TACKLE WAYFAIR WITH DIGITAL TRANSFORMATION
With you today

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Overview of the *Wayfair* decision
Wayfair Decision

As a result of the Wayfair decision, a physical presence is no longer required for substantial nexus under the Commerce Clause.

- On June 21, 2018, the U.S. Supreme Court issued its decision in South Dakota v. Wayfair.
- In a 5-4 decision, the Court ruled in favor of South Dakota and overruled Quill Corp. v. North Dakota and National Bellas Hess, Inc. v. Department of Revenue of Ill.
- The Court concluded that “the physical presence rule of Quill is unsound and incorrect.”
- Remanded to the South Dakota Supreme Court to evaluate if the provision meets the other tests for constitutionality (parties rumored to be negotiating a settlement).
Wayfair - the Threshold

To replace the physical presence rule of *Quill and National Bellas Hess*, the Court held that substantial nexus is established:

- “When the taxpayer [or collector] ‘avails itself of the substantial privilege of carrying on business’ in” a state.

Wayfair’s economic and virtual contacts with South Dakota, as measured by more than $100,000 of sales or 200 separate sales transactions satisfied Wayfair’s substantial nexus definition.

The Court’s holding in Wayfair presents a host of new constitutional questions, including:

- Is the South Dakota economic threshold the minimum?
- If not, what standard will determine the minimal economic threshold for substantial nexus?
- Could a physical, “non-economic” presence not constitute substantial nexus?
Wayfair - Open Issue - Retroactivity

The Wayfair decision created numerous open questions for multistate retailers that have relied upon the physical presence standard in determining whether to collect and remit sales taxes.

Retailers should monitor State publications to determine whether potential liability States are purporting to apply Wayfair on a retroactive basis.

If currently under audit, the taxpayer should aggressively resist any attempts to apply economic nexus on a retroactive basis.

The South Dakota statute at issue in Wayfair could only be enforce prospectively.
States with Sales/Use Tax Economic Nexus Statutes (AS OF 7/30/2019)

www.bdo.com/wayfair
Sales/Use Tax Economic Nexus Examples

- **California** - $500,000 sales (eff. 4/1/2019)
  - $500,000 calculation is the total combined sales of tangible personal property (TPP) for delivery in CA by the retailer and all persons related to the retailer
- **Illinois** - $100,000 sales or 200 transactions (effective 10/1/2018)
- **New York** - $500,000 sales and 100 transactions (effective 6/21/2018)
- **Connecticut** - $250,000 sales and 200 transactions (eff. 12/1/2018)
  - Effective 6/1/2019, reduced to $100,000 sales AND 200 transactions
- **South Carolina** - $100,000 sales (eff. 11/1/2018)
- **Virginia** - $100,000 sales or 200 transactions (eff. 7/1/2019)
  - When calculating whether you exceed Virginia’s threshold, its statute requires you to aggregate the sales of all commonly controlled persons, as defined under IRC Sec. 1563(a).
- **Georgia** - $250,000 sales or 200 transactions (effective 1/1/2019)
  - Effective 1/1/2020, $100,000 or 200 transactions
Marketplace Facilitator Rules

- As of July 2019, roughly 35 states have adopted marketplace facilitators rules
  - For the most part, the thresholds are identical to each State’s remote seller economic nexus thresholds

- Marketplace
  - Typically defined as a physical or electronic place, platform, forum, store, website, catalog, or other sales software application where TPP is offered for sale

- Marketplace Facilitator (a/k/a Marketplace Providers or Referrers)
  - Typically defined as the entity that owns and operates the marketplace, and directly or indirectly processes transactions on behalf of marketplace sellers
  - Facilitators are required to charge/collect/remit sales tax on taxable transactions made through its marketplace

- Marketplace Sellers
  - Typically defined as a seller, other than the marketplace facilitator/provider that sells through the marketplace
  - Be aware: If a marketplace seller has nexus in a state, and it makes any taxable sales that are not through a marketplace, then it would be required to collect/remit sales tax on those transactions
States with Marketplace Facilitator Rules
(AS OF 7/30/2019)
Suggested Action Plan
Six Step Approach to Sales/Use Tax Compliance in the Wake of Wayfair

Nexus Determination
Taxability Evaluation
Exposure Quantification
Mitigation and Disclosure
Sales Tax System Selection and Implementation
Sales Tax Compliance
Suggested Action Plan

- State Nexus Reviews
- Taxability Studies/Matrices
- Exposure Quantification
  - Quantify historic exposure
  - May be part of an assessment under ASC 450 or ASC 740
- Mitigation and Remediation
  - Sales Tax Remediation
  - Are customers exempt? Did they self-assess and pay use tax?
  - State voluntary disclosure programs and amnesties
- Sales/Use Tax Compliance (in-source or out-source?)
- Sales/Use Tax Automation
Managing Sales Tax Determination and Reporting
Post Wayfair

Given Wayfair and the expansion of nexus, a businesses existing or contemplated sales tax automation will be impacted:

• Invoicing, reporting, and payment changes
• More jurisdictions and rates
• Increased risk of properly identifying taxation of transaction

There also will be an impact for sellers with exempt sales.

