



# Post-Wayfair Sales Tax Reform in Louisiana

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# Introduction

This past July, the Supreme Court handed down a decision that fundamentally altered the landscape of state sales tax collection. Louisiana's sales tax infrastructure must evolve in kind.

In *South Dakota v. Wayfair*, the Supreme Court overturned a previous precedent that required a business headquartered out of state to have some form of "physical presence" within a state to be held liable for sales tax collection and remittance responsibility in that state. The previous rule was straightforward: any business that had storefronts, warehouses, or employees in Louisiana was required to comply with Louisiana sales tax law. Those lacking such connections were not. This applied to all retailers, whether their model consisted of online sales, brick-and-mortar stores, or both.

The *Wayfair* decision turned this simple rule on its head. Now, out-of-state businesses with no property or employees in a state can nonetheless be held liable for its sales tax. As a result, web-enabled businesses across the country are suddenly faced with a landscape in which they could theoretically be required to collect and remit taxes to 45 states and thousands of jurisdictions nationwide.

That's no small task, and one that will hit small businesses hardest. One study by the National Association of Manufacturers estimated that the cost of tax compliance was under \$700 per employee for businesses with over 100 employees, but over \$1500 per employee for businesses with less than 50 employees.

Unfortunately, Louisiana's convoluted sales tax system makes this adjustment for out-of-state businesses even more burdensome than it would be in other states. Louisiana legislators should resist the urge to cash in on the *Wayfair* decision with misguided reforms and instead should work to simplify the already dizzyingly-complex sales tax code for traditional brick-and-mortar transactions and online sales alike. Any such reform should be carried out in a revenue-neutral manner to ensure that Louisianans don't suffer from higher net tax burdens.

## The State of Sales Taxes in Louisiana

Louisiana has one of the most expensive and burdensome sales tax systems in the country. Its combined state and local sales tax rate is the second-highest in the nation at 9.45 percent, according to the Tax Foundation. This is just shy of Tennessee's 9.47 percent average despite the fact that the Volunteer State does not have an income tax and thus relies heavily on sales tax revenue for its general fund.

Adding salt to the wound of high rates is the code's extraordinary complexity, which makes compliance costly and difficult. As it stands, Louisiana's sales tax code lacks uniformity. Although the state sets definitions and exemptions for sales taxes, parishes often interpret these differently from their fellow parishes. Applications of sales tax law can differ dramatically from one transaction to the next. This policy structure is decidedly atypical. While many states have both state and local sales tax levies, they generally operate on a single base with common definitions. This reduces complexity while providing a revenue stream for localities in states that choose not to have a fully centralized, state-run sales tax.

The extraordinary complexity of dozens of different tax bases with varying rates makes Louisiana's tax code among the [worst in the nation](#), according to sales tax compliance company Avalara. When looking at overall business tax climate, Louisiana ranks a lowly [44th](#) in annual rankings by the Tax Foundation. As the data shows, Louisiana is in desperate need of a reform process in order to make taxes simpler and less expensive to comply with collecting.

## Louisiana's Response to Wayfair

In its ruling on *Wayfair*, the Supreme Court laid out several reasons that caused them to look kindly upon South Dakota's law. In doing so, they effectively established a guide to states looking to create laws that could survive court scrutiny. The main features the majority cited were: South Dakota's explicit rejection of retroactive enforcement; its use of a significant "de minimis" threshold to exempt small sellers from collection; and the state's membership in the Streamlined Sales and Use Tax Agreement (SSUTA), a consortium of states promoting uniformity and simplicity in sales tax law.

Soon after *Wayfair* was decided, the Louisiana Department of Revenue [adopted](#) a regulation laying out a collection requirement on sellers, exempting those with fewer than 200 transactions in-state consumers and \$100,000 in sales within the state. However, this regulation is not yet being fully enforced. The state currently awaits further legislative action and guidance from the Louisiana Sales and Use Tax Commission for Remote Sellers, a body set up to help the state construct sales tax requirements for remote sales in the modern era.

In this regulatory guidance, Louisiana's revenue department [asserted](#) its right to tax remote sellers despite not being a member of the SSUTA. States that are members of SSUTA make commitments to common definitions and simplified filing standards. While membership in SSUTA is far from a silver bullet in the pursuit of a simple sales tax system, it is at least one clear sign that a state is working toward that goal. If it does not become a member of SSUTA and yet still pursues taxation of internet sales, Louisiana puts itself in legal jeopardy by

## Key Facts:



After the Supreme Court's decision in the *Wayfair* case, some are looking to capitalize by imposing Louisiana sales tax on out-of-state sellers.



But Louisiana's sales tax code is both hugely expensive and maddeningly complex, combining the second-highest rate in the nation with wide latitude for parishes to interpret which items are subject to sales taxes.



A code this complex would likely be unconstitutional if imposed on out-of-state sellers, meaning Louisiana must reform its system before passing any post-*Wayfair* law.



