



The *Wayfair* Decision, Streamlined Sales Tax and Practical Tips for Dealing With Changes In Sales Tax Laws

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Agenda

- History of the Issue
- *Wayfair* Decision
- Streamlined Sales Tax
- Certified Service Providers
- Business considerations
- Q & A

History of the Issue

- ▶ *Quill v. North Dakota* (1992)
- ▶ Compliance with sales tax laws by multi-state corporations is too complex
- ▶ Local merchants suffer from lack of level playing field
- ▶ Significant losses of tax revenue due to growth in electronic commerce and inability of states to administer use tax with consumers

Federal Legislation: Intent of the Proposals

- ▶ Provide states with sales and use tax collection authority over businesses making remote sales into their state
- ▶ Require states to enact a minimum level of simplification
- ▶ Protect small businesses
- ▶ Establish a framework for software providers to provide remote sellers what they need to calculate and file returns in states where they are remote sellers

State Legislative Activity

States were enacting three primary options:

- ▶ Notice and reporting requirements
- ▶ Nexus expansion provisions to increase the scope of “doing business” language
- ▶ Marketplace collection/reporting provisions

The Wayfair Decision

South Dakota v. Wayfair – What the Court Held

- ▶ U.S. Supreme Court (June 21, 2018)
 - ▶ Overturned a physical presence requirement for sales/use tax
 - ▶ “Economic and virtual presence” test
 - ▶ Only addressed the first prong of *Complete Auto*’s (1977) four prong test – the prong that requires a taxpayer have “substantial nexus with the taxing state”
 - ▶ South Dakota’s \$100,000 in sales or 200 transactions held by the Court to be sufficient because “the seller availed itself of the substantial privilege of carrying on a business in South Dakota”

South Dakota v. Wayfair – What the Court Did Not Hold

- ▶ The Court did not rule on the constitutionality of other states' remote seller collection laws
- ▶ The Court did not rule on the constitutionality of South Dakota's law;
 - ▶ The Court remanded the case back to South Dakota to address “whether some other principle in the Court's Commerce Clause doctrine might invalidate [South Dakota's law]”
 - ▶ The Court noted these issues were not litigated or briefed; the Court did not resolve them
- ▶ Settled with South Dakota

South Dakota v. Wayfair - Guidance

- ▶ The Court noted three features about South Dakota's law that appeared to be designed to prevent discrimination against or undue burdens upon interstate commerce:
 - ▶ Transactional Safe Harbor;
 - ▶ No retroactive application; and
 - ▶ Membership in the Streamlined Sales and Use Tax Agreement (SSUTA)

South Dakota v. Wayfair - Guidance

- ▶ Specific Items Noted in *Wayfair* Decision Related to Streamlined Sales Tax:
 - ▶ Standardizes taxes to reduce administrative and compliance costs
 - ▶ Single state level administration
 - ▶ Uniform definitions of products and services
 - ▶ Simplified tax rate structures
 - ▶ Other uniform rules
 - ▶ Access to sales tax administration software paid for by the state
 - ▶ Sellers who choose to use such software are immune from audit liability



