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# Significant SALT Developments from 2019 and Predictions for 2020

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# Speakers

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# Learning objectives

1. Identify major state and local tax developments during 2019

2. Analyze issues faced by state legislatures at the outset of the 2020 legislative sessions

3. Identify likely occurrences in the SALT world in 2020

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# Agenda

1. Introduction
2. Review 2019 Developments
3. Evaluate 2019 Predictions
4. 2020 Predictions

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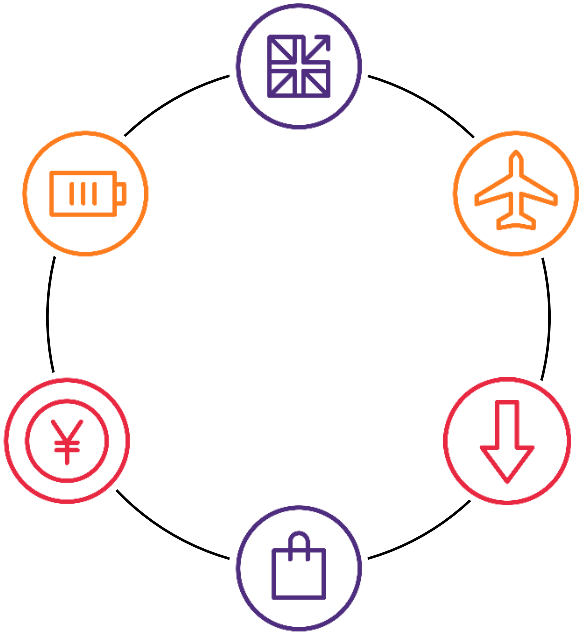
# Introduction





# What happened in 2019?

1. Rapid post-*Wayfair* implementation of sales tax economic nexus
2. The next frontier: Extension of *Wayfair* to income tax nexus
3. Continued state reaction to the TCJA
4. The rise of pass-through entity tax regimes
5. U.S. Supreme Court decides *Kaestner Trust*

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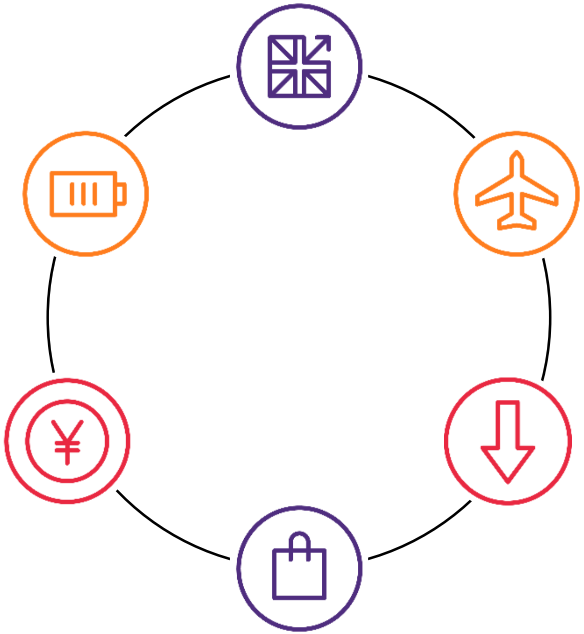
# What happened in 2019?

6. Widespread adoption of marketplace facilitator nexus provisions
7. Adoption of sales tax economic nexus standards by local taxing authorities
8. Further adoption of market-based sourcing
9. Combined reporting expanded and clarified
10. Adoption of the Oregon CAT



# Review of 2019 Developments



# 2019 Developments
## Rapid post-*Wayfair* implementation of sales tax economic nexus

- In 2018, in *South Dakota v. Wayfair, Inc*., the U.S. Supreme Court overturned the requirement that a business must have a physical presence in a state for sales and use tax purposes
- South Dakota sales and use tax law requires out-of-state sellers without a physical presence in the state to collect tax if the seller annually has
  - $100,000 of sales in the state, ***or***
  - At least 200 separate transactions in the state
- Court upheld South Dakota law as constitutional
  - Law satisfies the substantial nexus requirements of the Commerce Clause of the U.S. Constitution

# 2019 Developments

## Rapid post-*Wayfair* implementation of sales tax economic nexus

- Almost every state that imposes a sales tax has enacted economic nexus provisions in some form that apply to remote sellers

