

Proposal for: Tackling Internet Sales Taxes in a Post-Wayfair World

Submitted by

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Business

To

Honors College

Oakland University

In partial fulfillment of the
requirement to graduate from

The Honors College

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November 29, 2019

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INTRODUCTION

Taxes are one of the most dreaded, complicated and challenging aspects of American citizenry. They have long been the subject of derisive comments, philosophical debates, lobbying and legislative debate. Ronald Reagan famously quipped, “If you want less of something, tax it.” (Reagan 1986). But one of his lesser known quotes regarding taxes, “you can’t tax business. Business doesn’t pay taxes. It collects taxes,” best defines the quandary faced by states and remote vendors in collecting sales taxes in today’s e-commerce world. How can states constitutionally and effectively capture tax revenue from sales emanating from out-of-state and culminating in-state? What threshold standards are, or should be, required to impose such taxes on out-of-state (“remote”) vendors? What is the impact on business of permitting the imposition of tax collecting obligations on businesses, especially small businesses? How will state and federal legislatures deal with interstate commerce taxes going forward? These are all questions raised by, or resulting from, the United States Supreme Court’s 2018 decision in *South Dakota v Wayfair, Inc.* 2018 U.S. S. Ct. 3835. This paper reviews the historical context and issues *Wayfair* attempted to resolve in a modern world; the problems *Wayfair* sought to remedy; the states’ responses to the door *Wayfair* opened for the collection of an often untapped revenue resource; the unintended or unknown impact of *Wayfair* on interstate commerce (in particular small remote vendors); and the significant hurdles facing a remote vendor, especially the novice who sets out to make his/her fortune in e-commerce. Finally, the paper will identify proposed solutions for operating in a world of commerce with more than 10,000 different state and local taxing authorities (Bishop-Henchman and Borean, Tax Foundation: State Sales Tax Jurisdictions Approach 10,000 2014). The full map with total numbers of taxing jurisdictions developed by the Tax Foundation can be found in the appendix 1.

Part One the Judicial History and Framework for *Wayfair*

In 2018, The United States Supreme Court granted a writ of certiorari to consider the constitutionality and legality of South Dakota’s recently enacted sales and use tax. South Dakota, the plaintiff, alleged that it was losing sales and use tax revenue due to its inability under existing legal constraints to collect taxes arising from sales to in-state buyers by vendors lacking a “physical presence” in South Dakota. Until *Wayfair*, the judicial dictates for such taxation required that, to avoid an unconstitutional tax under the Commerce Clause, a state could tax remote vendors only if they had a “physical presence.” Judicial precedence limited the states’ ability to regulate acts in interstate commerce by requiring that (1) any state law or regulation may not discriminate against interstate commerce, and (2) the law or regulation may not impose undue burdens on interstate commerce. The “physical presence” rule, i.e., that the party to be taxed had to have some level of a physical presence in the state, set forth in *National Bellas Hess, Inc. v. Department of Revenue of Ill*, 386 U.S. 753 (1967) and *Quill Corp. v North Dakota*, 504 U.S. 298 (1992), satisfied these two principles and became the foundation for any constitutional examination of state taxation. The *Quill* decision followed the roadmap set out in *Complete Auto Transit Inc., v. Brady* 430 U.S. 274, 279 (1977), as discussed below.

All this changed with *Wayfair*. On June 21, 2018, the 5-4 decision overruled *National Bellas Hess, Inc. v. Illinois Department of Revenue, supra* and *Quill Corp. v. North Dakota, supra*, thus eliminating the “physical presence” rule. Instead, the Court approved of South Dakota’s so-called “bright line test”, which permitted South Dakota to impose a duty to collect taxes on a remote vendor if that vendor, in a 12-month period, had more than \$100,000 in sales within the state of South Dakota or had more than 200 transactions in the state. *South Dakota v*

Wayfair, Inc. 2018 U.S. S. Ct. Lexis 3835. A vendor that met either of these two conditions was required to register with the state and collect a sales tax from their buyers on behalf of the state. Sellers would be required to adhere to filing and reporting requirements, as well as to monitor its own sales and determine when the bright lines are met. This decision will create a significant burden on e-commerce vendors and most pointedly on the small remote vendor. Small businesses alone account for 43.5 percent of the United States GDP as of 2014 and employ 61.8 percent of all US workers as of 2015 (SBE Council n.d.) Accordingly, as the Court itself suggested, it appears the ball is now in Congress' court "to address [the] problems [i.e., the burdens on small businesses, reliance on *Quill*, various compliance issues and costs] if it deems it necessary and fit to do so." *Wayfair, 2018 U.S. Lexis 3835*. Unless or until Congress acts, states may now impose sales tax compliance on the sellers, using at least some minimum threshold to satisfy the Constitutional limitations of undue burden on commerce and a non-discriminating application between in-state and out-of-state vendors. To understand the changes created by *Wayfair* and their significance and implications, it is important to explore the history of sales and use tax.

Historical Background

The Commerce Clause and *Quill*.

While states seeking to impose sales and use taxes obligations must both satisfy the Fourteenth Amendment's due process clause¹ and not run afoul of the Commerce Clause or its judicially created Dormant Commerce Clause, the *Wayfair* decision, in contrast to *Quill*, focused

¹ The due process clause of the 14th Amendment, as interpreted and developed by the courts for purposes of imposing taxes, requires that a party must have sufficient minimum contacts with the state and purposefully avail itself of the economic marketplace such that it would be reasonable to require the party to defend itself in a suit in that state. (See, *Scripto, Inc. v Carson*, 362, U.S. 207, 211 (1960)).

almost exclusively on the Commerce Clause and Dormant Commerce Clause. The Commerce Clause is found in the U.S. Constitution, Article 1, sec. 8, cl. 3. In full, it states:

[The Congress shall have Power] To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes; ... The Commerce Clause represents one of the most fundamental powers delegated to the Congress by the founders (*Scripto, Inc. v Carson*, 362, U.S. 207, 211 (1960)).

