



Solutions to Challenges Small Online Sellers Face Post-Wayfair

Background

- The Supreme Court upheld South Dakota's taxation of remote, online sellers in 2018's *South Dakota v. Wayfair* ruling, citing in part:
 - South Dakota's participation in the 24-state Streamlined Sales and Use Tax Agreement (SSUTA); **and**
 - Other significant guardrails South Dakota had established to reduce burdens on online sellers
- Unfortunately, not all states that now tax online sellers based on economic nexus (45 in total, plus the District of Columbia) feature simple, uniform rules that reduce burdens on small, online and/or remote businesses
 - Louisiana's sales tax system is uniquely difficult to use, due to a parish-by-parish registration and reporting requirement, distinct exclusions and exemptions adopted by local ordinance, and other burdens to out-of-state sellers
 - Kansas's administrative guidance neglected to include a safe harbor for small sellers until amended by law last year
 - California has pursued effectively retroactive enforcement of economic nexus rules
- It ***falls to Congress*** to reduce some of these burdens on interstate commerce and on small businesses

Congressional Reform Options

- Congress should:
 - Require states to provide businesses with a ***single point of contact for collection and audit*** procedures
 - Mandate that states count ***only taxable sales*** towards their economic nexus threshold;
 - Require states to offer the option to pay a ***single, weighted-average sales tax rate*** for the entire state, which would eliminate the need for some businesses to track sales tax rates in dozens, hundreds, or even thousands of local jurisdictions; Texas already does this
 - Statutorily prohibit ***retroactive enforcement*** of economic nexus rules prior to *Wayfair*
 - Provide businesses not currently in compliance with state economic nexus rules with ***relief*** as they attempt to come into compliance with state and local laws
 - Provide businesses with ***liability protection*** for errors made by third-party software providers;
 - Set a ***national threshold*** that businesses must reach before they can be subjected to tax collection and remittance responsibilities on the basis of economic nexus or marketplace facilitator laws;
 - Require states to abide by a uniform, federally-specified definition of where remote sales are to be ***sourced***;
 - Require uniform tax ***definitions*** and tax ***exemptions*** within each state, so that local tax bases are aligned with state tax bases (i.e., businesses must track just 46 different sets of definitions and exemptions – 45 states plus D.C. – rather than up to 12,000 state and local jurisdictions)
 - Provide taxpayers with the ability to ***try challenges to state tax laws*** in federal courts by modifying the Tax Injunction Act; and
 - Consider what policies may help businesses meet the ***high cost of implementing and using third-party software*** to track registration, sales tax collection, and sales tax remittance (even though many of the more urgent reforms above would reduce the need for third-party software)