- How are states doing this?
  - Through legislation as states went into session
  - Through regulations and guidance issued by state tax authorities

- Watch out for differences in:
  - Revenue threshold measurements (varying amounts, gross vs. taxable)
  - The “and” vs. “or” tests
  - Effective/enforcement dates

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# 2019 Developments

## Rapid post-*Wayfair* implementation of sales tax economic nexus

- Sales dollar thresholds
  - Large-market states adopting higher amounts (i.e., California, New York and Texas)
  - States with standards in place prior to *Wayfair* reducing thresholds to $100,000 (i.e., Connecticut, Georgia, Massachusetts and Ohio)

- Other developments
  - Elimination of transaction threshold
  - Elimination of notice and reporting requirements
  - Kansas' ongoing lack of clarity

# 2019 Developments

## The next frontier: Extension of *Wayfair* to income tax nexus

- Following *Wayfair*, several states have started to apply an economic nexus standard for income tax purposes
  - For tax years beginning on or after Jan. 1, 2019, Philadelphia adopted via regulation an economic nexus standard for its Business Income and Receipts Tax
  - For tax years beginning after Dec. 31, 2019, Hawaii has enacted an income tax economic nexus standard for taxing out-of-state persons on their income earned in Hawaii (S.B. 495)

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# 2019 Developments

## The next frontier: Extension of *Wayfair* to income tax nexus

- Following *Wayfair*, several states have started to apply an economic nexus standard for income tax purposes
  - On Sep. 30, 2019, Pennsylvania Department of Revenue announced an economic nexus standard with a $500,000 gross receipts threshold for purposes of establishing a corporate net income tax (CNIT) filing requirement (Corporation Tax Bulletin 2019-04)
  - On Oct. 18, 2019, the Massachusetts Department of Revenue amended its corporate nexus regulation to provide an economic nexus standard
- Methods of adoption
  - Legislative enactment vs. administrative policy

# 2019 Developments
## Continued state reaction to TCJA

- The enactment of the federal Tax Cuts and Jobs Act (TCJA) in late 2017 provided a significant overhaul of the federal income tax system and was enacted in part to transition the U.S. toward a partial territorial system
- For tax years beginning after Dec. 31, 2017, IRC Sec. 951A imposes a minimum tax on certain foreign income described as global intangible low-taxed income (GILTI)
  - Income recognized by U.S. shareholders of controlled foreign corporations (CFCs)
- Under IRC Sec. 250, a deduction is provided for 50% of GILTI and a deduction is provided for 37.5% of foreign-derived intangible income (FDII)

# 2019 Developments
## Continued state reaction to TCJA

- Federal Conformity Date
  - Several states advanced their conformity dates beyond Dec. 22, 2017 (i.e., Arizona, Minnesota and New Hampshire)
  - Others adopted legislation selectively conforming (i.e., Arkansas and California)
- International Tax Provisions
  - Retroactive to Jan. 1, 2018, Florida provides a subtraction adjustment for the amount included in taxable income under IRC Sec. 951A (GILTI)
    - Any amount subtracted is only allowed to the extent that it is not deductible in determining federal taxable income
    - An offsetting addback is also required
    - Language appears to relate to the offsetting impact of the GILTI deduction under IRC Sec. 250, so that the subtraction adjustment cannot exceed the net GILTI amount reported for federal taxable income purposes

# 2019 Developments
## Continued state reaction to TCJA

- International Tax Provisions
  - New Jersey Division of Taxation released several rounds of guidance regarding apportionment of GILTI and FDII (Technical Bulletin TB-92), ultimately deciding that net GILTI amounts generally would be includible in the denominator and not the numerator of the sales factor
    - In late 2018, the Division had initially released guidance introducing a special accounting method of allocating revenue related to GILTI and FDII using a combination of comparative gross domestic product (GDP) measures and separate allocation
  - On June 24, 2019, New York enacted legislation that exempts 95% of GILTI for tax years beginning on or after Jan. 1, 2019
    - Prior to this legislation, net GILTI was subject to tax in New York for the 2018 tax year

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# 2019 Developments
## Continued state reaction to TCJA