The companion Dormant Commerce Clause is not found in the Constitution, rather it is a judicial principle holding that courts have the power to invalidate a state law that impacts interstate commerce, even if the law does not offend, or interfere with, any federal law. Put differently, the regulation of interstate commerce was solely the responsibility of Congress, and if Congress does not act, the matter remains dormant (and cannot be addressed legislatively by the states). *See, Gibbons v. Ogden*, 22 U.S. 1 (1824), wherein the Court opined that the power to regulate interstate commerce "can never be exercised by the people themselves, but must be placed in the hands of agents, or lie dormant." Justice William Johnson explained it in his concurring opinion, stating the Constitution is "altogether in favor of the exclusive grants to Congress of power over commerce." *Gibbons v. Ogden*, 22 U.S. 1 (1824). While one would think this may have settled the question, confusion and ambiguity continued, with the Dormant Clause evolving into the principle that states could regulate interstate commerce, including imposing taxation, as long as the law did not discriminate between in-state and out-of-state actors. It was this "anti-discriminatory" principle that the court reinforced in its *Quill* decision.

In the *Quill* case, the Supreme Court decided that the Due Process Clause does not prevent states from subjecting vendors who conduct a significant amount of sales within a state to the state's use tax. In *Quill*, the state of North Dakota sued a remote mail-order vendor for unpaid use taxes on its sales to North Dakota residents. The vendor in *Quill* owned no tangible

property in the state and had no employees there, but it did sell almost \$1 million worth of merchandise to about 3,000 North Dakotans (HECKMAN 2012). The Court held that the tax did not violate the *Due Process Clause*, concluding, “[T]here is no question that Quill has purposefully directed its activities at North Dakota residents, that the magnitude of those contacts is more than sufficient for due process purposes, and that the use tax is related to the benefits Quill receives from access to the state.” *Quill Corp. v. North Dakota*, 504 U.S. 298, 1992. “Having found that the tax passed due process scrutiny,” the Court then examined the constitutionality of the tax under the Commerce Clause and reached an opposite conclusion. The court concluded that because Quill did not have a physical presence, as was the rule set forth in *National Bellas Hess, supra*, it violated the Commerce Clause. The court held that while the state’s tax on out-of-state vendors was not violative of due process, it did run afoul of the Commerce Clause by infringing on interstate commerce. Without satisfying the physical presence test, the court found that the tax did not have the requisite substantial nexus with the person, property or transaction it sought to tax.

Pre-Wayfair Due Process and Dormant Commerce Clause Standards

The Dormant Commerce Clause was argued in the case *Complete Auto Transit, Inc. v. Brady supra* 430 U.S. 274, 1977, wherein the court had to define direct and indirect impacts on interstate commerce and whether a state’s attempts to tax out-of-state sellers interfered with interstate commerce. *Complete Auto* established a “four-part test” that continues to relate applicability of the Dormant Commerce Clause to state taxation. Under the *Complete Auto* test, a state tax does not violate the Dormant Commerce Clause challenge if the tax “[1] is applied to an activity with a substantial nexus with the taxing state, [2] is fairly apportioned, [3] does not discriminate against interstate commerce, and [4] is fairly related to the services provided by the

State (Complete Auto Transit, Inc. v. Brady, Chairman, Mississippi Tax Commission 1977). In *Quill*, the court held that only physical presence meets the first prong of the above test — “substantial nexus.” It concluded that, because *Quill* lacked this physical presence, the tax was unconstitutional under the US Commerce Clause.

Post *Quill* – How to Capture Tax Revenue from Internet Sales to State Residents

Bellas Hess and *Quill* left states in a quandary, as they saw their sales tax revenue being depleted by the competition from e-commerce that evaded taxation. The states began to seek ways to capture these sales as a potential revenue source. States also determined that the lack of legislation on e-commerce was eroding sales tax revenue and leaving local brick and mortar retailers at a competitive disadvantage because sales over the internet were not taxed.

The clear physical presence rules established by *Quill* effectively shielded a significant number of sellers that sold into a state without a physical presence therein. To address this perceived gap, states began to establish so-called “nexus bills,” variously described as ‘affiliate nexus,’ ‘click-through nexus,’ ‘drop ship nexus,’ and most notably, the “Amazon tax”. States were passing these nexus bills in an attempt to capture more revenue not only from sales tax, but also from income tax, and the so-called “use tax” that required the buyer to self-report a purchase and then pay the tax when the seller has not previously collected the tax. Over the last decade, multiple states attempted to capture e-commerce sales tax revenue by requiring Amazon, the largest retailer in the United States, to start collecting sales taxes while selling goods online. The legislation passed by the states is referred to in the scholarly literature as the “Amazon Tax.” The Amazon Tax taxed all sales to buyers in the state, regardless of whether the seller had a physical presence in the state. Between January 2011 and May 2015, 19 states passed legislation to require Amazon to collect sales tax from its customers (Baugh, Ben-David and Park 2018).

In 2008, the state of New York enacted the first Amazon Tax, imposing taxes on all online sales within the state involving commissions if the sales of the vendor exceeded \$10,000 within a 12-month period (Henchman 2012).

States, in particular example, New York made an attempt to tax online sales without violating the Quill physical presence rule. New York legislatures redefined and broadened the term “ vendor” to any party that solicit business within the state “by employees, independent contractors, agents or any other representatives”. New York assumes that if the company has any affiliation with the parties mentioned above, that is the company employs them, then the company then solicits business within the state, thus physical presence rule (Quill) applies and the sales tax collection can be imposed on the seller (Hutchens 2015).

Rhode Island, Georgia, California, Connecticut, and North Carolina soon followed suit, adopting similar click-through laws that require tax collection from the seller if its website can be accessed in the state and the seller is found to be soliciting business from residents in the forum (Bishop-Henchman, *The History of Internet Sales Taxes from 1789 to the Present Day: South Dakota v. Wayfair* 2018).

The U.S. Congress soon started to look at the issue and had proposed several bills to help the states with sales tax collection. In 2015, the Remote Transactions Party Act was introduced. This Act was designed to allow states to require remote sellers to collect and remit to the state sales taxes derived from sales to individuals or entities located in the state. On the other hand, it prohibited states from requiring out-of-state sellers to file their sales and use tax returns more frequently than the state requires their instate companies to do (Bishop-Henchman, *The History of Internet Sales Taxes from 1789 to the Present Day: South Dakota v. Wayfair* 2018). Similarly, the Marketplace Fairness Act was introduced in 2017 to provide more freedom to states to

collect sales taxes from interstate internet sales. This act was introduced to equalize collection of sales taxes from both in-state and out-of-state sellers.

The states' efforts to impose taxes on e-commerce and the conflicting judicial decisions as to the constitutionality of these taxes culminated in the Supreme Court's decision to grant *cert* in *South Dakota v Wayfair*.

