

**GILMORE BELL**

---

MISSOURI MUNICIPAL LEAGUE  
2019 ANNUAL CONFERENCE

**Finding Our Way After *Wayfair*:  
Use Taxes & Missouri**

Presented by:  
Erick Creach  
GILMORE & BELL, P.C.  
211 North Broadway  
Suite 2000  
St. Louis, Missouri 63102  
Phone: 314-436-1000

0

---

---

---

---

---

---

---

---

**The Basics**

**Sales Tax**



**Use Tax**



**GILMORE BELL**

1

---

---

---

---

---

---

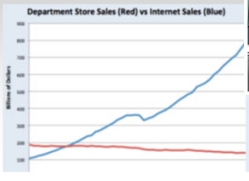
---


---

**Why Do We Care?**

Internet Retail Sales 2000-2018

Department Store Sales (Red) vs Internet Sales (Blue)





**GILMORE BELL**

2

---

---

---

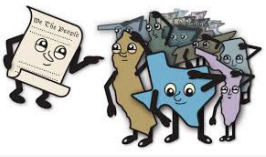
---

---

---

---

---



What power do the states have to tax these online sales?

GILMORE BELL

3

---

---

---

---

---

---

---

---

### Pre-Wayfair Status Quo

- Physical Presence Standard
  - States cannot impose a sales or use tax collection obligation on a retailer that lacks a physical presence in the state
- Key Inquiry:
  - Whether activities in the state allow a retailer to establish or maintain a market in the state

GILMORE BELL

4

---

---

---

---

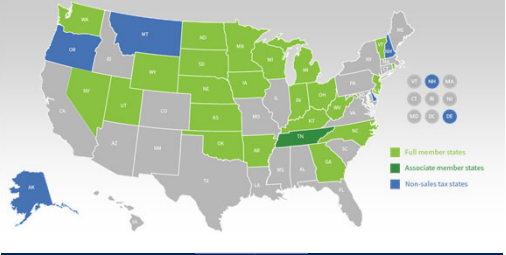
---

---

---

---

### SSUTA: Streamline Sales & Use Tax Agreement



GILMORE BELL

5

---

---

---

---

---

---

---

---

## Amazon Laws

- Create rebuttable presumption of “physical presence” in the state
- New York Law (2008)
  - \$10,000 or more “click-through” sales involving New York companies in 3 calendar quarters



GILMORE BELL

6

6

---

---

---

---

---

---

---

---

CNN BUSINESS Markets Tech Media Success Perspectives Video

### Amazon to start collecting state sales taxes everywhere

by Chris Isidore @CNNTech  
March 29, 2017, 2:59 PM ET

**The holiday is over: Amazon will collect sales taxes nationwide on April 1**

PUBLISHED FRI, MAR 24 2017 - 3:12 PM EDT | UPDATED FRI, MAR 24 2017 - 3:39 PM EDT

**In April 2017, Amazon begins collecting sales taxes in every state.**

GILMORE BELL

7

7

---

---

---

---

---

---

---

---

## South Dakota v. Wayfair

### South Dakota Statute

- Does not follow Amazon law approach
- Retailer must collect tax if \$100,000 of sales or 200 or more separate sales transactions into South Dakota in current or preceding calendar year



GILMORE BELL

8

8

---

---

---

---

---


---

---

---

## *South Dakota v. Wayfair*

- Physical presence standard is overruled
- Our new standard is “purposeful availment”
  - “Economic nexus”



“OK, heads, it's sustained. Tails, overruled.”

GILMORE BELL

9

---

---

---

---


---

---

---

---

## *South Dakota v. Wayfair*



**Three Factors in South Dakota's Favor**

1. Safe harbor for de minimis sellers
2. No retroactive application
3. South Dakota is a member of SSUTA

GILMORE BELL

10

---

---

---

---

---

---

---

---

## *Wayfair* in Missouri

Unsuccessful attempts were made in both the 2018 and 2019 legislative sessions to adopt economic nexus bills

GILMORE BELL

11

---

---

---

---

---


---

---

---

## Barriers to Economic Nexus in Missouri

- MO not part of SSUTA
- MO Sales Tax Regime
- MO Number of Taxing Jurisdictions



**GILMORE BELL**

12

---

---

---

---

---

---

---


---

---

---

## Use Tax Elections

|                       |                     |
|-----------------------|---------------------|
| <b>Successful</b>     | <b>Unsuccessful</b> |
| Cape Girardeau County | Columbia            |
| Perryville            | Boone County        |
| Perry County          | Jackson County      |
| Bollinger County      |                     |



**GILMORE BELL**

13

---

---

---

---

---

---

---

---

---

---

## What Missouri Voters are Thinking

Nope, nope nope! I'll pay taxes for purchases made at local businesses and I sometimes shop local even when I could get it cheaper on Amazon but I'm against taxing internet purchases. Let's encourage local business development and stimulate our local economy. Instead of ignoring our local economic growth just to grab an easy tax buck!

Like Reply Ty

No way!! That is crazy!! Yes let's do whatever we can to promote our local and especially our small businesses do not tax me or anyone because they chose to shop online or however to obtain the things they are looking for!

Like Reply Ty

I would vote no, unless they are tracking your internet use how would they know what you buy? Plus this will tax everything purchased from Amazon, Walmart so not I purchase items from Walmart that is in Texas and not available in Missouri already they put sales tax on it now would have to pay more sales tax.

Like Reply Ty

vote no make our governments be more responsible on how they spend their money

Like Reply Ty

"NO" I shop Amazon for items I can't purchase in town.

Like Reply Ty

**GILMORE BELL**

14

---

---

---

---

---

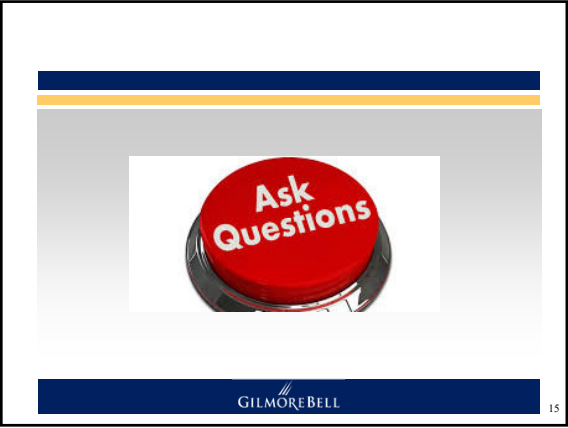
---

---

---

---

---



---

---

---

---

---

---

---

---