- Interest Expense Deduction
  - New Jersey conforms to the IRC Sec. 163(j) interest deduction limitation, but applies the limitation on a pro rata basis to interest paid to related and unrelated parties, regardless of whether the amounts paid to related parties are subject to intercompany interest addback rules
  - The Pennsylvania Department of Revenue’s guidance regarding the interest expense limitation requires taxpayers to create two separate calculations to track the disqualified IRC Sec. 163(j) interest expense amount at the federal level as well as the disqualified related-party interest expense addback at the Pennsylvania level
  - Virginia partially decouples from IRC Sec. 163(j) through the adoption of a 20% offset to the overall interest deduction limitation

# 2019 Developments
## The rise of pass-through entity tax regimes

- The TCJA imposes a limit on the amount of state and local taxes that individuals may deduct for federal income tax purposes
- Prior to federal tax reform, the deduction for state and local taxes paid was unlimited for individual taxpayers
- Beginning with the 2018 tax year, most individuals and married couples filing a joint return are now limited to a $10,000 annual SALT deduction
- Several states have enacted legislation to reduce the impact of the SALT deduction cap, but some of the methods have been disallowed by the IRS (such as the charitable contribution approach)
- Following tax reform, five states have enacted mandatory or elective pass-through entity (PTE) taxes
    - At this point, this approach has not been disallowed by the IRS

# 2019 Developments
## The rise of pass-through entity tax regimes

- General operation of PTE taxes
    - Attempt to preserve deductibility of state and local taxes
    - Designed to shift the tax on PTE income from the owner to the entity
        - The entity is allowed to deduct its state and local income taxes as a tax on the business at the federal level
        - This is followed by a deduction for the PTE tax on the distributive share of the owners' income
        - The owner is permitted to claim a credit on his or her state income tax return for the amount of the owner's distributive share of the tax paid by the PTE

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# 2019 Developments
## The rise of pass-through entity tax regimes

- In June 2018, Connecticut became the first state to enact a PTE tax
  - This is the only state that has enacted a PTE tax that is mandatory
- In Dec. 2018, Wisconsin became the first state to enact an ***elective*** PTE (S.B. 883)
- In April 2019, Oklahoma enacted an elective PTE tax for tax years beginning on or after Jan. 1, 2019 (H.B. 2665)
- In June 2019, Louisiana enacted an optional PTE tax that is effective for tax years beginning on or after Jan. 1, 2019 (S.B. 223)
- In July 2019, Rhode Island enacted an optional PTE tax for tax years beginning on or after Jan. 1, 2019 (H.B. 5151)

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# 2019 Developments
## U.S. Supreme Court decides *Kaestner Trust*

- Unanimous decision on June 21, 2019 in *North Carolina Department of Revenue v. The Kimberly Rice Kaestner 1992 Family Trust*
    - Can a state tax a trust on its undistributed income when the only connection between the trust and the taxing state is the residency of its beneficiaries?
- In 2018, the North Carolina Supreme Court held that the state's imposition of income tax on a trust based solely on the North Carolina residence of the beneficiaries was unconstitutional because it violated the Due Process Clause

# 2019 Developments

## U.S. Supreme Court decides *Kaestner Trust*

- U.S. Supreme Court held that North Carolina could not tax a trust's undistributed income based solely on the fact that the trust's contingent beneficiaries were North Carolina residents
- Residence of trust beneficiaries in North Carolina did not supply the minimum connection necessary to uphold the state's tax
  - In-state beneficiaries did not receive any trust income during the tax years in question
  - Beneficiaries had no right to demand the trust income or otherwise control, possess, or enjoy the trust assets
  - Beneficiaries could not depend on receiving any specific amount of trust income in the future

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# 2019 Developments
## Widespread adoption of marketplace facilitator nexus provisions

- Several states have interpreted *Wayfair* broadly enough to apply to marketplace providers or facilitators whose online marketplaces serve as a forum for retailers to market and sell their products and services
  - “Marketplace provider” not well-defined
  - Who is responsible for the sales tax when both the remote seller and the marketplace provider meet the thresholds?
  - The application of *Wayfair* beyond the parties in the transaction
  - Administrative challenges, including sales tax collection, remittance, compliance, audits, etc.
  - Documentation questions for sales made directly to customers by a remote seller versus those through a marketplace