Streamlined Sales Tax

Streamlined's Goals

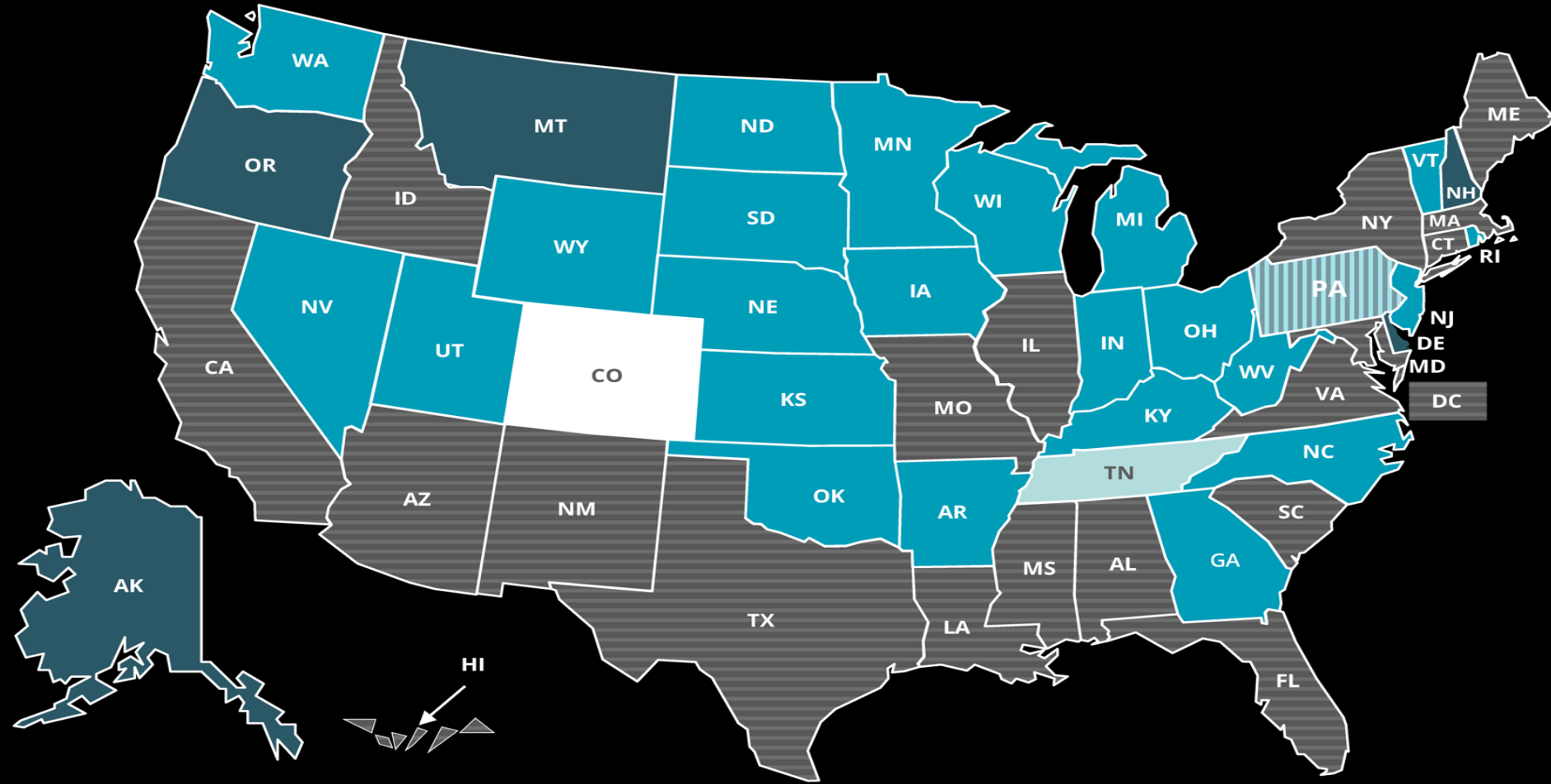



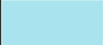
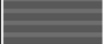
- ▶ Create a simpler system for administering the various state and local sales taxes
- ▶ At least make processes uniform if they cannot be made simple
- ▶ Balance the interests of a state's sovereignty with the interests of simplicity and uniformity
- ▶ Leverage the use of technology to ease the retailer's tax collection and reporting




Who We Are

- ▶ Voluntary Association of States
 - ▶ State legislators
 - ▶ Tax administrators
- ▶ Local Government Officials
 - ▶ U.S. Conference of Mayors (USCM)
 - ▶ Government Finance Officers Association (GFOA)
 - ▶ National League of Cities (NLC)
- ▶ Business Community

STREAMLINED STATE STATUS 07-01-2019



-  Full Member States
-  Associate Member States *flex to full*
-  Advisory States *not conforming*

-  Non-sales Tax States
-  Project States *not advisory*
-  Non-participating State

Results: Streamlined Sales and Use Tax Agreement (SSUTA)

- ▶ SSUTA effective October 1, 2005
- ▶ Current membership (9/1/2018)
 - ▶ 23 Full members
 - Arkansas, Georgia, Kansas, Kentucky, Indiana, Iowa, Michigan, Minnesota, Nebraska, New Jersey, Nevada, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota, Utah, Vermont, Washington, West Virginia, Wisconsin, Wyoming
 - ▶ 1 Associate member
 - Tennessee

Key Features of SSUTA

- ▶ State level administration of local sales and use taxes
- ▶ Common state and local tax bases within a state
- ▶ Uniform destination-based sourcing rule for goods and services
- ▶ States can choose origin sourcing for intrastate delivered products

Key Features of SSUTA

- ▶ One-stop central registration
- ▶ Uniform definitions
- ▶ Rate and boundary databases
- ▶ Taxability matrix
- ▶ Uniform returns
- ▶ Simplified exemption administration
- ▶ CSP Model

Streamlined Central Registration System

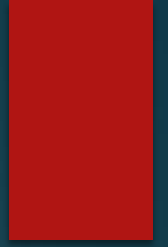
- ▶ Who should use?
 - ▶ Which States Participate?
- ▶ Benefits
 - ▶ Ease of Registering in Multiple States
 - ▶ No Cost to Sellers
 - ▶ Ease of Updating Registration Information

The “Certified Service Provider” (CSP)

▶ Who or what is a CSP?

