

Finance Committee mulls remote sales tax collection compliance issues post-*Wayfair*

Four years after the Supreme Court ruled in *South Dakota v. Wayfair* that states could require remote sellers with no physical nexus to collect and remit sales taxes on in-state transactions, the Senate Finance Committee on June 14 held a hearing looking at the impact the decision has had on small businesses and heard numerous recommendations about ways to limit the complexity and costs associated with complying with the decision.

URL: https://www.supremecourt.gov/opinions/17pdf/17-494_j4el.pdf

‘Accounting Houdinis’

Both Chairman Ron Wyden, D-Ore., and top Republican Mike Crapo of Idaho advocated greater consistency across states—including on thresholds for determining when businesses become responsible for sales tax collection—and sought to understand from the small businesses who testified at the hearing the most costly and burdensome aspects of compliance they have experienced since 2018.

Wyden noted that small-business executives have had to become “accounting Houdinis” to meet the requirements of the District of Columbia and the 45 states that impose sales taxes—not to mention the thousands of individual jurisdictions within states.

Recommendations

Witnesses John Hennessey of New Hampshire-based Littleton Coin Company and Michelle Huie of Montana’s VIM & VIGR Compression Legwear agreed that, in addition to uniformity around nexus criteria, a single sales tax rate per state would be a key improvement for small businesses, as would uniform product classifications across and within states, and protection from retroactive tax bills.

Reducing complexity: Huie walked the committee through the compliance process she has faced over the past four years—despite operating in a state with no sales tax. That process, she explained, includes (1) determining that her business met the nexus threshold in 22 states (some with hundreds of jurisdictions), (2) registering with the revenue departments of each, (3) collecting taxes from customers, and (4) remitting payment to each state at varying time intervals. To help alleviate the out-of-pocket costs for businesses like hers, including the costs for technology necessary to track and comply with the laws of all the jurisdictions, Huie also recommended a centralized clearinghouse for e-commerce companies to register and pay sales tax across the states.

Liability protection: Because of the complexity involved in complying with the decision, Hennessey further recommended that small businesses receive liability protection from state penalties for improper payments if the company has made a good-faith effort to comply with the applicable rules for sales tax collection.

Streamlined Sales Tax project: Craig Johnson of the Streamlined Sales Tax Governing Board (SSTGB), which represents 24 member states that have simplified their sales tax systems through conformity with a

Streamlined Sales and Use Tax Agreement, told the panel that his organization provides a central registration system, certain liability protections, and common definitions that can alleviate some of the burden for companies and that it is looking at developing a central filing portal. These solutions, of course, do not address compliance issues in the 21 states that have not joined the project.

In response to questions from Crapo and Sen. Ben Cardin, D-Md.—who also chairs the Senate Committee on Small Business and Entrepreneurship—Johnson and Diane Yetter, a board member of the SSTGB’s Business Advisory Council, agreed that it would be helpful for Congress to incentivize states to join the Streamlined Sales Tax project, as this would provide additional consistency for taxpayers but allow states to retain their sovereignty.

Eliminating retroactive collection requirements: Chairman Wyden and Senate taxwriter Maggie Hassan, D-N.H., advocated for the Online Sales Simplicity and Small Business Relief Act of 2019 (S. 2350), a proposal they introduced in the last Congress with their delegation colleagues Sens. Jeanne Shaheen, D-N.H., and Jeff Merkley, D-Ore., that sought to prohibit states from retroactively imposing sales tax collection duty on remote sellers. (The senators have not reintroduced the legislation during the current Congress.)

URL: <https://www.congress.gov/bill/116th-congress/senate-bill/2350/text>

GAO report

James McTigue Jr., of the Government Accountability Office, which issued a report June 14 titled *Remote Sales Tax: Initial Observations on Effects of States’ Expanded Authority* (GAO-22-106016), told the committee that remote sales tax now accounts for about one-third of sales tax revenues in the 45 states and District of Columbia that have a sales tax.

URL: <https://www.gao.gov/products/gao-22-106016>

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