# 2019 Developments

## Adoption of sales tax economic nexus standards by local taxing authorities

- Several states, including Alaska, Alabama, Colorado and Louisiana, grant their local jurisdictions "home rule" authority to impose and administer their own sales and use taxes at the local level
- Certain Alaska municipalities have acted to extend application of the *Wayfair* nexus standards to local sales taxes
  - Nome, Alaska began requiring remote sellers and marketplace facilitators with at least $100,000 in sales or 100 separate transactions to collect and remit sales tax beginning in Sep. 2019
  - Separately, a group of 15 Alaska localities formed the Alaska Remote Seller Sales Tax Commission – Agreed to implement economic nexus thresholds of at least $100,000 in sales or 200 separate transactions

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# 2019 Developments
## Further adoption of market-based sourcing

- During 2019, several states enacted market-based sourcing legislation
  - For tax years beginning after Dec. 31, 2019, Hawaii adopts market-based sourcing for purposes of apportioning income from sales other than sales of tangible personal property (TPP) (S.B. 394)
  - Retroactively effective to Jan. 1, 2019, Indiana codifies market-based sourcing for sales other than TPP not specifically allocated to Indiana for most industries (S.B. 563)
  - For taxable periods ending on or after Dec. 31, 2021, New Hampshire adopts market-based sourcing for sales other than TPP for both the business profits tax (BPT) and business enterprise tax (BET) (H.B. 4)

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# 2019 Developments
## Further adoption of market-based sourcing

- During 2019, several states enacted market-based sourcing legislation
  - For tax years beginning on or after Jan. 1, 2020, New Mexico has enacted market-based sourcing for sales of items other than TPP (H.B. 6)
  - For tax years beginning on or after Jan. 1, 2020, North Carolina has enacted market-based sourcing for sales other than TPP (S.B. 557)
    - For certain taxpayers with state net loss carryforwards into the taxable year, an election may be made on the 2020 tax return to continue using the income-producing activity methodology instead
  - On June 10, 2019, Vermont adopted market-based sourcing (H.B. 514)
    - Effective Jan. 1, 2020, sales, other than sales of TPP, are in Vermont if the taxpayer's market for the sale is in the state
    - For the sale of a service, a taxpayer's market for the sale is in Vermont if and to the extent the service is delivered to a location in the state

# 2019 Developments
## Combined reporting expanded and clarified

- Legislative adoption somewhat muted during 2019
- On April 4, 2019, New Mexico enacted major tax legislation adopting mandatory combined reporting (H.B. 6)
    - For tax years beginning on or after Jan. 1, 2020, affiliated corporations that are part of a unitary group will be subject to mandatory unitary combined reporting
    - Combined reporting applies to corporations with more than 50% common ownership, where there is a common corporate parent
    - Unitary group is defined as two or more corporations that are commonly owned and economically interdependent, as evidenced by centralized management, functional integration and economies of scale

# 2019 Developments
## Combined reporting expanded and clarified

- Kentucky enacted legislation during 2019 clarifying certain provisions of its 2018 legislation adopting mandatory combined reporting for members of a unitary group, effective for tax years beginning on or after Jan. 1, 2019
  - Restricts the scope of “tax haven” countries
  - Clarifies the use of NOLs among members
  - Further describes what entities are included in the combined group
  - Provides publicly traded corporations with a deferred tax deduction that offsets the impact of combined reporting changes for financial statement reporting

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# 2019 Developments
## Combined reporting expanded and clarified

- New Jersey Division of Taxation released considerable guidance regarding its combined reporting requirements enacted during 2018 which apply to tax years ending on or after July 31, 2019
    - Inclusion/exclusion of business entities in a combined group and minimum tax of a combined group member
    - Exclusion of the double inclusion of GILTI and the treatment of related party addbacks
    - Combined group filing methods
    - Sharing of tax credits among combined group members
    - Banking corporations and combined returns
    - Unitary business principle and combined returns

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# 2019 Developments
## Adoption of the Oregon CAT

Effective for years beginning on or after Jan. 1, 2020, Oregon has adopted a Corporate Activity Tax (CAT) (H.B. 3427, H.B. 2164)

- $250 plus 0.57% tax on corporate activity in excess of $750,000
- Imposed on “persons” with “substantial nexus” conducting commercial activity in the state
- Unitary combined filing requirement
- Imposed in addition to other Oregon taxes (corporate net income/excise tax and gross-receipts minimum tax)

