



# Legislative UPDATE

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## **Comptroller Proposes Rules to Require Remote Sellers to Collect Sales Taxes**

On October 19, the Texas comptroller published [proposed rules](#) in *The Texas Register* to implement the U.S. Supreme Court decision in *Wayfair v. South Dakota*. (*Wayfair* is the opinion concluding that sales taxes may be collected from online sellers under certain circumstances.) The comptroller's position is that no legislation is needed for Texas to begin requiring remote sellers to collect sales taxes. Instead, enforcing existing laws and amending existing administrative sales tax rules will be sufficient to allow Texas to ensure the collection of sales taxes on remote sales. Even so, legislation may be introduced in the 2019 legislative session relating to how local sales taxes are collected and remitted.

The most significant proposed rule changes include:

- Amending the definition of “engaged in business” to encompass a broad array of activities that are included in the Tax Code but haven’t been enforced due to the longstanding legal requirement that a business maintain a “physical presence” in Texas. The *Wayfair* decision eliminated the “physical presence” requirement, thus expanding the circumstances under which a remote seller may have a “substantial nexus” in the state.
- Establishing a “safe harbor” for remote sellers. The comptroller will not enforce the sales tax collection obligation on a remote seller whose total Texas revenue in the preceding year is less than \$500,000. In the *Wayfair* opinion, Justice Kennedy upheld South Dakota’s \$100,000 safe harbor provision, finding that it did not place an undue burden on interstate commerce. The comptroller’s proposed safe harbor proposal would go beyond South Dakota’s by exempting more remote sellers from the collection requirement in Texas.

- Providing a transition period for remote sellers to prepare for their collection and reporting obligations. While the comptroller proposes to adopt the rule changes by January 1, 2019, the permitting and collection requirements for remote sellers will not go into effect until October 1, 2019.

Comments on the proposal may be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication in the *Texas Register*.

## **Don't Forget:** **Mandatory Eminent Domain Reporting**

The comptroller will be sending reminders to cities to file their annual eminent domain report as required by law. Legislation passed in 2015 requires cities to annually fill out a [web-based form](#) with the comptroller relating to each city's statutory eminent domain authority. (The failure to fill out the form could result in a \$1,000 penalty against a city.)

The 2018 reporting window opens on November 1. The entry should be, for almost every city, just an update of previously-filed information, including whether the city exercised its eminent domain authority in the preceding calendar year by filing a condemnation petition under Section 21.012, Property Code.

Of course, any city that never filled out the form as required should do so now. Detailed instructions on doing so are available in this [previous article](#).

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