

Reporting Out-of-State Sales Tax Requests for NH Businesses



Issued on: August 29, 2019

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Introduction

On July 19, 2019, Governor Sununu signed into law SB 242, a bill passed by the General Court in response to the United States Supreme Court's decision in *South Dakota v. Wayfair, Inc.*, 138 S.Ct. 2080 (2018). In *Wayfair*, the United States Supreme Court overruled a longstanding requirement that an out-of-state seller have a physical presence in a taxing state before that state can require the seller to collect and remit sales or use tax. In the wake of the *Wayfair* decision, it is possible that other states, or localities within those states, will attempt to collect sales or use tax from New Hampshire businesses that do not have brick-and-mortar facilities within those states or localities, but remotely sell goods to individuals or entities located there. SB 242 is designed to address uncertainty surrounding this practice and to ensure that any such collection efforts are bona fide and non-fraudulent and comport with the United States and New Hampshire Constitutions.

What does SB 242 do?

First, SB 242 requires that a state or locality provide written notice to the New Hampshire Department of Justice (DOJ) at least 45 days before taking any action to determine or impose sales or use tax liability on a New Hampshire business.

Second, SB 242 requires that the DOJ develop a system to facilitate confidential, voluntary information sharing and collaboration with New Hampshire businesses.

Third, SB 242 authorizes the DOJ to collaborate with the New Hampshire Department of Revenue Administration (DRA) to transmit periodic bulletins (like this bulletin) to New Hampshire businesses regarding the provisions of SB 242 and other related developments in this area of taxation.

Fourth, SB 242 encourages New Hampshire businesses to notify the DOJ whenever a state or locality requests information for use in determining sales or use tax liability.

Fifth, SB 242 establishes a temporary commission to monitor actions taken at the federal or state level that could affect the collection of sales or use tax from New Hampshire businesses. The commission will issue preliminary and final reports on its findings.

Resources Available to New Hampshire Businesses

The DOJ and the DRA cannot provide legal or tax advice to private parties potentially affected by SB 242 or the *Wayfair* decision. Accordingly, any New Hampshire business contacted by another state or locality regarding the collection or remittance of sales or use tax is strongly encouraged to alert their accountant, attorney, or other appropriate advisor to determine a course of action.

Any New Hampshire business contacted by a state or locality regarding the collection of sales or use tax is also encouraged to contact the DOJ's Consumer Protection Bureau.

Consumer Protection Hotline:

Phone: 1-888-468-4454 or (603) 271-3641

Email: DOJ-CPB@doj.nh.gov

By mail: Consumer Protection Bureau
Office of the Attorney General
33 Capitol Street
Concord, NH 03301

A Consumer Protection representative will collect information from the business and provide that information to the appropriate DOJ official. The information collected will help the DOJ determine, among other things, the legitimacy of any attempt to collect sales or use tax from the business in question and the extent to which other states and localities are complying with the requirements of SB 242. Information shared with the DOJ through this process is confidential. *See* RSA 78-E:3, III.

The DOJ will provide updates on its website regarding important developments relating to the *Wayfair* decision and SB 242. This information will be available through a link on the DOJ's home page (www.doj.nh.gov) and will include, among other things, any bulletins sent by the DOJ to New Hampshire businesses, annual reports issued by the DOJ on how SB 242 is being implemented, and the preliminary and final reports of the temporary commission described above. Businesses are encouraged to periodically visit the DOJ's website to ensure they remain apprised of these developments.

The New Hampshire Department of Business and Economic Affairs, Division of Economic Development has also developed a website with *Wayfair*-related information and resources. It is available at www.nheconomy.com/nosalestax.