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# 2019 Developments
## Adoption of the Oregon CAT

Technical corrections bill

- Modified the definition of persons excluded from the CAT
- Additional guidance for financial institutions & insurers
- Clarified the inclusion or exclusion of certain cost inputs and certain receipts from the tax base
- Provided a new exclusion for labor cost payments made to specified contractors

The CAT is imposed on each “person” with substantial nexus AND commercial activity for the privilege of doing business in Oregon

Unitary combined filing requirement for persons who are part of a unitary group AND subject to the Oregon CAT

# 2019 Developments
## Adoption of the Oregon CAT

The Oregon CAT is imposed upon persons with “substantial nexus” with Oregon. “Substantial nexus” exists if any of the following applies:

- Owns or uses a part or all of its capital in Oregon,
- Holds an authorization to do business from the Oregon Secretary of State,
- Resident of Oregon,
- Domiciled in Oregon, or
- Has a bright-line presence in Oregon

Protections afforded by P.L. 86-272 do not apply

# 2019 Developments
## Adoption of the Oregon CAT

A person has a bright-line presence in Oregon for CAT purposes if any of the following applies in a given year:

- Oregon property ≥ $50,000;
- Oregon payroll ≥ $50,000; or
- Commercial activity (i.e., receipts before deductions) sourced to Oregon ≥ $750,000, or
- At least 25% of total property, total payroll or total commercial activity sourced to Oregon at any time during the calendar year

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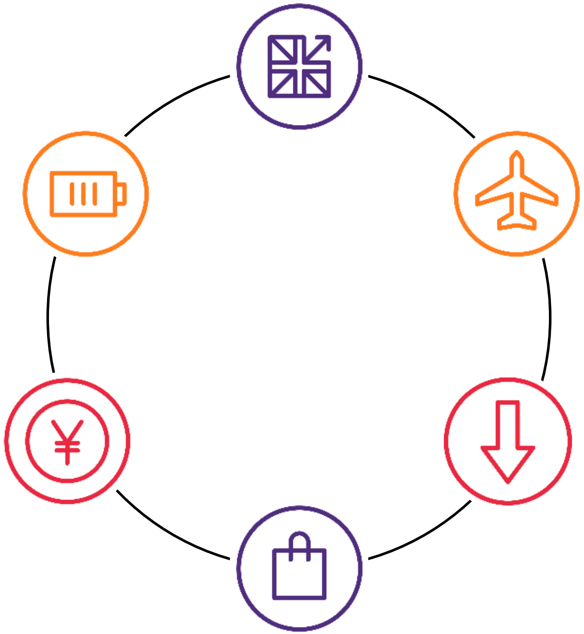
# Evaluation of 2019 Predictions



# 2019 Predictions

1. Sales tax nexus litigation
2. Marketplace facilitator legislation
3. Adoption of economic nexus standards by local jurisdictions
4. Economic nexus provisions beyond sales tax
5. Decoupling from federal tax reform provisions

# 2019 Predictions

6. State-specific tax reform
7. Partnership reporting and payment procedures
8. Local headcount taxes
9. Corporate income tax extended filing deadlines
10. Sports gambling taxes



# Evaluation of 2019 Predictions

## Sales tax nexus litigation

- **At least three court decisions will reference pre-*Wayfair* nexus controversies**
  - Prediction verified
  - Massachusetts – *Blue Nile LLC v. Harding*: taxpayer challenged a 2017 regulation requiring retailers without a physical presence to collect/remit sales tax – court dismissed on procedural grounds
  - Ohio – *Greenscapes Home & Garden Products, Inc. v. Testa*: out-of-state corporation subject to Ohio Commercial Activity Tax (CAT), having exceeded $500,000 gross receipts factor
  - Michigan (*Apex Laboratories*), New Jersey (*Stanislaus Food Products*) and Maryland (*ConAgra Foods*) – Income/business tax cases discussing *Wayfair*

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# Evaluation of 2019 Predictions

## Marketplace facilitator legislation

- **At least seven states will enact marketplace facilitator legislation imposing economic nexus thresholds**
  - Prediction verified
  - *Wayfair* did not address application of decision to marketplace providers/facilitators – growing state interest to adopt such provisions
  - Over 25 states adopted marketplace facilitator provisions in 2019, most having done so legislatively
  - Over 40 states adopted marketplace legislation by end of 2019, with additional provisions to become effective by early 2020
  - Challenge for taxpayers: lack of uniformity across the states as to applicability, compliance with varying state definitions

