



Sales Tax Compliance In Pennsylvania After Wayfair

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What Do States Have to Do Under Wayfair?

- The Court did not fully resolve the issue of what states must do to require sales tax collection from remote sellers
- *“These issues have not yet been litigated or briefed, and so the Court need not resolve them here.”*

South Dakota's "Features"

- The Court took favorable note of *"several features that appear designed to prevent discrimination against or undue burdens upon interstate commerce"* in South Dakota's law
 - Safe harbor or threshold level of in-state sales activity, to protect small merchants
 - Prospective application
 - Member of the SSUTA, designed to *"reduce administrative and compliance costs"*
 - Seems to approve of SSUTA, but does not make it mandatory

SSUTA “Features”

- A single, state-level tax 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
- Audit immunity for sellers using state-certified software or services

Difficult Aspects of SSUTA

- Uniform definitions of the tax base
 - Loss of control over state policy choices
 - Loss of revenue
- Local jurisdictions imposing sales tax
 - Tax Foundation counts more than 10,000 sales tax jurisdictions
 - 23 states have more than 100 sales tax jurisdictions
- Uniform registration, exemptions and other processes
 - Business registration may also trigger UC, excise tax, business taxes, permitting, licensing, etc.

Is There a Path Forward for Non-Members of SSUTA?

- Can we “*reduce administrative and compliance costs*” for smaller vendors without the uniform definitions and procedures?
- Answer: **Yes**, if we can:
 - Make compliance much simpler,
 - Provide active assistance through the CSPs, and
 - Subsidize it

Act 13 of 2019

- Effective July 1, 2019 Pennsylvania's definition of "maintaining a place of business" is expanded to include economic presence
- Businesses with economic presence must register to collect and remit Pennsylvania sales tax
- Economic presence is defined as making annual gross sales to Pennsylvania customers of at least \$100,000
- No transaction threshold

Act 13-2019: Calculating Gross Sales

- Includes taxable and nontaxable sales made on all channels
- Measured by calendar year
 - Calendar year 2018 – July 1, 2019 through March 31, 2020
 - Calendar Year 2019 – April 1, 2020 through March 31, 2021 (Same for subsequent years)

The CSP Initiative

PA-DOR has contracted for services of the Streamlined project Certified Service Providers (CSPs)

- CSPs responsible for filing and remittance duties on behalf of their clients
- DOR provides a taxability matrix
- Working with a CSP can relieve the seller of certain liabilities upon audit

The PA CSP Composite Return

- Each CSP will file a single composite return and payment per month
- Structure is analogous to marketplace platforms filing one return for all marketplace sellers
- Each CSP will also upload to DOR a file showing detail by seller included in the composite return for analysis and tracking
- Removes sellers from state processes of registration and account maintenance
- Provides significant simplification for small remote sellers

Working with Pennsylvania CSPs

- Client Responsibilities
 - Provide accurate information about products at the transactional level
 - Provide an annual attestation that they have no physical presence in Pennsylvania. The DOR Attestation form is provided by CSP to the client

Pennsylvania Certified Service Providers

- **AccurateTax** – <https://www.accuratetax.com>
- **Avalara** – <https://www.avalara.com>
- **Sovos** – <https://sovos.com>
- **TaxCloud** – <https://TaxCloud.com>

Taxpayers *not eligible* to use a CSP:

- Physical presence in Pennsylvania
- Compliance issues

Filing Direct – No CSP

Taxpayers with economic presence may choose to file directly with the department

- ü Must obtain a sales tax license
- ü Must charge, collect, remit PA sales tax and file returns
- ü Must determine taxability of items sold to PA customers

Results

- FY 18-19
 - 2011 Guidance (Click-thru nexus, etc.) \$177 M
 - Act 84-2016 (Digital goods & streaming video) \$64 M
 - Act 43-2017 (Marketplace collection) \$204 M
 - Other \$17 M
 - TOTAL \$462 M or ~4% of total

- FY 19-20
 - Act 13-2019 (Economic nexus) \$1.5 M Aug-Nov

Questions?

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