

# Gary Botwinick Quoted In "New Jersey Looks For A Sales Tax Boost From Wayfair" In The BondBuyer

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[The Bond Buyer](#), October 19, 2018

This holiday retail season could provide cash-strapped New Jersey with a Christmas gift of more than \$300 million of new annual revenue thanks to a new state tax law set to take effect Nov. 1.

Gov. Phil Murphy signed [legislation](#) in early October requiring most remote sellers and online marketplace facilitators to collect sales taxes that are remitted to state coffers.

The policy change will be in place in time for Black Friday retail sales. It was enacted after the U.S. Supreme Court's [landmark decision](#) in June in South Dakota v. Wayfair. The case determined that states have a right to require the collection of taxes from companies who sell products within the state even if they have no physical presence there.

"This will help provide parity among brick-and-mortar businesses and online marketplaces and provide the state with needed revenue," Assemblymen John Burzichelli, D-Paulsboro, said in a statement. "Online marketplaces have made it easier for interstate and international commerce, allowing many businesses to circumvent state sales tax requirements."

The federal Government Accountability Office estimated in a [2017 report](#) that New Jersey would net between \$216 million and \$351 million a year from an online sales tax. In anticipation of the internet tax becoming law, state lawmakers estimated \$212 million of revenue for the 2019 fiscal year budget signed by Murphy in early July, according to an Aug. 30 Moody's Investors Service credit analysis on New Jersey.

"Any additional revenue that the state can generate is always good for the budget," said Moody's analyst Baye Larsen. "Every incremental new dollar certainly benefits."

The Wayfair decision has spurred tax law reviews in many of the 45 states, plus the District of Columbia, that collect sales taxes.

The online sales tax revenue boost will aid New Jersey in tackling structural budget challenges that combined with a steep pension burden have triggered credit woes.

New Jersey has the second lowest-rated general obligation bonds among U.S. states at A3 by Moody's, A-minus by S&P Global Ratings and A by Fitch Ratings and Kroll Bond Rating Agency, after experiencing 11 credit rating downgrades between 2011 and 2017 under former Gov. Chris Christie.

Amazon has been collecting sales tax on items it sells directly in New Jersey [since 2013](#). The new law adds requirements for "marketplace facilitators," meaning Amazon and online sellers such as eBay will be required to collect taxes for third-party "marketplace" sellers that use their platforms.

New Jersey's online sales tax measure gives discretion to the state's director of taxation to temporarily suspend or delay the collection of a marketplace facilitator for a period not exceeding 180 days in an effort to assure an accurate and timely collection of taxes due.

"The fact that they are not physically located in New Jersey should not exempt a business from sales tax and use requirements," said Assemblyman Paul Moriarty, D-Washington Township, who co-sponsored the bill with Burzichelli. "These businesses should play by the same rules as other New Jersey businesses who pay property taxes, local taxes and make an investment in the communities they're in."

The new law requires online retailers and marketplace providers like Amazon to collect sales taxes and turn the revenue over to Trenton if they achieve gross revenues above \$100,000 or if they have more than 200 yearly in-state transactions. The threshold is copied directly from the South Dakota law that passed Supreme Court muster in Wayfair.

The same 6.625% sales tax rate that is levied on in-person sales will now apply to remote transactions. The legislation does however provide an exemption for online travel agencies, who will not be mandated to collect and pay sales taxes or be subject to a hotel tax on their platforms.

New Jersey reduced its sales tax from 7% in 2016 as part of a \$16 billion, eight-year renewal agreement for the state's Transportation Trust Fund struck by former Republican Gov. Chris Christie and the Democratic legislature. The lowered sales tax rate along with a decision to phase out the estate tax is projected to cost the state \$505 million of general fund revenue in 2019 and more than \$1 billion by 2021.

"The sales tax rate reduction has offset a lot of the underlying sales tax growth they otherwise would have gotten," said Larsen, who noted that only 30% of New Jersey's total revenues is comprised from sales taxes. "The new internet-based taxes will help offset a lot of those losses."

The New Jersey Department of Treasury reported on Oct. 15 that year-to-date sales tax collections of \$1.574 billion are up 1.7% from the same period a year ago. If not for the rate reduction, underlying growth in the sales tax through September would be 5.5%, according to state officials. The state's 2019 sales tax target assumes 6.2% growth when factoring in new receipts flowing from the tax on remote sales.

Tax attorney Gary Botwinick, a partner at Einhorn, Barbarito, Frost & Botwinick, PC in Denville, New Jersey, said the new legislation is a positive economically for New Jersey and will also likely add increased traffic to state's retail stores because they will be better positioned to compete with online platforms. Botwinick said online retailers may also decide to now set up shop in New Jersey because of the state's huge population density, transportation hubs and wealth in order to save shipping costs.

"Beyond the additional revenue New Jersey will now get, I think this will have an effect in other ways that are more meaningful," said Botwinick. "It was unfair for brick-and-mortar stores to be at a competitive disadvantage against online retailers selling into New Jersey."

Larsen said that while traditional New Jersey businesses may get a boost, there are multiple reasons why many consumers opt for online ordering which could mute much of a trickle-down revenue effect on state finances. She also cautioned that states in general can be subject to over-estimating a new tax's impact during its first year of operation before logistics are in order with enforcement.

“With the implementation of any new tax there is always implementation risk in that first year,” she said. “With this being only half a percent of the total budget though, any potential surprise should be manageable.”

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