The *Wayfair* Decision

On June 21, 2018 Supreme Court decided the case “*South Dakota v. Wayfair Inc.*” Wayfair is one of the world's largest online retailers for home décor that was founded in 2002 by Steve Conine and Niraj Shah (Wayfair.com 2019). The issue before the court was “whether South Dakota may require remote sellers to collect and remit [a sales] tax without some additional connection to the State [other than the fact that the sale was consummated in the State]” *Wayfair, 2018 U.S. Lexis 3835*. In a 5-4 decision, the Court held that the state of South Dakota could require out-of-state internet retailers to collect sales taxes on sales to South Dakota residents (entities and individuals). The Court also used the opportunity to overrule *Quill* and *National Bellas Hess*, holding that the physical presence test in those two cases, “both as first formulated and as applied today, is an incorrect interpretation of the Commerce Clause.” *Wayfair, 2018 U.S. Lexis 3835*. The Court was concerned about the physical presence and substantial nexus requirements for determining a tax's constitutionality under the Commerce Clause in today's e-commerce world. As discussed above, *Quill* held that states could not require a business to collect its sales tax if the business lacks a physical presence in the state. In the absence of requiring the vendor to collect the sales tax, the duty was imposed on the buyer to self-report its purchases and pay a “use tax.” Consumer compliance was - not surprisingly -

“notoriously low.” (Report to Congressional Request, 2017 (McTigue 2017)). As the Court acknowledged, each year the physical presence rule became further removed from economic reality. It resulted in potential revenue losses to the states and gave out-of-state businesses an advantage. This dilemma tilted the court in favor of a more expansive state right to collect taxes generated by interstate commerce sales to its residents. The Court focused on fairness and equality, while de-emphasizing the administrative costs and efforts imposed on small and medium size businesses.

The Amazon tax laid the groundwork for judicial action, and the newly passed sales tax in South Dakota became the test case with Wayfair, a large e-commerce vendor headquartered in Boston, MA, challenging the tax. In *Wayfair*, the court said that physical presence is not the only way to establish the first prong of the four-prong test — substantial nexus. In the absence of *Quill*, the four-prong test simply asks, “whether the tax applies to an activity with a substantial nexus with the taxing state.” In upholding the South Dakota law, the *Wayfair* majority found that “the nexus is clearly sufficient. It applies to sellers who engage in business in the state, and [companies like Wayfair] are large, national companies that undoubtedly maintain an extensive virtual presence.” *Wayfair*, 2018 U.S. Lexis 3835.

In addition to the broader picture of the changing economic marketplace and the ubiquity and expansiveness of e-commerce, the Court also found the specific facts presented in *Wayfair* to be compelling in determining to uphold the tax. Noting that the law was expressly not to be imposed retroactively, that it contained a “bright-line” test requiring the vendor to have delivered more than \$100,000 of goods or services into the State or engage in 200 or more separate transactions for the delivery of goods or services into the State, and that South Dakota is a party to the Streamlined Sales and Use Tax Agreement, the Court found that the collection

requirement was constitutional under the Commerce Clause and did not place an undue burden on interstate commerce. The Court found the bright-line requirements were intended to protect small sellers with insignificant, incidental sales in the state and help the state to establish a collecting mechanism for sales tax. The court found compelling South Dakota's argument that sales tax revenue is of the essence because South Dakota has no state individual or corporate income tax; three-quarters of its tax revenue is derived from sales and property taxes *Wayfair*, 2018 U.S. Lexis 3835. Until the *Wayfair* decision, the *Quill* physical presence test applied to both sales and income taxes. *Wayfair* has changed the approach for sales tax; note, however, that the *Quill* physical presence standard is still valid for income tax purposes.

In several ways, the facts in *Wayfair* made the Court's decision not to apply the "physical presence" test and in fact overrule the decisions in *Quill* and *National Bellas Hess*, more palatable. First, it is worth noting the fact that South Dakota has made several attempts to simplify sales tax. Second, as the Court recognized, South Dakota became a member of the Streamlined Sales and Use Tax Agreement (SSUTA), a multistate organization with the goal to increase uniformity and reduce the complexity of sales tax and its collection across the US. Third, South Dakota has created fewer distinctions within a category of goods to determine if one good is taxable or not. This is in contrast to other states with tax distinctions with a category of products. For example, when shipping a blanket to Minnesota from out-of-state, a sales tax, in addition to any local rates must be applied. If the blanket is qualified as a "baby receiving blanket," however, it is exempt from sales tax (Minn.Stat. 297A.62.1 and Minn.Stat. 297-A.67.8(b)). Quite often, definitions of taxable versus nontaxable products are too meticulous and can cause errors in the sales tax applied. When shipping to Texas, a sales tax of 6.5% plus any local rates would apply on sale of deodorant; however if deodorant contains antiperspirant, then

the sale is exempt (Texas Comptroller of Public Accounts 2012). These kinds of distinctions are rare in the South Dakota tax scheme. Lastly, South Dakota enforces simplified state and local rates for sales taxes. Localities may not impose a separate or additional sales tax on goods from that imposed by the State.

With the decision to overturn *Quill* and its physical presence rule, the Supreme Court left the sales tax legislation issue open for both the state and federal legislatures. Soon after the decision, various states jumped on a bandwagon of either following the *Wayfair bright line* rule or creating their own. Some states placed their new sales tax legislation in effect starting as early as July 1, 2018, immediately after the *Wayfair* decision was handed down. Other states set due dates in the near future, such as January 1, 2019. Some states took advantage of the Court's failure to hold expressly that retroactive application would have made the statute unconstitutional and accordingly chose to apply a retroactive approach in sales tax collection.

Post Wayfair

In light of the Supreme Court decision, HR 379 was introduced in the U.S. House of Representatives in January 2019. In relevant part, the bill provided that: (1) a statewide uniform sales tax rate cannot be higher than the highest combined rate of all such local and state taxes; (2) out-of-state remote sellers would be permitted to remit all such local and state taxes to one location; and (3) states would be required to set a statewide uniform standard for what is deemed taxable (Judiciary 2019). The bill has not been taken up for consideration yet.