A third party that allows sellers to outsource its sales tax compliance responsibilities

The “Certified Service Provider” (CSP)



- ▶ Uses a Certified Automated System (CAS)
 - ▶ Determines:
 - ▶ Taxability of transaction
 - ▶ State and local tax rates
 - ▶ Tax due to each jurisdiction
 - ▶ Generates and files returns
 - ▶ Makes required remittances
 - ▶ Meets other requirements set by SSTGB

The “Certified Service Provider” (CSP)

▶ Additional Benefits To Sellers of Using CSPs

- ▶ Sellers who have to collect tax in a Streamlined state solely because they exceed the state’s economic nexus requirements may use CSP’s at no cost in those states
- ▶ Seller makes a single automated payment for all remittances
- ▶ CSP distributes the money to appropriate jurisdictions
- ▶ CSP assumes responsibility for audit(s)

The “Certified Service Provider” (CSP)

▶ Benefits to States

- ▶ Upfront review of tax rules
- ▶ Confidence that proper rates are being charged
- ▶ Timely and electronic filing of returns
- ▶ Ongoing testing of system for accuracy
- ▶ No cost unless “volunteer” tax is collected and remitted

SST benefits - Avalara



REGISTRATION - Free registration in 24 states resulting in a single identification number for all states



RETURNS - Free return preparation and remittance



ACCURACY - Free sales tax calculations using certified tax codes, rates, and boundaries



AUDITS - Free personal audit liaison

SST Benefits

Who Qualifies for CSP Services?

- ▶ The classification is determined per SST state
- ▶ Major qualifications
 - ▶ No fixed place of business
 - ▶ Less than \$50,000 in payroll
 - ▶ Less than \$50,000 in property

Common questions

- ▶ Does being pre-registered in a state disqualify me from being a CSP Supported Seller? NO
- ▶ Does having the requirement to collect tax due to economic nexus disqualify me? NO
- ▶ Do you have to participate in all 24 states? NO

System and data requirements - Avalara

▶ System requirement

- ▶ Passing transactional information into Avalara's AvaTax System for accurate tax calculation
- ▶ Real time or imported

Best practice data requirements must

- map item codes to certified tax codes
- pass street level address
- pass invoice item description
- populate exemption certificate information in AvaTax prior to an exempt transaction being processed

Streamlined Activity

| Revenue Department Website | Remote Seller Compliance Date | Remote Seller Threshold | State Guidance for Remote Sellers | Notes | Streamlined Member State Information |
|----------------------------|-------------------------------|--|-----------------------------------|--|--------------------------------------|
| Indiana | 10/1/2018 | Gross revenue <i>exceeding \$100,000 or 200 or more</i> separate transactions in the previous calendar year or current calendar year. | Remote Seller | | IN |
| Iowa | 1/1/2019 | Gross revenue from sales of \$100,000 or more or 200 or more separate sales transactions in previous or current calendar year | Remote Seller | Additional Remote Seller Information | IA |
| Kansas | 10/1/2018 | Remote sellers with no physical presence in Kansas are required to collect and remit the applicable sales or use tax on sales delivered into Kansas. | | | KS |
| Kentucky | 10/1/2018 | Gross receipts of \$100,000 or more or 200 or more sales based on previous or current calendar year sales | Remote Seller | Additional Tax Answers for KY | KY |
| Maine | 7/1/2018 | Gross revenues from Maine sales of tangible personal property, products transferred electronically, or taxable services <i>exceeded \$100,000 or at least 200</i> separate transactions during the current or previous calendar year | Remote Seller | | |
| Maryland | 10/1/2018 | Gross revenue <i>exceeds \$100,000 or 200 or more</i> separate transactions during the previous or current calendar year | Remote Seller | | |

Streamlined Activity

- ▶ Uniform messaging
 - ▶ Impact of decision
 - ▶ Common questions
 - ▶ State contact information
 - ▶ ALL states

Streamlined Offerings to Non-Member States

- ▶ Use of Central Registration System
- ▶ CSP Contract
- ▶ Certifying CSPs
- ▶ Taxability Matrices
- ▶ Rate and Jurisdiction Databases



Dealing With Remote Sales Tax Changes

Common Businesses Impacted

- ▶ **e-Commerce Sellers**
- ▶ **Retail and Consumer Products**
- ▶ **Products Delivered Electronically**
 - ▶ Digital goods
 - ▶ Software/SaaS
 - ▶ Services

Questions Businesses Need to Ask

- ▶ Do I sell products in states where I am not registered?
- ▶ Do I ship products into states where I am not registered?
- ▶ Do I know which states have enacted economic nexus thresholds?
- ▶ Do I sell on a marketplace?

Risks of Not Taking Action

- ▶ Discovery by Department of Revenue
 - ▶ Tax, Interest and Penalties
- ▶ Use tax notification penalties
- ▶ Class action lawsuits
- ▶ Qui Tam lawsuits

Questions?