

Talking Tax Reform: Post-Wayfair Taxpayer Protections

October 05, 2023



Key Terms

Remote Seller: A business with no physical presence in a state but transacting sales in the state (e.g., Halstead Bead).

Marketplace Facilitator (Provider): A business that offers a platform through which remote sellers and/or in-state sellers may make sales to customers (e.g., Amazon).

South Dakota v. Wayfair (2018)

- Pre-*Wayfair* = Physical Nexus
 - Use Tax regime and shortcomings
 - Cookie Nexus
 - Click-Through Nexus
- Post-*Wayfair* = Economic Nexus
 - Court recognized the rise in e-commerce and the disparate treatment of in-state sellers
 - When annual sales and/or transactions subject a remote seller or marketplace facilitator to sales tax collection and remittance obligations
- The *Wayfair* Court did not establish a standard for requiring remote sellers and marketplace facilitators to collect and remit sales taxes

Post-*Wayfair* Patchwork of State Legislation (lack of uniformity)

- Thresholds
 - Sales thresholds, Transactions Thresholds
 - Maryland: \$100,000 sales or 200 transactions
 - New York: \$500,000 sales and 100 transactions
- Safe Harbors
 - Are remote sellers/marketplace facilitators given a grace period to become compliant once the thresholds are satisfied?
- Definitions of what is a sale requiring collection and remittance of sales tax
 - Gross sales, Retail sales, Taxable only (or include nontaxable), Business Inputs
- Subjecting remote sellers and marketplace facilitators to non-sales taxes and fees
 - North Carolina - scrap tire disposal tax, white goods disposal tax, dry-cleaning solvent tax
 - California - tire fee, the covered electronic waste recycling fee, the lead-acid battery fee, lumber products assessment fee
- Centralization of sales tax administration
- Certified Service Provider (CSP) Software

Potential Solutions

1. Provide a CSP that is easily integrated into existing software that can work across all jurisdictions
2. Thresholds based on retail sales only, excluding business inputs, and eliminate all transactions thresholds
3. Limit collection and remittance obligations to sale taxes (limit the creep of additional taxes and fees)
4. Specifically allow marketplace facilitators and remote sellers to contract for all collection and remittance obligations
5. Protection from retroactive taxation and a grace period of at least 30 days to become compliant once thresholds are met
6. Unified rate option for remote sellers/marketplace facilitators
7. Central Clearing House Option