• Maintenance of certificates through automation
• Possible vendor access to shared-file certificates
Some Events that Trigger Automation

- History of audit assessments
- Paying recurring fees for refunds
- Recurring notice assessments
- ERP/Financial System changes
- Mergers and acquisitions
- Evidence of high tax organization employee turnover
- Manually maintains tax rates
- Manually calculates sales or use tax
- Manually prepares tax returns
- Plans for large (taxable) capital expenditures
- $100k in sales or 200 transactions
Does my Sales Tax Compliance Function Need to Change?

Regardless of whether you in-source or out-source your sales tax compliance function... **GOOD DATA IS PARAMOUNT**

- **Evaluate Current Data & Systems:**
  - ERP
  - Ecommerce Platform(s)
  - Point of Sale
  - Drop Ship Sales
  - Sales Tax Engine
  - Marketplace Sales

- **Highest & Best Use of Resources:**
  - Assess the costs/benefits of in-sourcing vs. out-sourcing sales tax function
  - Leverage other resources and knowledge
  - Should we automate?
    - Does data reside in multiple systems?
    - Does the ERP system “talk” with your point of sale or sales tax engine?
Staying Current:

- **Master data**
  - Customer addresses
  - Product hierarchy
  - Clean-up product master

- **Certificate management**
  - Storage (paper or pdf?)
  - Expiration dates
  - Current forms
  - Are they valid?

- **Periodic reviews**
  - Taxability matrix
  - Out-dated logic
  - Rate exceptions
  - New tax laws

- **Software updates**
What Are My Options?

Maintain Existing Process
- Expand use of Human Capital

Tax Compliance Reporting
- Maintain Existing Process at Larger Capacity
- Acquire a Third-Party Tax Reporting Software
- Outsource Tax Reporting

Tax Determination
- Maintain Existing Process at Larger Capacity
- Acquire a Tax Rate File Subscription
- Acquire a Third-Party Tax Determination Software
  - What if I already have tax determination software?
# Sales & Use Tax Compliance Automation

## Insourcing vs Outsourcing

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<td>Additional Financial Costs</td>
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Tax Vendors

Tax Determination Software

- Vertex
  - O Series, Q Series, L Series, Returns, Exemption Certificate Manager
- Thomson Reuters | Sabrix
  - Onesource Indirect Tax Determination, and Sales Tax Returns
- Avalara
  - AvaTax, CertCapture, AvaTax Excise, MyLodgeTax
- SOVOS | Taxware
  - Tax Determination, Reporting, Taxify
- Wolters Kluwer | CCH
  - SureTax, Sales Tax Office, Sales Tax Returns
- TaxJar

Tax Rate Subscriptions

- Zip2Tax
- Thomson Reuters
- Vertex
- CCH Sales Tax Radar
- TaxJar
Automation with Third-Party Software: Example Topology

Financial System:
- eCommerce
- Navision
- Netsuite
- SAP
- Oracle
- Peoplesoft
- Salesforce Commerce
- Homegrown

Tax Determination Software:
- Tax Rates
- Tax Geographies
- Taxability Content
- Customer Exceptions
- Product Exceptions
- Custom Rules
- Compliance/Audit Reporting

Sales Invoice Detail

Tax Results
Automation with Third-Party Software: Automation Project Resources

▶ BDO
  • Project team (Director, Manager, Staff Associate)
  • Multi-State professionals & Tax Software Expertise

▶ Client
  • Tax representative(s)
  • Accounts receivable & billing
  • Procurement & accounts payable
  • Information Technology (DBA, Network Engineer)
  • Legal

▶ Tax Software Vendor
  • Software technical consultant
  • Professional Services coordinator
Automation with Third-Party Software: Common Project Lifecycle

- ID Service Provider
- Diagnostic Review
- ID Tax S/W Vendors
- Schedule Demos
- Award Vendor Contract
- Gather details
- Determine GAPS
- Review Master Data
- Develop Blue Print
- Prepare Environments
- Install Software
- Prep config load
- Configure Tax S/W
- Unit test Config
- Resolve Issues
- Integration testing
- System testing
- Resolve Issues
- Knowledge Transfer
- Monitor Solution
Automation with Third-Party Software: Common Deliverables

- Project work plan
- Roles & responsibilities matrix
- Business requirements & gap analysis
- Functional design document
- Tax configuration guide
- Test plan & results
- Training materials
Automation with Third-Party Software: Investment Considerations

Cost to Maintain Existing Process
- Cost of internal resources

Tax Rate File Subscription
- Annually $400 - $15k+
- Incremental costs of incorporating rates into ERP

Cost of Third-Party Tax Determination Software
- Initial license fee - First Year
- Annual support renewal - Second Year +
- Service fee for establishing communication with ERP
- Professional service fees covering project lifecycle
- Internal resources for project assistance and upkeep after Go-Live
Automation with Third-Party Software: Investment Considerations (con’t)

- Cost of Third-Party Tax Reporting Software
  - Initial license fee - First Year
  - Annual support renewal - Second Year +
  - Professional service fees for implementation
  - Internal resources for online filing and payment of returns

- Cost of Outsourcing
  - ~$30 - $100+ (Per Return)
  - Start-up costs for initial onboarding (depends on provider)
  - Add-on costs (depends on provider)
Questions?
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