The Post-Wayfair Opportunities

The immediate impact of *Wayfair* – the nearly simultaneous changes in state tax laws, coupled with the ever-increasing complexity of constantly changing tax laws – created

uncertainty and confusion, resulting in a stampede of opportunity for many tax professionals and business leaders. On June 29th, 2018, Deloitte Tax LLP held a webcast titled “SCOTUS on Wayfair Case: The Path Forward for Sales-and-Use Tax Reporting.” Deloitte Tax provided polling data from that event. Each question averaged 4000 responses. A full list of responses can be found in the appendix 2. The survey responses to Question No. 1 show that only 12.2 % of all respondents think that their organization’s IT and tax departments were prepared to calculate and remit sales tax that may result from the demise of *Quill* (Deloitte Tax LLP 2018). The rest of the respondents were either “somewhat prepared”, “not at all prepared” or “don’t know/not applicable”.

The Responses to Question No. 2, demonstrated that taxability decisions and calculating and remitting sales tax are the biggest challenges to them. Moreover, as revealed in the response to Question No. 3, only 10 percent of respondents do not find potential state actions concerning, which in essence demonstrates that *Wayfair* has some burdensome complications to it. Overall, the survey results raise serious issues as to whether sales tax compliance activities are stable among the companies and can effectively and efficiently be administered by the companies.

Why do the majority of respondents feel less than “very prepared” to deal with the new sales tax legislation? To understand this uncertainty, it is important to examine the sales tax complexities prior and post *Wayfair*. Sales taxes have had their own issues and complexities that were not eliminated by *Quill* and other related cases. Retailers, regardless of whether they are brick and mortar or e-commerce retailers, have faced complex taxability decisions in each state. For example, juice or clothing in various states will be taxed differently, or in some states they

will not be taxed at all. Juice in New York will be taxable according to Tax Bulletin ST-65 (TB-ST-65) “fruit drinks, whether or not carbonated, that contain less than 70% natural fruit juice (for example, lemonade and cranberry juice cocktail)” (New York Department of Taxation and Finance 2019). Similarly, boots in most states will not be taxed, but in Minnesota, taxes are imposed on boots above the knee (Minnesota Department of Revenue 2009). Sporting boots are taxed in Rhode Island, while other boots remain tax-exempt (Rhode Island Division of Taxation 2007). Such rules apply to numerous retail sales items regardless of category whether clothing, food, electronics, software or others. The businesses have to determine whether their products are taxed and how they are taxed at every level in a taxing jurisdiction. The definitions of items taxed are constantly changing, which creates an additional complexity from year to year. The second complexity that existed *pre-Wayfair* is the existence of multiple tax rates within a state. As of 2014, the number of taxing jurisdictions, including state and local taxing authorities approached 10,000, which means each one of those jurisdictions imposes its own tax, which may well result in varying and multiple tax rates within a single state. It also is worth noting that ZIP codes do not accurately indicate sales tax rates. As explained in *Brief of Amici Curiae eBay Inc, et al, in Support of Respondents, 2018 U.S. S. Ct Briefs 1406*, determining the sales tax due in various jurisdictions could be a complex and labor-intensive task. It might not always be clear what the final destination of the goods sold is; determining the final location and sales tax due is not as easy as simply searching the address. If one’s current sales tax calculation process is ZIP code based, there is a risk of charging the wrong rate and even remitting tax to the wrong jurisdiction. In any case, the company might be at risk for a costly negative audit. Sales tax rates are continually changing, often on a yearly base. Appropriate sales tax rates must be determined at the time of sale by the seller; however, as shown, rates vary by the location, also known as

local rates, and rates also can vary within a 5-digit zip code. For example, as mentioned in *Amicus Brief 1406*, filed in support of Wayfair’s position, in a suburb of Bonner Springs, Kansas, if the seller uses 5-digit zip code 66012, the sales tax rate combining state and local rates will be 7.5%, however, if the seller uses a 9-digit zip code 66012-1402, the sales tax rate will increase to 9.25% *Brief of Amici Curiae eBay Inc, et al, in Support of Respondents, 2018 U.S. S. Ct Briefs 1406*. Ironically, if the good is shipped a few houses down the road 66012-7086, the sales tax rate will be 7.5% *Brief of Amici Curiae eBay Inc, et al, in Support of Respondents, 2018 U.S. S. Ct Briefs 1406*. Such precise sales tax rate computation may be time and labor consuming and might be make accuracy in compliance nearly impossible, depending on what information is provided by the buyer at the time of sale.

The Risks Ahead

To complicate the taxability and tax rate issues further, the seller has to determine and comply with numerous filing requirements and deadlines. And then there are the state-created sales tax holidays that the vendor must consider, when states forgive the imposition of taxes or reduce the taxes to spur or facilitate the purchase of merchandise, such as “return to school” items.

Currently, e-commerce vendors are faced with known and unknown risks arising from compliance and payment requirements created by the ever-increasing changes in state sales tax - *Wayfair* has now added to the complexity of this tax issues. The most important risk these businesses face is financial risk. For example, if the company does not properly comply with sales tax policies - whether intentionally or not - the state(s) may identify the company as a non-filer, which in turn can result in additional sales tax assessment and significant penalties and

interest. Sales and use tax liability could threaten a company's financial well-being, particularly small business or those operating on slim margins, whose very existence could be jeopardized. As explained in the article "Sales Tax Risk Assessments and Remediation in a Post-Wayfair World" by Oldroyd, Fader and Faciana, 2018, retailers can be penalized with an assessment of sales tax rates as high as 10.25 percent of gross receipts for failing to charge sales tax (Oldroyd, Fader and Faciana 2018). If non-collection is a part of a whistle-blower lawsuit, the effective sales tax rate could be as high as 30 percent (on gross income), (Oldroyd, Fader and Faciana 2018). The significance of taxing gross, rather than net income, must not be overlooked. It is not uncommon for a startup business or small business to have gross income, but an operating loss and no revenue to pay the assessed tax obligation (Oldroyd, Fader and Faciana 2018). Therefore, it is essential for these remote vendors to identify and understand the tax structure of any state into which they consummate sales and then to mitigate the risks either by timely complying with sales tax policies, by invoking a sales tax amnesty, or by the Voluntary Disclosure Agreement (VDA). VDA is an "agreement" between the taxing institution and the taxpayer whereby a taxpayer, when proactively disclosing prior period tax liabilities in accordance with a binding agreement, can receive certain benefits.

The second identified risk that companies might face is "reputational risk", *i.e.* the risk to the company's reputation and goodwill, resulting from the failure of properly administering sales taxes (Oldroyd, Fader and Faciana 2018). *Wayfair* essentially has made remote vendors the tax collectors for the states where they ship goods once they cross the threshold "bright line" set by a state. The harm to a company's reputation is facilitated by states, such as Pennsylvania and Massachusetts that publish the lists of delinquent taxpayers.