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# Evaluation of 2019 Predictions

## Adoption of economic nexus standards by local taxing jurisdictions

- **At least five self-administered local jurisdictions will adopt sales tax economic nexus provisions, but no state will move to require state-level administration of such jurisdictions**
  - Prediction verified
  - Nome, Alaska: adopted economic nexus threshold of $100k in sales or 100 separate transactions into Alaska
  - Alaska localities formed the Alaska Remote Seller Sales Tax Commission, adopted uniform remote seller sales tax code with uniform thresholds of $100k in sales or 200 transactions in Alaska – adoption expected in 2020
  - No state took over state-level administration of locally-administered sales taxes

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# Evaluation of 2019 Predictions

## Economic nexus provisions beyond sales tax

- **At least three additional states will adopt economic nexus provisions for corporate income / gross receipts taxes in response to *Wayfair***
  - Prediction verified
  - Four states enacted bright-line economic nexus standards through various methods:
    - Hawaii corporate income tax – $100k in sales / 200 transactions (legislation)
    - Pennsylvania corporate net income tax – $500k sales threshold (departmental bulletin)
    - Massachusetts corporate excise tax – $500k sales threshold (amended regulation)
    - Texas franchise tax – $500k sales threshold (amended regulation)
  - Localities: Philadelphia Business Income & Receipts Tax – $100k in sales (regulation)

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# Evaluation of 2019 Predictions

## Decoupling from federal tax reform provisions

- **By the end of 2019, more states will have decoupled from the IRC Sec. 163(j) limitation than the GILTI inclusion**
  - Outcome of prediction was inconclusive
  - By one measure, the prediction literally did verify, as approximately one-quarter of the states have specifically decoupled from Sec. 163(j), while slightly fewer states have technically decoupled from GILTI
  - However, many states used corresponding offsets and/or deductions, resulting in these states effectively decoupling from the GILTI inclusion

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# Evaluation of 2019 Predictions

## State-specific tax reform

- **At least three states will decide to engage in state-specific tax reform going well beyond addressing federal conformity and *Wayfair***
  - Prediction verified
  - Illinois – enacted legislation gradually repealing franchise tax, increasing corporate income tax rate and adopting graduated personal income tax rates (with voter approval to amend Illinois constitution), providing for tax amnesty
  - Oregon – legislation added the Commercial Activity Tax (CAT) beginning with the 2020 tax year
  - New Mexico – legislation implemented mandatory combined reporting, market-based sourcing, gross receipts tax economic nexus standard

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# Evaluation of 2019 Predictions

## Partnership reporting and payment requirements

- **At least five additional states will adopt partnership reporting and payment procedures for adjustments following federal audits**
  - Prediction did not verify
  - Bipartisan Budget Act of 2015 designed to shift burden of assessing tax after a partnership-level audit adjustment from IRS to partnerships
  - Only Oregon and West Virginia adopted the new federal partnership audit provisions
  - Multistate Tax Commission approved model statute for reporting adjustments to federal taxable income/federal partnership audit adjustments – query whether states will adopt MTC model statute in 2020

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# Evaluation of 2019 Predictions

## Local headcount taxes

- **At least five jurisdictions (and at least one “major” municipality) will adopt a headcount tax designed to address a specific need**
  - Prediction did not verify
  - No headcount taxes of note enacted in 2019
  - Notable local action in this area in 2018, with headcount taxes enacted in Seattle, WA (later repealed), San Francisco, CA and Mountain View, CA – all cities with thriving tech sectors
  - Mountain View, CA – modified headcount tax in Oct. 2019 to incorporate progressive rate structure

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# Evaluation of 2019 Predictions

## Corporate income tax extended filing deadlines

- **At least five states will recognize the need for corporate income tax filing date changes by enacting legislation to move state corporate extended filing due dates to at least 30 days beyond the federal due date**
  - Prediction did not verify
  - However, some states acted to extend filing deadlines and/or provide penalty relief through either legislative or administrative action:
    - Delaware and New Jersey – granted blanket 30-day extensions to 11/15 for 2018 tax year only
    - California and Kentucky – granted permanent automatic seven-month extensions beginning with the 2019 tax year
    - Alabama, Mississippi, North Carolina and Utah – granted penalty relief for returns filed by 11/15 on a case-by-case basis

