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](https://www.accuratetax.com)
- **Avalara** – [https://www.avalara.com](https://www.avalara.com)
- **Sovos** – [https://sovos.com](https://sovos.com)
- **TaxCloud** – [https://TaxCloud.com](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:

- Must obtain a sales tax license
- Must charge, collect, remit PA sales tax and file returns
- 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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