Regulatory risk is another calamity. As explained in “Sales Tax Risk Assessments and Remediation in a Post-Wayfair World,” by Oldroyd, Fader and Faciana, 2018, the risk may arise because some governmental bodies require that contractors or vendors participating in bids must comply with all state laws. A company that wittingly or unwittingly fails to register for sales tax collection exposes itself to failing in the bid process (Oldroyd, Fader and Faciana 2018). But the risk does not stop there. The state government that believes a particular company failed to collect sales taxes may detain the non-complying company’s trucks that pass through the state and thus disrupt the operations.

Finally, it is prudent for companies, while complying with Generally Accepted Accounting Principles (GAAP) to evaluate and report contingent sales tax liability under ASC 450 and ASC 740. At the same time, the companies must identify and assess pre and post-*Wayfair* sales tax liability to determine in which states it exceeded the thresholds for a safe harbor and to which localities the filing obligations exist (Oldroyd, Fader and Faciana 2018).

Proposals for Dealing with the Post-*Wayfair* Tax World

This section sets forth proposals that might assist the remote retailers in dealing with sales tax compliance and in understanding filing obligations. While the impact of *Wayfair* is still in its infancy, there are some guidelines and resources that are becoming available to these newly created sales tax collectors. While Ronald Reagan was generally correct in stating that businesses “collect” taxes, rather than “pay” taxes, the accuracy of his statement becomes shaky when the non-complying sales tax collector fails to collect and transmit the requisite taxes and must dip into its own funds to pay not only the owed sales taxes, but also the tax penalties and interest.

The following state legislative actions are suggested by Joseph Bishop-Henchman in the article *The History of Internet Sales Taxes from 1789 to Present Day: South Dakota v. Wayfair* to ensure fairness and compliance from legislative perspective. The seven guidelines are: 1) Avoid retroactive application and include a prospective application in any new legislation imposing tax collection obligations on remote retailers; 2) Consider using a single state-level administration of all sales taxes in the state; 3) Create and ensure uniform definitions of products and services; 4) Implement simplified tax rate structures; 5) Offer State approved and provided Software; 6) Include Safe Harbor (Bishop-Henchman, *The History of Internet Sales Taxes from 1789 to the Present Day: South Dakota v. Wayfair* 2018). Among professionals, there is a debate whether *Wayfair*-type bright-lines may be imposed to sweep up remote vendors who had not met the bright lines had the standards existed in past years. The concern is real, as some states, such as Hawaii, have imposed their sales tax collection obligations retroactivity in sales tax collection. Hawaii's Bill 2514, enacted on June 13, 2018, specifically states that post-*Wayfair* sales tax collection applies to the period beginning December 31, 2017, which is prior to the *Wayfair* decision (Hawaii State Legislature 2018). Retroactive collection in general was not addressed by the Supreme Court because the South Dakota legislation was expressly prospective. One might infer that the court recognized the prospective application in a favorable light and is thus suggesting that the prospective application is not merely advisable, but was a factor considered by the Court to be essential to meeting Commerce Clause or Due Process requirements. Having left the issue for later resolution, legal challenges to retroactivity are a certainty.

Consider using a single state-level administration of all sales taxes in the state. One significant change that would streamline the tax collection - whether it is done by the state or the

retailer - would be to have a central collection agency or body responsible for state and local sales taxes. Additionally, according to the publication of Tax Foundation “Post-Wayfair Options for States,” the adherence to a single uniform sales tax statewide, as exists in such states as Georgia, Indiana, Iowa, Kentucky, Minnesota, New Jersey, North Dakota, South Dakota, Utah, Vermont, Wyoming, Arkansas, Kansas, Michigan, Minnesota, Nebraska, Nevada, North Carolina, Ohio, Oklahoma, Rhode Island, Washington, West Virginia, and Wisconsin, would eliminate the compliance burden and opportunity for error that multiple intrastate sales taxes create (Bishop-Henchman, Walker and Garbe, Post-Wayfair Options for States 2018).

Create and ensure uniform definitions of products and services. As shown earlier in the examples of the Minnesota blankets and boots and Texas deodorants, various states have definitions of services, products, electronic transactions that differ not only for other states, but differ within the category of the good or service being sold. The lack of uniformity creates confusion and uncertainty as to the application of an appropriate sales tax, and if applicable, the appropriate rate or rates the vendor must impose in carrying out its tax collection obligations. Failure to make the proper conclusion invites legal issues for the taxpayer.

Implement simplified tax rate structures. South Dakota requires the same tax base between state and local sales tax and no partial tax rates for certain items.

Offer State approved and provided Software. Access to sales tax administration software should be provided by the state, giving the remote retailer tax collector a level of reliability and certainty. Sellers who use the software should be held harmless and not liable for errors derived from relying on it.

Include Safe harbor. States should exclude “those who transact only limited business” in the state. (South Dakota’s limitations are \$100,000 in sales or 200 transactions.)

States are likely to use the *Wayfair* decision as an opportunity to reform their state tax systems. Alabama, Arizona, Colorado, and Louisiana impose significant compliance costs on their retailers, and the need to comply with *Wayfair* may enable them to overcome internal resistance to a better sales tax system (Bishop-Henchman, Walker and Garbe, Post-Wayfair Options for States 2018).

A Suggested Checklist for the Remote Retailer/State Sales Tax Collector

The *Wayfair* decision has created a new level of scrutiny to be performed by the remote retailer. Overturning the *Quill* precedent will erode the protection of state borders as effective limits on state tax power. This will encourage tax-heavy states like California, New York, and Illinois to become more aggressive tax collectors on businesses. Businesses selling remotely in these states could be subject to audit and enforcement actions in states across the country in which they have no physical presence and, thus, little political influence. Among suggested precautions are the following:

- Understand the company’s current position, assessment of business processes, review systems, products, taxability. Evaluate current collection and remittance practices, where the thresholds are met. Determine the deadline.
- Determine the potential impacts of *Wayfair*, such as where or when the sales/use tax is triggered based on sales data. Determine what tax and financial reporting considerations need to be made.