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# Evaluation of 2019 Predictions

## Sports gambling taxes

- **In the area of "sin" taxes, at least four states will adopt a tax on sports gambling**
  - Prediction verified
  - Eight states approved sports betting and taxation, joining 12 other states + District of Columbia since U.S. Supreme Court's 2018 decision in *Murphy v. NCAA* (invalidating federal law prohibiting expansion of sports betting beyond Nevada and three other states)
  - States include: Colorado, Illinois, Indiana, Iowa, Michigan, New Hampshire, North Carolina (tribal lands only) and Tennessee
  - Range of tax rates: 6.75% of gross revenue in Iowa to 51% of gross revenue in New Hampshire (monopoly grant to DraftKings – all revenue remitted to lottery fund)

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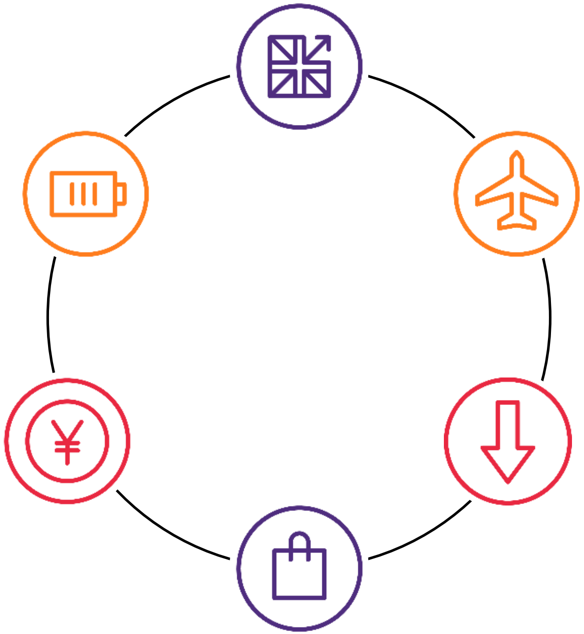
# 2020 Predictions



# 2020 Predictions

1. Continuing state responses to federal tax reform
2. Continuing state reaction to *Wayfair*
3. Ongoing development of income tax economic nexus provisions
4. Adoption of additional pass-through entity tax regimes
5. U.S. Supreme Court SALT litigation

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# 2020 Predictions

6. Down the ballot in 2020: The Illinois constitutional amendment referendum
7. Reclassification of workers from independent contractors to employees
8. Renewed focus on market-based sourcing litigation
9. Enactment of income tax reductions tied to revenue
10. More gross receipts taxes?

# 2020 Predictions

## Continuing state responses to federal tax reform

- **At least three additional states will affirmatively decouple from the IRC Sec. 163(j) interest deduction limitation. Also, at least four states will clarify the apportionment treatment of GILTI.**
  - The most significant TCJA provisions concerning states at this point seem to be the treatment of the business interest expense deduction limitation under IRC Sec. 163(j) and the international tax provisions, including GILTI and FDII
  - There appears to be a state trend of decoupling from the IRC Sec. 163(j) limitation
  - Of the states that have decided to include GILTI, some of the states have not clarified the proper apportionment treatment of this income

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# 2020 Predictions

## Continuing state reaction to *Wayfair*

- **Given the post-*Wayfair* activity in 2019, this trend will continue with: (i) enactment of marketplace provider standards in at least three additional states; (ii) enactment of changes to marketplace facilitator / provider laws to achieve further uniformity in at least three additional states (in line with MTC / NCSL standards); and (iii) removal of transactional thresholds from sales tax economic nexus standards in at least three additional states.**
    - While the states continued to adopt marketplace facilitator legislation in 2019, uncertainties remain due to the lack of uniformity concerning who is considered a marketplace facilitator, and whether the marketplace or the seller has the primary sales tax collection responsibility

