



# Rhode Island Department of Revenue

## Division of Taxation

ADV 2018-29  
SALES AND USE TAX

ADVISORY FOR TAX PROFESSIONALS  
July 23, 2018

### Supplemental Statement on Non-Collecting Retailers, Wayfair, Remote Sellers

Rhode Island and other states have received numerous inquiries regarding how they will respond to last month's U.S. Supreme Court decision in *Wayfair*.<sup>1</sup> This supplemental statement is intended to clarify recent issues in response to inquiries.

The obligations of non-collecting retailers (including remote sellers) under Rhode Island's 2017 non-collecting retailer law are not affected by the Supreme Court's decision in *Wayfair*. (See Rhode Island General Laws § 44-18.2-1 *et seq.*, as amended.) Since the August 2017 Rhode Island law has been in effect, non-collecting retailers have been provided adequate notice by the Division and sufficient time to register and begin collecting or notifying/reporting on a go-forward basis as required under the law.

Under Rhode Island's law, which became effective on August 17, 2017, a non-collecting retailer must exercise one of two options:

- 1.) Register with the Division of Taxation and collect and remit Rhode Island sales/use tax, or
- 2.) Provide notices to consumers as to their Rhode Island sales/use tax obligations.

As the Division noted in Publication 2018-06, non-collecting retailers are not affected by the *Wayfair* decision for Rhode Island sales/use tax purposes under existing Rhode Island law:

- Non-collecting retailers that have registered and have begun collecting and remitting Rhode Island sales/use tax under the August 2017 law, or that have elected instead to provide notice to consumers in accordance with the August 2017 law, should continue to do so.
- Non-collecting retailers that have not elected to either 1.) register with the Division and collect and remit Rhode Island sales/use tax under the August 2017 law, or 2.) provide notice to consumers in accordance with the August 2017 law, should make the election so that they can be in full compliance with Rhode Island's August 2017 law. Those that fail to comply with the August 2017 law remain subject to the penalties described in Rhode Island General Laws § 44-18.2-5, as amended. The August 2017 law remains the law in Rhode Island until such time as it is amended or repealed.

Additionally, Rhode Island substantially reduced the burden of sales/use tax compliance by adopting the Streamlined Sales and Use Tax Agreement in 2006.<sup>2</sup> This has made Rhode Island a more attractive place to do business. To the extent that the Rhode Island legislature in the future entertains any amendments to the current law in response to *Wayfair* that would make collection and remittance of sales tax mandatory, that process will be transparent and provide all stakeholders with an opportunity to participate; until such amendments become law, non-collecting retailers are required to comply with the requirements of the current law.

<sup>1</sup> *South Dakota v. Wayfair, Inc., et al.* No. 17-494. Decided June 21, 2018.

<sup>2</sup> The Streamlined Sales and Use Tax Agreement is a cooperative effort of a number of states, the District of Columbia, businesses, and certain local governments to simplify and make more uniform the sales and use tax collection and administration by retailers and states. There are 23 full member states and one associate member state.