- Assess current system and business model and adjust it as needed. Create new customer data (while monitoring sales) when necessary. Evaluate the technology and adjust as needed.
- Stay compliant, meet the filing requirements, determine exposure periods, and obtain exemption certificates.
- Implement technology solution. Consider tax amnesty if retrospective rules apply (Voluntary Disclosure Agreement VDA agreement). Register with new filing jurisdictions. Train people within the company and test the new process of compliance with Sales and Use Tax (SUT).
- Further monitor new changes on federal, state and local levels in tax rates, deadlines, bright lines or safe havens and the passage of new bills or regulatory rules.

MTC and the Marketplace Facilitator – a Good Start

Recently, some states in cooperation with the Multistate Tax Commission (MTC) have conducted a study to determine further steps for e-commerce. As of July 24, 2018, states that belong to the MTC have adopted “Marketplace Facilitator” legislation. This legislation was created in light of *Wayfair* in an attempt to simplify sales tax collection and remittance process. The legislation shifts sales tax collection and remittance obligations from a third-party seller to the ‘marketplace facilitator’. MTC identifies Marketplace as:

“...any means, whether physical or electronic, through which one or more sellers may advertise and sell or lease tangible personal property, such as a catalog, Internet website, or television or radio broadcast, regardless of whether the tangible personal property or the seller are physically present in the state” (Cram 2018).

MTC defines the Marketplace Facilitator as “a person that operates or controls a marketplace and facilitates transactions by engaging, directly or indirectly, in communicating the offer and acceptance between a purchaser and a seller” (Cram 2018).

This legislation is intended to impose sales tax collection on the large online retailers such as Amazon, Walmart, Etsy, eBay, Sephora, Overstock, Macy’s and many others. Such companies facilitate sales for their marketplace sellers’ product through a marketplace for a payment. For instance, [Amazon.com](https://www.amazon.com) has the Fulfillment by Amazon (FBA) program. This program creates a contractual relationship with a marketplace seller (any company) when an inventory is sent to Amazon’s warehouses/fulfillment centers. The inventory is then sold on [Amazon.com](https://www.amazon.com), where Amazon takes orders, handles payment, shipping and returns. Amazon collects sales tax on sales in every state that has sales tax. As set forth on Amazon’s website, pursuant to the Marketplace legislation, Amazon “will now be responsible to calculate, collect, remit, and refund state sales tax on sales sold by third party sellers for transactions”. These taxes are “...destined to states where Marketplace Facilitator and/or Marketplace collection legislation is enacted. In certain states, local taxes are not included within Marketplace Facilitator Legislation; Amazon is not responsible for those taxes” (Amazon.com n.d.). The list of the states with effective due dates and references to state’s websites were posted on Amazon’s website; this list is attached in the appendix 3.

Collection of sales taxes by a Marketplace Facilitator is an effective way to collect and remit fast and easy sales taxes. The question remains open for marketplace sellers who sell merchandise using multiple Marketplace Facilitators: if a seller sells goods using multiple platforms and each of the platforms collects sales tax, how will the seller monitor *Wayfair* bright-

lines and register with the states to collect sales taxes? The answer is still unclear, just as it is unclear as to how the sales will be monitored and local sales tax will be collected. For such sellers, now there is a need either to consolidate all reports provided by the marketplace facilitators like Amazon, or to use outside services to do this activity.

Available Resources for the Remote Vendor

In the light of the pre-existing complexity of sales tax requirements and the new *Wayfair* requirements, there are various sales tax software providers that offer sales tax monitoring and collecting, filing and remitting services. In conducting this research, websites of such service providers were investigated, and service brochures are used in this paper to describe what specific services these companies offer. Looking at the various online software solutions is not intended to be an endorsement or advertisement for any of the providers, it is an attempt to learn what is occurring in the sales tax industry with sales tax processing services.

There are various software and online sales tax service providers. This paper identifies ten of the most common services that could be used in sales tax computations: Avalara, Tax Jar, OneSource, Ariba SAP, Oracle Cloud, 4 HANA SAPs, Tableau, Vertex Cloud, Tax Cloud, Intuit PorSeries Tax. This list is not all inclusive but is meant to demonstrate the availability of sales tax software for the sellers. In appendix 5 there are three of the descriptions from the identified providers and the types of services they offer.

Findings

Innumerable legal complexities of sales taxation have existed throughout the years: *Quill*, the Commerce Clause, the Dormant Commerce Clause and *Wayfair*. The legal complexities, however, are not to be outdone by the available sales tax requirements and the complexities of

sales tax rates, filing deadlines, definitions of taxable products and bright lines. Retailers, regardless of size must comply with all existing regulations that apply to them. As mentioned before, a large percentage of companies are not prepared for the changes that arrived as a result of the *Wayfair* decision. It is important to understand what burdens the described above sales tax regulations create. In conducting this research, it became readily apparent that statistical data or any dollar value data that would help to measure the impact of *Wayfair* on retailers is yet to be developed to a level of significant certainty. The most recent detailed retail study by Price Waterhouse Coopers LLP (PWC), 2006 followed the previous State of Washington Department of Revenue in 1998 “Retailers’ Cost of Collecting and Remitting Sales Tax” by Mary Welsh and Fredrick C. Kiga (1998). The PWC study conducted a survey and analyzed the results to prove the burden of sales tax compliance. This study identified three types of retailers according to the size: small with annual sales (from \$150,000 to \$1 million), medium with annual sales (from \$1 million to \$ 10 million) and large with annual sales (greater than \$10 million) (PriceWaterhouseCoopers LLP 2006). The study found that the national average annual state and local retail sales tax compliance cost in 2003 was 3.09 percent of sales tax collected for all retailers, 13.47 percent for small retailer, 5.20 percent for medium retailers, and 2.17 percent for large retailers (PriceWaterhouseCoopers LLP 2006). To compare, the predecessor and the base for PWC’s research, the State of Washington Department of Revenue’s study in 1998 identified the same three groups to be of size: small (from \$150,000 to \$400,000 of sales), medium (from \$400,000 to \$1,500,000 of sales), and large (over 1,500,000 of sales) (Kiga 1998). The study determined that if a retailer was collecting sales taxes in even one single state, the small retailers collecting taxes for that state bore the highest compliance cost – 6.47 percent of sales tax collected. Medium size retailers bore a cost of 4 percent of sales tax collected and large retailers,

1 percent of sales tax collected. These 1998 costs could be a result of sales tax and *Quill* complexities (Kiga 1998). As one can see, between the years 1998 and 2006, the size of the retail sales increased, and the percentage of the cost of collecting and remitting sales tax has increased for all groups.

