Supreme Court opinion may be found at [Wayfair](#). The Court's precedent-setting decision is important to the collection of sales tax on purchases made online by Nebraskans.

Existing statutes require Nebraskans to pay a use tax for purchases that are subject to sales tax if sales tax was not collected and remitted by an out-of-state, or "remote" seller. Remote sellers are retailers that do not have a physical presence in Nebraska, but make sales to purchasers in Nebraska.

Current statutes also require certain sellers who are engaged in business in our state to collect sales tax. Prior to the *Wayfair* decision, precedent established by the U.S. Supreme Court prohibited states from requiring the collection of sales taxes by remote sellers who did not have a physical presence in Nebraska. Following the *Wayfair* decision, certain remote sellers now have a sales tax collection responsibility on sales made to customers in Nebraska.

The Department is ready to assist remote sellers in registering their businesses to collect and remit tax on sales to customers in Nebraska. Tax Commissioner Tony Fulton said, "The *Wayfair* decision presents a new climate for remote sellers, and we want to be mindful of that fact. Further, we do not take for granted the great service to Nebraska performed by businesses who collect sales tax on behalf of the state. Remote sellers seeking to comply with our laws will find a respectful, professional Department ready to assist them as partners."

Remote sellers who are not currently registered to collect and remit sales tax in Nebraska. If you are a remote seller who is engaged in business in Nebraska as defined under [Neb. Rev. Stat. § 77-2701.13](#), you must obtain a sales tax permit on or before January 1, 2019, and must begin collecting and remitting sales tax on sales made to customers in Nebraska. Remote sellers that are not engaged in any of the activities

listed in § 77-2701.13 are not required to collect but may, for the benefit of their Nebraska customers, register and volunteer to collect the tax in Nebraska.

The Department plans to administer the collection responsibility consistently with the Supreme Court's decision in *Wayfair*, which looked favorably upon an exception for remote sellers with sales of \$100,000 or less or with fewer than 200 separate transactions in the state annually. The Department does not intend to pursue retroactive sales tax collection from remote sellers that did not have physical presence in Nebraska for sales made to customers in Nebraska prior to January 1, 2019. Depending on the final outcome of the *Wayfair* litigation – which remains pending in South Dakota – the Department may seek legislation in the 2019 legislative session as needed.

Remote sellers that are not currently collecting Nebraska tax on their sales can register directly with the Department by going to our website and clicking on the "[Register a Business](#)" link and following the directions provided.

All sellers may also register with Nebraska and the other 23 Streamlined Sales Tax states by accessing the Streamlined Sales Tax Registration System (SSTRS) registration form, which is available at sstregister.org.

Nebraska-based retailers who are making remote sales for delivery into other states. If you are a Nebraska-based retailer making sales of property or services into other states, you may have an obligation to collect and remit those states' sales taxes. If you are licensed to collect and remit tax in Nebraska, you should continue doing so. You can obtain information on the licensing requirements for other states at taxadmin.org.

Additional Information. See the Department's [Frequently Asked Questions](#) for more information on the *Wayfair* decision and collection responsibilities of remote sellers.

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