Intensify

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Mar. 09, 2020

Sales tax rate changes edged down last year overall, but the trend of new districts imposing taxes continued in 2019 as did many post-Wayfair modifications sparking many new challenges — including the risk of retroactive tax collection.

Trends Creating Unique Tax Challenges

Despite an overall decrease in the number of standard sales tax rate changes, our annual End-of-Year 2019 Tax Rate Report highlights several trends that may create unique challenges regarding city and district-level taxes.

states requiring remote sellers to collect and remit sales tax based on economic nexus (as opposed to the previous standard of physical nexus) more than doubled in the past year. The spike in Wayfair-related state legislation has been further complicated by a lack of uniformity across state lines, leaving businesses with the burden of deciphering new standards and thresholds that increase the complexity of compliance. There has been an attempt to unify standards for all states related to marketplace facilitator collection rules when a remote seller is itself already registered to collect in the state. The Marketplace Facilitator Model Legislation was recently adopted by the National Conference of State Legislatures (NCSL) State and Local Tax (SALT) Task Force in January 2020 to provide uniform guidance on this issue.

Marketplace Facilitator Laws

At the close of 2019, 37 states (including D.C.) had enacted marketplace facilitator laws that require tax collection and remittance on behalf of third-party sellers. These rules are intended to protect small to medium-sized businesses from burdensome sales tax collection requirements — one of several aspects of the Wayfair decision intended to protect small sellers (along with economic thresholds, exemption from retroactive tax collection, and a general obligation to make sales tax less burdensome). While most states have adhered to these principles, a few have not.

For example, some states are seeking retroactive sales tax from out-of-state online merchants — while proposing to extend retroactive collection as far back as 2012. These states include California, South Carolina, and — until recently — Louisiana. As my colleague Vertex Chief Tax Officer Michael Bernard notes in his recent Vertex blog post, "Walmart's recent win in the Louisiana Supreme Court further highlights how important it is for state and local jurisdictions to set up clear guidance for market facilitator laws instead of looking back and trying to collect pre-Wayfair taxes." Notably, the Tax Foundation has a few states on their watch list that have post-Wayfair legislation underway that may also be legally vulnerable; these

dollar value of sales, or both?

3. What is the threshold and when does it get exceeded?

Businesses also should monitor municipalities within home rule states, such as Colorado and California. In home rule states, local governments have the power to adopt economic nexus rules that can vary — sometimes, significantly — from locality to locality. Disparate local economic nexus rules create much higher levels of tax management and compliance complexity.

Our research suggests that companies selling across state lines should:

- Carefully track where they do business;
- Maintain a current understanding of each state's economic threshold; and
- Be prepared to register, collect, and remit the appropriate amount of sales tax — prior to crossing those thresholds.

Given some states' recent moves to impose retroactive tax liabilities and real-time reporting requirements, one thing is for sure, the U.S. indirect tax landscape will become even more challenging.

Sales Tax