

[Company Letterhead or Company Name and Information]

The Honorable Andrew N. Kim
Chairman
U.S. House Committee on Small Business
Subcommittee on Economic Growth, Tax and
Capital Access
2361 Rayburn HOB
Washington, DC 20515

The Honorable Kevin R. Hern
Ranking Member
U.S. House Committee on Small Business
Subcommittee on Economic Growth, Tax and
Capital Access
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Washington, DC 20515

Written Testimony of

Joyce Latimer, Majority Member, SML Marketing LLC

Hearing on *South Dakota v. Wayfair, Inc.*: How Mainstreet is Fairing and Whether Federal Intervention is Necessary

March 3, 2020

Chairman Kim, Ranking Member Hern, and Members of the Subcommittee, thank you for holding this hearing on state taxation. I am honored to offer my perspective as a Virginia small business owner, and to share my story with you.

Background

My name is Joyce Latimer and I am the Majority Member of three Members of SML Marketing LLC. The other Members are my husband and his brother. We are based in Moneta, Virginia. I started my eCommerce business in August 2014 in order to replace the income lost due to my husband's early retirement. Although he didn't qualify for disability, his issues with treatment of sleep apnea made it unsafe for him to continue his job as a career Class A truck driver. So, our business is majority owned by me, a woman.

Back Taxes (If Applicable)

I conferred with my CPA and my lawyer in setting up my business and was advised that I must file for a federal EIN for my LLC and as a resident and business owner in Virginia, a Virginia Sales and Use Tax account to meet my tax obligations for my sales. In December 2018, I received a letter from the California Department of Tax and Fee Administration (CDTFA) saying that they had "received information" that we had inventory stored in warehouses or fulfillment centers in California and therefore we were classified as a California business and were required to register and pay sales tax on sales made to California consumers. (See Exhibit 1, attached). Our primary sales outlet is Amazon FBA (Fulfilled By Amazon) which means that Amazon accepts our product and then distributes it to their warehouses as they see fit. We have no control over that process. The letter advised me to register with the CDTFA before January 15, 2019, that it was their "intent to treat all taxpayers who voluntarily make attempts to correct past reporting errors with the utmost respect and fairness." It was a direct threat.

Other press releases by CDTFA further confused the issue by stating that out of state retailers with sales above a \$100,000 or 200 sales threshold must register and start remitting taxes on sales made after April 1, 2019 (See Exhibit 2, attached). Based on this press release, I registered with CDTFA and they immediately wanted me to pay back taxes from Q4 2014 to date. I did not pay these back taxes because I didn't have that much money available and because I don't think it is legal for California to collect them at all. Their own state treasurer said that it was an illegal demand by the CDTFA (Exhibit 3). I collected and filed the sales tax payment for Q2 2019 (after April 1), but not Q1 2019. It cost me \$300 for the online software to calculate those taxes and I had to manually enter the

county/local taxes at a significant loss of time. On July 1, 2019, Amazon assumed the Marketplace Facilitator role for California sales tax collection and payment.

I still get monthly emails and or letters from the CDTFA threatening me about having not paid my back taxes. The one for December 2019 is attached as Exhibit 4. Fortunately, we have not been contacted by any other states about current or back taxes. The payment to California alone would have closed my business.

Taxes Post Wayfair

If we collected taxes, I would certainly turn the over to the states, but how can any small business owner be expected to register in all 47 states collecting sales taxes? We don't have the resources to hire CPA firms or lawyers to handle that much paperwork for even the small amount of income we had. We don't have the funds to fight the tax authorities of all the states either. And, my CPA has warned that registering for sales tax collection and remittance to states outside my home state also put me on the list for those states wanting to collect income tax and other use taxes. Those are not pass-through taxes. Those constitute an additional tax burden and reporting burden for my business.

We have finally identified profitable products so that we can grow our business. Tax issues are not the only negative aspects of selling on Amazon FBA. So, we have considered expanding to our own website, but the tax implications are just overwhelming in complexity and costs for an independent small business owner. I can't afford to go out on my own.

How do we Fix this?