Suggested Survey

PWC's study is a good foundation on which a new study can be built, however, the elements of *Wayfair* certainly need to be incorporated into the questionnaire to analyze the situation over a decade after the State of Washington study was conducted.

It is difficult to measure the impact of *Wayfair* decision and sales tax as a whole on the retail and e-commerce industry. This research suggests designing and conducting such an independent study to establish any quantitative and qualitative data to learn the impact. As explained, there are multiple ways to comply with sales tax collection, filing, and remittance rules, but to understand what the industry does and what is the industry experience, it is important to improve sales tax legislation.

The main question of the new study should be: "whether sales tax compliance cost for retailers, regardless of operation type, has increased and become unreasonably – or unconstitutionally - burdensome in the post-*Wayfair* world." Imposing *Wayfair* rules and overturning the *Quill* rules obviously eliminated the brick and mortar disadvantage for retailers that had physical buildings in-state and were obliged to collect sales tax, while online retailers who were not obliged to do so. PWC's questionnaire is used as a foundation for this questionnaire, with the exception of *Wayfair*-related points (PriceWaterhouseCoopers LLP 2006). It would be helpful to increase the scope of PWC's suggested study by examining some

Wayfair related questions. Suggested by this study questions can be found below. The full list of survey questions, both suggested by this survey and those that were prepared by PWC can be found in appendix 4 (PriceWaterhouseCoopers LLP 2006).

Question 1.

Rank the following costs (rank only the ones that apply) with 1 being the highest cost.

- Monitoring the bright lines preparing reconciliations from multiple platforms etc.
- Quantifying the increase in headcount due to *Wayfair*, i.e., how many additional employees were hired to handle *Wayfair* compliance.
- Monitoring the changes in Sales Tax legislation (filing deadlines, new rules, such as marketplace facilitators).
- Mapping the products while selling online via own website or through multiple marketplace facilitators.

Question 4

What percent of your retail sales in dollars during 2018/2019 were through the following channels? (Total must add to 100%)

- Internet sales through your own website
- Internet sales using marketplace facilitators (for example Amazon, eBay)

Question 9

How many employees did you have at the end of 2018/2019? (if in any of the department is less than 1, use fractions)

- Employees working on Wayfair compliance
- Employees working with ecommerce (maybe internet order processing)

Question 11

Approximately what percent of your total sales dollars were paid in the following ways in 2018/2019? (Must total to 100%)

- Gift cards
- Cryptocurrency

Question 12

For each of the following types of payment, indicate the average percentage fee you paid to the credit card company or other financial institution in 2018/2019 (include only fees that are determined as percentage of the sales price)

- Fee for using marketplace facilitator services

Question 14

Approximately what percent of all the cash registers used by your employees were of the following types in 2018/2019?

- Outsourced (was performed by the third party such as Amazon, Taxjar or other third party)

Question 15

What was the approximate cost for a new cash register of each type that you used in your retail business in 2018/2019 (mark NA if an option does not apply)?

- Outsourced (was done by the third party such as Amazon, Taxjar or other third party)

Sales tax compliance costs:

1. Please estimate additional annual costs you incurred in 2018/2019 due to e-commerce retail sales – the cost that would have been avoided in 2018/2019. Do not include your sales tax remittance themselves, just the cost of complying with Wayfair (sales tax on e-commerce). Exclude compliance costs related to the use tax payment on your own purchases.

2. Take into account all relevant costs of personnel, software, equipment, supplies and assistance from outside service providers (CPA firms, Marketplace sellers, online software services etc.)

Question 18

Documenting sales tax, filing in correspondence with states ‘deadlines , remittance costs, monitoring rates and filing deadlines changes, costs of obtaining sellers permits.

Question 21

Product mapping to apply appropriate state and local sales tax

Question 25

If you are unable to break down your costs into the above categories, what is your best estimate of the total additional costs incurred because of the implementation of the sales tax on online sales. (if you provided answers to questions 17-24, please ignore this one.) Total annual sales tax compliance cost in 2018/2019.

Question 34

Of tax-exempt sales in 2018/2019, what percent was related to each of the following reasons? (total must equal to 100%)

- Out-of-state sales in the states where the bright lines were not met

Conclusion

This paper examined the legal complexities of sales tax and *Wayfair* overall. The rapid changes in state legislation are potentially burdensome for businesses to monitor and follow. All taxing states have filing deadlines, taxable versus nontaxable goods differentiation, marketplace facilitator legislation, proposed Bill in the Congress of the United States and most importantly different thresholds for imposing tax collecting obligations on the online retailers. As discussed previously, there is a chance that US Congress would step in and attempt to regulate sales tax administration and make it uniform as granted by the 14th Amendment and the Commerce Clause. As of today, it is up to businesses whether to comply with *Wayfair* and post-*Wayfair* created regulations by using software providers, whether to comply in-house, or whether to use professional assistance by public accounting firms. In the essence, any business that operates online must consider the taxing requirements, obligations and what are the options to handle new *Wayfair* and post-*Wayfair* tax regulations. The cost effect of *Wayfair* decision is yet to determine, but it is clear from pre-*Wayfair* studies conducted in 1998 by WDOR and 2006 by PWC, there is a cost that businesses must bear due to complexities of multistate sales tax definitions and filing requirements. The amount of software available for sales tax administration indicates that there is a demand from businesses that seek sales tax assistance. As demonstrated by the survey provided by Deloitte Tax LLP, it is clear that businesses find this legislative change troublesome and uncertain.

