Dakota v. Wayfair, Inc. (June 21, 2018) shattered a long-standing physical presence rule that prevented states from imposing a sales tax collection obligation on out-of-state ...

Gail Cole • Jun. 24, 2019

Almost one year ago, the seminal United States Supreme Court ruling in South Dakota v. Wayfair, Inc. (June 21, 2018) shattered a long-standing physical presence rule that prevented states from imposing a sales tax collection obligation on out-of-state sellers. Now, as they strive to negotiate the new sales tax landscape, many states are turning to the Streamlined Sales and Use Tax Agreement (SST) for guidance. Accounting professionals and businesses therefore need to understand how Wayfair and SST intersect.

Wayfair recap

economic activity in the state, or economic nexus.

Wayfair didn't create a bright-line test like the physical presence rule to help states craft remote sales tax legislation. However, the court did highlight three aspects of South Dakota's sales tax system that appeared designed to prevent undue burdens upon interstate commerce. These are:

- South Dakota provides safe harbor for small businesses
- South Dakota can't retroactively enforce its economic nexus law
- South Dakota is a member of the SST

Safe harbor. The state provides an exception for small sellers. A business establishes economic nexus in South Dakota only if it crosses the economic nexus threshold, which is more than $100,000 in sales or at least 200 transactions in the state in the current or previous calendar year.

Prospective enforcement. South Dakota began enforcing economic nexus on November 1, 2018 — more than four months after the Wayfair decision — and it cannot apply the law retroactively.

SST. South Dakota is a member of the Streamlined Sales and Use Tax Agreement, meaning it's taken steps to simplify and modernize sales and use tax administration to reduce the burden of sales tax compliance, especially for remote sellers.

SST recap

Having been prevented from taxing remote sales on multiple occasions because of the complexity of state sales tax laws and the burdensome nature of sales tax compliance, 44 states came together in 2000 to undertake simplification measures. The result of their efforts is the Streamlined Sales and Use Tax Agreement.

The Agreement doesn't dictate what states can and can't tax or set specific rates.

- Uniform state and local tax bases
- Uniform sourcing rules for all taxable transactions
- Uniform tax base definitions and rules

As of May 2019, 24 states have adopted the above simplification measures: Arkansas, Georgia, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota, Tennessee (an associate member), Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming. All but one — Kansas — have also enacted economic nexus.

Convergence zone: Wayfair and SST

To avoid creating undue burdens upon interstate commerce, which could potentially be found to be discriminatory, most states are looking to the Wayfair ruling *and* SST as they develop remote sales tax legislation. Nonetheless, complexity abounds.

What states are taking away from Wayfair

Based on the Wayfair ruling, all states with economic nexus laws are allowing an exception for small sellers. However, these exceptions vary from state to state. In California and Texas, for example, the economic nexus threshold is $500,000. In Mississippi, it's $250,000 *and* systematic exploitation of the market. In Minnesota, it's 10 or more sales totaling more than $100,000 *or* at least 100 separate retail sales.

Furthermore, thresholds in each state are based on different sales. Colorado and the District of Columbia include exempt sales of goods and services in their thresholds; California and New Mexico do not. Some states include digital property, some services, and some only taxable tangible personal property.

As a result of Wayfair, most states are enforcing economic nexus on a prospective

It takes considerable effort to establish whether a business has economic nexus in a state in the first place. Once that's determined, the business needs to register with the tax department then commence collecting and remitting sales/use tax and filing returns according to state (and sometimes local) law.

This can be enormously impactful for companies hitting economic nexus thresholds in multiple states. SST member states strive to make it less so.

How SST can help

Any business may register through the SST to receive the benefits listed above in SST states, from consumer privacy protection to uniform sourcing rules and tax bases. Through the Streamlined Sales Tax Registration System (SSTRS), sellers can obtain the license or permit needed to collect and remit sales or use tax in all SST states, or in individual states on an as-needed basis.

Once registered, there are two paths forward: A business can manage most aspects of sales and use tax compliance itself or outsource the bulk of sales and use tax administration to a Certified Service Provider (CSP). The SST Governing Board has certified six service providers, including Avalara.

Those opting to self-manage sales and use tax benefit from the streamlining aspects of SST. For example, they can quickly and efficiently update information (e.g., change an address) or terminate registration (e.g., close a business) in all states in which they're registered.

Sales tax compliance is further simplified for businesses that choose to use a CSP. For example, in addition to handling sales and use tax registration, Avalara provides real-time sales and use calculation, files returns, remits taxes, and more.

These services are available to any seller. For “volunteer sellers” in SST states, CSP

Having economic nexus in a state does not disqualify a seller from obtaining volunteer status.

Wayfair beyond SST member states

SST member states certainly aren’t the only states that have adopted economic nexus. As of this writing, 41 states plus Washington, D.C., have economic legislation on the books (the laws in Massachusetts and Ohio apply to internet vendors only). Only Florida, Kansas, and Missouri have no remote seller sales tax law or rule, though Louisiana has yet to announce an effective date for its economic nexus law.

At least two non-SST states that have adopted economic nexus are emulating aspects of the SST program. Virginia’s economic nexus law requires the Virginia Tax Commissioner to simplify sales and use tax compliance for remote sellers. And the Pennsylvania Department of Revenue “is working with certified service providers to offer software and services to aid in the registration, collection, reporting and remittance of Pennsylvania sales tax.”

Sales tax compliance is challenging, even in SST states. Sales tax software can help to make it simpler. And for volunteer sellers in SST states that use a CSP, those services are free.

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Sales Tax