Pro-growth reform would lower rates and reduce complexity, giving both online and brick-and-mortar sellers a simpler, less expensive code.

clearly failing to meet one of the guideposts set out by the Supreme Court.

In addition to the aforementioned standards, the Court warned that an overly complex sales tax system could constitute an undue burden upon interstate commerce. By nearly any measure, Louisiana's system is one of the most complex in the nation, placing the state in further legal danger absent dramatic simplification efforts.

## The Louisiana Sales and Use Tax Commission Proposal

In an effort to sidestep the issues that would arise out of attempting to impose its byzantine code on out-of-state retailers, Louisiana officials have instead contemplated an entirely new system for dealing with online retailers. Under the system designed by the Louisiana Sales and Use Tax Commission for Remote Sellers, out-of-state retailers would be required to pay an 8.45 percent tax rate on all sales to Louisiana consumers, remitted to the state government. The first 4 percent will then be divided among the parishes by the state's revenue department proportional to population, while the remaining 4.45 percent will be kept by the state government. In-state retailers would continue to be subjected to the "ordinary" sales tax system that varies dramatically parish-to-parish.

This proposal fails to meet even the most basic standards of sound public policy by creating a separate system of tax compliance for online sales and brick-and-mortar sales. Businesses with complex operations, like a company with a brick-and-mortar presence in state and an out-of-state affiliate that makes sales into Louisiana, would face significant confusion as to which tax system applied to a given sale. Questions such as this led to [last-minute debates](#) over the definition of a "remote seller." At the eleventh hour, the Commission published guidance that attempted to address these questions. It determined that in the aforementioned example, the in-state business would deal with the complex conventional system and the online affiliate would utilize the more streamlined system.

In doing so, it would unfairly distort markets and could subject the state to litigation because it would fail to meet the so-called "Complete Auto test," which refers to a case that combines with *Wayfair* to lay out conditions that a state's tax law must meet in order to not be considered an unconstitutional burden on interstate commerce. The Louisiana Sales and Use Tax Commission proposal would fail the part of the test prohibiting discriminatory taxation that treats in-state entities differently from out-of-state entities.

Practically speaking, this reform plan would do little of the difficult and important work of fundamentally rewriting Louisiana's sales tax code so that it is less complex and less burdensome in order to meet the guidelines set out by the Supreme Court in *Wayfair*. It would instead be an effort to pay lip service to reform in the dogged pursuit of higher sales tax revenue, exposing hundreds of new businesses to the state's complicated code.

## Next Steps

For Louisiana to move forward post-Wayfair, it needs far more comprehensive changes to the way it administers sales tax. The state's non-uniform tax base, collected by dozens of parish tax collectors with different interpretations, acts as an impediment to creating a modern tax system comparable to what exists in nearly every other state. Tax reform that

ensures that retailers, both in-state and out-of-state, need to deal with only one set of rules surrounding exemptions and exclusions, one tax administrator, and one tax auditor, should be an essential step before the state takes any other action.

Beyond this, Louisiana should seek to become a member in SSUTA. While SSUTA is not perfect by any stretch, participating states [must agree on](#) tax definitions, uniform sourcing, and rate simplification. Some forms of compensation for the administrative costs of tax compliance, and access to state tax software, must also be made available. These are only some of the steps Louisiana will need to take to effectively simplify its code, but membership in SSUTA can help legislators and tax administrators build a better system than exists today.

Louisiana could also improve its sales tax in other ways. For example, it would be beneficial for legislators to clarify in statute that the state will not attempt to collect internet sales taxes retroactively. The Supreme Court signaled that retroactive taxation would be frowned upon, and it is also a substantial burden for businesses to remit taxes they did not know they would be charged at the time.

Additionally, the state should ensure that any tax reform is performed in a revenue-neutral manner. Louisianans already suffer under an expensive sales tax system. Making it more expensive would only exacerbate the state's significant challenges in creating a more business-friendly climate that can foster much-needed economic growth. Instead, legislators should look to broaden the base and lower rates in the context of [comprehensive tax reform](#).

## Conclusion

Louisiana's current system is an administrative nightmare for businesses attempting to comply with tax rules. Absent significant reforms, the state puts itself in legal jeopardy if it attempts to pursue collection of taxes on out-of-state sellers in the wake of the Supreme Court's decision in *Wayfair*. A better approach would be to fundamentally reform the state's sales tax system to modernize it, putting Louisiana on better competitive footing regionally and nationally.

## About the Authors

*Andrew Moylan and Andrew Wilford lead the Interstate Commerce Initiative at the National Taxpayers Union Foundation (NTUF), a project which seeks to protect taxpayers from the pernicious effects of states attempting to exercise power outside their borders. NTUF is a nonpartisan research and educational organization that shows Americans how taxes, government spending, and regulations affect them.*

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