We need for Congress to intervene to protect small businesses from money-hungry state officials and the complexity of tax filing and collection practices from all the individual states. I understand that sales tax is under the individual state's purview but our online businesses are high tech and global these days. There needs some corresponding improvements and communications in how states deal with online retailing - a system that supersedes individual archaic state regulations or the brand new heavy-handed tactics. If we don't succeed, neither will the states!

Conclusion

We have worked hard and suffered our own setbacks in building our small business. We can't have state governments robbing us of the future we can have in online retailing. We're glad to collect and remit state sales taxes collected from those state's citizens. It just has to be done in an efficient and fair manner – going forward, not back! For these reasons I urge Congress to intervene on behalf of small businesses, especially those in online retailing.

Sincerely,



Joyce Latimer

BBD Sales LLC
109 Onyx Ct
Oregon WI 53575

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Written Testimony of

Dean Sweberg, Managing Member of BBD Sales LLC

Hearing on *South Dakota v. Wayfair, Inc.*: How Mainstreet is Fairing and Whether Federal Intervention is Necessary

February 26, 2020

Chairman Kim, Ranking Member Hern, and Members of the Subcommittee, thank you for your leadership in this hearing on state taxation. I feel honored to offer my perspective as a small business owner in Wisconsin and appreciate the opportunity to share my story with you.

Background

My name is Dean Sweberg and I am the Managing Member of BBD Sales LLC, based in the village of Oregon, Wisconsin, a small community with nearly 10,000 residents. I started my eCommerce business eighteen years ago while a student in college. In those days, Amazon was merely a bookstore and I would buy and sell textbooks from other students on campus, keeping tabs on the seasonal price fluctuations to leverage a profit. In the years since, I have grown my business by expanding into many other product categories and also from the Amazon marketplace to also selling on Walmart, Jet and eBay's marketplaces. All of our sales are through these marketplaces; we do not operate our own website. In early 2018 my company had a total of 5 employees, but that is unfortunately no longer the case.

Sales Tax Nightmare Post Wayfair

While selling on Amazon and the other marketplaces has provided a tremendous platform for my business, in recent years it has become more and more challenging. In just the past three months I made the difficult decision to abandon previous plans for growth, decided not to renew our warehouse lease, and I laid off several employees, who are no longer receiving their living wages, let alone health care or the company retirement match. As a direct result of the Wayfair decision, I was forced to obtain sales tax permits in 39 states, each with their own set of filing frequencies/due dates, complex forms, and seemingly endless nuances between what is and isn't taxable and at various rates (shipping, grocery items/food, clothing, sales tax holidays, and so on). Many states, (Arizona, Colorado, and Texas, just to name a few especially egregious examples) have literally hundreds of municipalities, fire and transit districts, parishes, counties, and so on that require itemizing out on a monthly...or if we're lucky, quarterly basis. I am now forced to block my schedule for several days during the first week of every month just to sit in front of the computer and key in sales tax filings, when I could be growing my product selection or re-ordering top sellers to keep up with demand. I pay over \$1,000 per year just to use software that breaks down sales into the various jurisdictions, leaving the actual filing responsibilities to me. To hire a third-party service provider to file on my behalf would cost us nearly \$10,000 per year, which is out of reach for my company. Profit margins on

marketplace sales are razor thin, and so even as I am selling millions of dollars in product per year, the take home profit is similar to that of a teacher or a plumber. My wife is a school teacher, so this hypothetical analogy is the best I can come up with: imagine if a school teacher was told that because his/her students happened to visit 39 different states with their families during summer/spring break, that teacher now has to file student report cards in each of those municipalities, counties, states on a varying schedule of due dates, some monthly, some quarterly, some biannual, etc...and there would be financial penalties and possibly jail time threatened if these deadlines or filings were missed. How many teachers would stay in the job? This is precisely what small business e-commerce sellers are facing today.