# 2020 Predictions

## Ongoing development of income tax economic nexus provisions

- **Given the states' appetite to extend *Wayfair* beyond sales tax nexus starting in 2019, at least four more states will adopt an economic nexus threshold for income tax via legislation, regulation or administrative action.**
  - While *Wayfair* eliminated the physical presence standard for sales tax, the states quickly began to apply this position to corporate income tax, interpreting this decision to stand for the proposition that physical presence is not required to impose other state taxes
  - In 2019, Hawaii, Massachusetts and Pennsylvania adopted an economic nexus standard for corporate income tax, while Texas has done the same for its franchise tax

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# 2020 Predictions

## Adoption of additional pass-through entity tax regimes

- **At least three additional states will enact legislation establishing optional PTE taxes as a workaround to the $10,000 SALT deduction limitation.**
  - Some states have enacted legislation in response to the change made by the TCJA that limits the amount of state and local taxes that individuals may deduct for federal income tax purposes
  - In 2018, Connecticut enacted a mandatory PTE tax in an effort to mitigate the impact of this limitation
  - Several other states, including Louisiana, Oklahoma, Rhode Island and Wisconsin, subsequently enacted elective PTE taxes

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# 2020 Predictions

## U.S. Supreme Court SALT litigation

- **During 2020, the U.S. Supreme Court will grant *certiorari* to revisit the issue of fair apportionment as applied to individual income tax.**
  - The U.S. Supreme Court considered high profile state tax nexus issues with the *Wayfair* and *Kaestner Trust* decisions during each of the two previous years
  - The Utah Supreme Court rejected a lower court's determination that the state treatment of foreign business income violated the foreign Commerce Clause
  - This seems to be the first time that a state high court has chosen to completely depart from using the external consistency test based on its interpretation of the U.S. Supreme Court's *Wynne* decision

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# 2020 Predictions

## Down the ballot in 2020: The Illinois constitutional amendment referendum

- **Because the constitutional amendment allowing the imposition of a graduated personal income tax rate would enable the Illinois legislature to substantially increase the tax rate for many taxpayers, the voters will not approve the amendment.**
  - In June 2019, Illinois enacted legislation that would change the current flat personal income tax rate to a graduated rate structure if voters approve a constitutional amendment at the Nov. 2020 general election
  - Personal income tax currently is imposed at a flat rate of 4.95%
  - For tax years beginning on or after Jan. 1, 2021, the graduated rates would range from 4.75% to 7.99%
  - Tax rate would substantially increase for income over $250,000

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# 2020 Predictions

## Reclassification of workers from independent contractors to employees

- **At least two states will enact independent contractor reclassification laws as a means to address ride-sharing business practices.**
  - In an effort to protect ride-sharing drivers and other gig economy workers, California enacted legislation in Oct. 2019 that made it more difficult for gig economy employers to classify workers as independent contractors
  - New law reclassifies vast numbers of independent contractors meeting certain criteria as employees
  - Other states are likely to follow California's lead in this area

# 2020 Predictions

## Renewed focus on market-based sourcing litigation

- **At least two significant decisions addressing the calculation of market-based sourcing will be released in 2020.**
  - Sales factor sourcing issues continue to remain a general point of focus for taxpayers
  - Several years have passed since the MTC's 2017 adoption of amendments to its model regulations to reflect the implementation of market-based sourcing
  - Shift to market-based sourcing has continued to evolve over the past several years
  - Taxpayers and taxing authorities have likely reached a point where many affected returns are coming up for audit

# 2020 Predictions

## Enactment of income tax reductions tied to revenue

- **At least two states will legislatively adopt income tax rate reductions tied to state revenue measures during 2020.**
  - Florida is lowering corporate income and franchise tax rate because state revenue exceeded projections
  - New Hampshire has enacted a triggering mechanism, under which the BPT and BET rates would be reduced based on tax revenue collected
  - As states generally continue to enjoy the benefit of a strong economy and positive financial impact from the TCJA, they will endeavor to share with their constituents

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# 2020 Predictions

## More gross receipts taxes?

- **In an effort to raise revenue, at least one state will follow Oregon’s lead and adopt a gross receipts tax.**
  - Although many states are enjoying economic prosperity, several are not
  - Corporate income taxes have long been criticized for their revenue volatility
  - States such as Ohio and Texas have successfully turned to gross receipts taxes as a more steady revenue source
  - Most recently, Oregon adopted a Corporate Activity Tax that became effective on Jan. 1, 2020

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# Any final questions?

Q&A

 

# Speakers

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