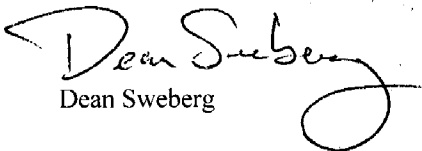
What can be done

In order to fix this problem, we need Congress to intervene. Small businesses need a nationwide standard that includes a mandatory single sales tax rate per state for out of state retailers. While Marketplace Facilitator laws in many states are helping to reduce the burden for businesses like mine, many states are aggregating thresholds and discouraging sellers from trying to be independent from Amazon, because the burden of being a small online retailer is too high. We certainly respect the need and right for states and municipalities to collect sales taxes, and I am sure that 100% sales tax compliance is possible, but only if states are required to use modern technological solutions. We need Congress to put the burden on the states, rather than on us sellers. What we want is not bigger thresholds, or any thresholds, but rather efficiency.

Conclusion

Countless hours have gone into building my business and it was an honor to provide good paying jobs with benefits for several employees. Due to the Wayfair decision creating significant administrative and regulatory burdens on my business, we have been struggling these past two years. I urge you to consider legislation that would address this nightmare scenario for small business owners throughout the United States. I also urge you to carefully consider the testimony of Online Merchants Guild ("OMG"). OMG is an eCommerce seller organization, and its members are only small eCommerce business owners like me. They are my voice, and nobody else's. They fought for us during Wayfair, and are fighting for us every day, and I urge you to work with them going forward, to help you solve this issue.

Sincerely,


Dean Sweberg



Buyer's Point
2300 Tall Pines Dr, Suite 110
Largo, FL 33771
www.buyerspoint.com

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Written Testimony of

Benjamin Walker, President/Founder of Buyer's Point

Hearing on *South Dakota v. Wayfair, Inc.*: How Mainstreet is Fairing and Whether Federal Intervention is Necessary

March 3, 2020

Chairman Kim, Ranking Member Hern, and Members of the Subcommittee, thank you for holding this hearing on state taxation. I am honored to offer my perspective as a Florida small business owner, and to share my story with you.

Background

My name is Benjamin Walker and I am the President/Founder of Buyer's Point, we are based in Largo, Florida. I started my eCommerce business in 2010 in Oklahoma before moving to Florida. I started this business out of college to help pay off student loans. It took me 3 months to save the first \$50 to buy our first item of inventory. We have since expanded to a warehouse/office location in Florida, hiring 3 full time staff including myself, 1 part-time staff, and several remote workers across the US.

Back Taxes (If Applicable)

In 2018 I received a letter from the CDTFA (California Department of Tax and Fee Administration) saying we had Nexus in their state because we were an Amazon FBA seller and would need to remit back sales taxes. When we contacted the state, we were told we could either sign up for their volunteer program or be forced to pay interest and penalties on the back sales tax.

We were completely caught off guard. We hired an accounting firm to represent us to the state. We were later told we would owe \$37,000 in back taxes. Please keep in mind we only made \$60,000 in income that year. That bill would decimate our business and our ability to continue to invest in our team and new products. Furthermore, we are

being told we are responsible to pay back sales taxes even though we did not collect any sales taxes from our California based customers.

Taxes Post Wayfair

While selling on Amazon has been great for my business, over the years it has become more and more challenging and I want to be able to expand into new markets and platforms. Unfortunately, given the state of affairs, we are afraid to move forward because of the uncertainty. We are afraid other states will follow suit and demand we pay back sales taxes even though we did not collect any sales taxes from our customers.

How do we Fix this?

In order to fix this problem, we need Congress to intervene. Small businesses need to be protected from foreign state tax administrators who act like overzealous prosecutors who rely on bullying rather than the law to generate revenue from out of state businesses. If this trend continues, we will be forced to close the business and layoff our employees.

We have worked extremely hard to get to this point. Nobody wants to deprive states of sales tax, we think 100% sales tax compliance is possible, if only states were required to use modern technological solutions. Given all the technological progress we've made between Quill and Wayfair, states are still blocked from taking a more efficient approach to sales tax due to their bureaucracies. This is what we need Congress to fix. We don't want bigger thresholds, or any thresholds, what we want efficiency. Time to put the burden on the states, rather than us. Tell them, they need to make this a streamlined and efficient process.

Conclusion

For these reasons I urge you to step in and not allow states to require payment of back sales taxes. Moreover, to require state to use modern technology solutions to make remittance of sales taxes more efficient and cost effective.

Sincerely,

Ben Walker

Benjamin Walker
President/Founder
Buyer's Point