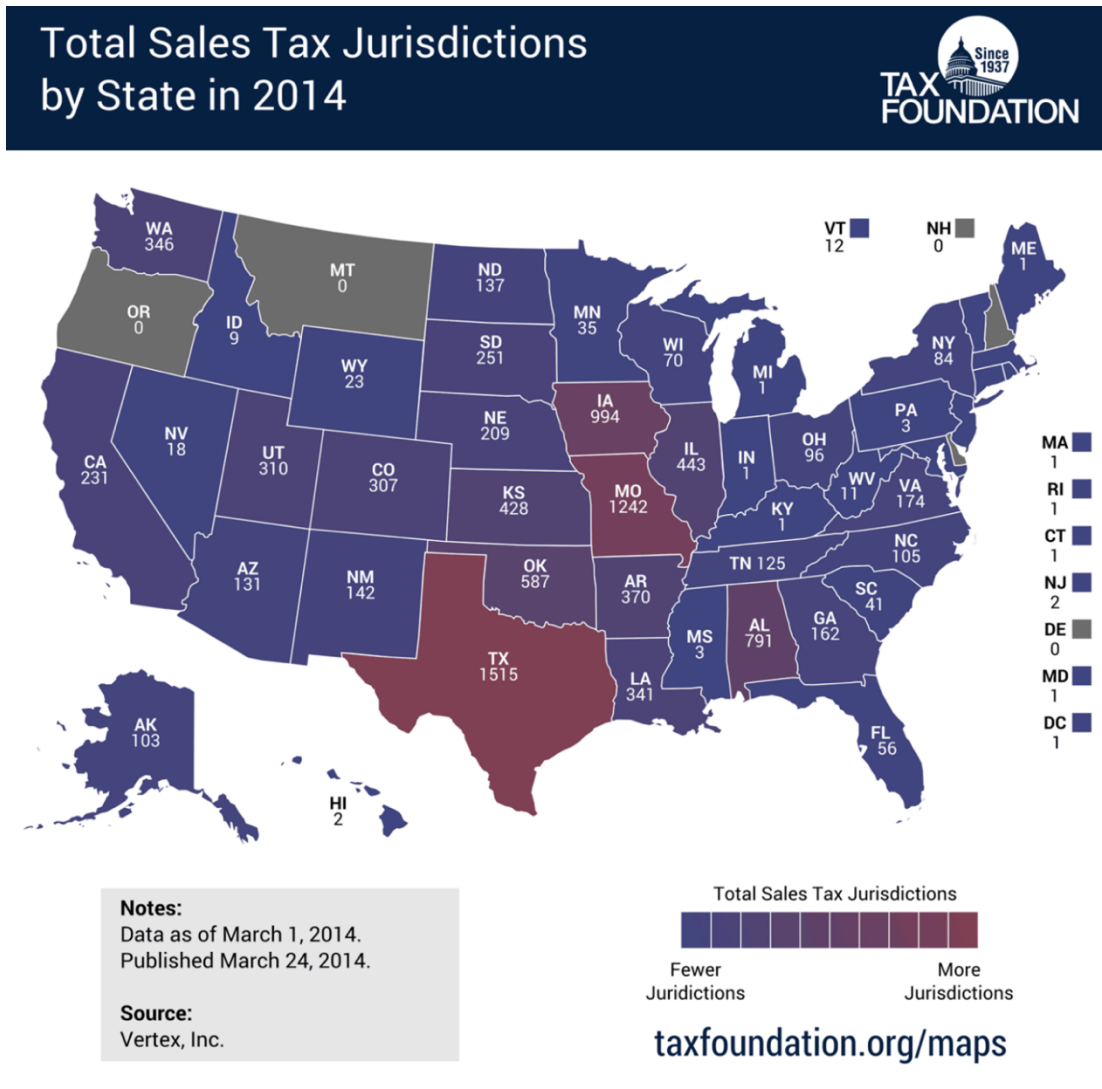
In the light of current legislative changes, it is important to determine and quantify the impact of the Supreme Court decision *Wayfair*. The suggested questionnaire could be a good tool for tax professionals to consider when conducting an extensive study of the *Wayfair* impact. Most certainly, the companies have the tools to comply with the sales tax legislation: whether

they can do that in house or use ERP system or they can completely outsource sales tax function to the third party.

Appendix 1

(Bishop-Henchman and Borean, Tax Foundation: State Sales Tax Jurisdictions Approach 10,000

2014).



Appendix 2

(Deloitte Tax LLP 2018)

Disclaimer: “Companies, especially “middle market” and emerging businesses, have expressed concerns that such uncertainty will create unforeseen burdens and costs, including systems, payroll, and other costs associated with vigilance in monitoring new rules for multiple jurisdictions.”

Event Title: SCOTUS on Wayfair case: The path forward for sales-and-use tax reporting **Event Date:** 6/29/18

Polling Summary Report as of 7/2/18

Results are aggregated without inclusion of Deloitte attendee responses

How prepared are your organization’s IT and tax departments to calculate, collect and remit sales tax now that Quill is overturned?

Votes Received: 4,391

Very prepared	12.2%
Somewhat prepared	37.6%
Not at all prepared	17.8%
Don't know/Not applicable	32.3%

What is your biggest compliance challenge now that Quill is overturned?

Votes Received: 4,565

Calculating and remitting sales tax	24.7%
Analyzing financial statement positions	6.5%
Taxability decisions	32.4%
Other	9.9%
Don't know/Not applicable	26.5%

How concerned are you about what the various states may do in response to the Wayfair decision?

Votes Received: 4,503

Very concerned	27.2%
Somewhat concerned	48.6%
Not concerned	10.0%
Don't know/Not applicable	14.2%

How nimble is your organization, not only from a systems perspective, but including process and change management for operations and corporate that will be needed due to the Wayfair decision?

Votes Received: 3,906

Very nimble	7.7%
Somewhat nimble	48.1%
Not at all nimble	19.9%
Don't know/Not applicable	24.4%

Appendix 3

(Amazon.com n.d.)

State	Effective Date	Marketplace Facilitator Legislation
Alabama	1/1/2019	https://revenue.alabama.gov/2018/07/03/ador-announces-sales-and-use-tax-guidance-for-online-sellers/
Arizona	10/1/2019	https://azdor.gov/news-events-notice/news/new-tpt-law-remote-sellers-and-marketplace-facilitators-starting-october-1
Arkansas	7/1/2019	https://www.dfa.arkansas.gov/excise-tax/sales-and-use-tax/arkansas-remote-seller-frequently-asked-questions-faqs
California	10/1/2019	https://www.cdtfa.ca.gov/industry/MPFAct.htm
Colorado	10/1/2019	http://leg.colorado.gov/bills/hb19-1240 Legislation does not include Colorado home rule city sales and use tax on third party sales
Connecticut	12/1/2018	https://portal.ct.gov/-/media/DRS/Publications/OCG/OCG-8.pdf?la=en
District of Columbia	4/1/2019	https://otr.cfo.dc.gov/sites/default/files/dc/sites/otr/page_content/attachments/Wayfair%20Response%20Notice%20%281%20%202019%29_0.pdf
Idaho	6/1/2019	https://tax.idaho.gov/n-feed.cfm?idd=4279
Indiana	7/1/2019	For more information, contact the Indiana Department of Revenue(https://www.in.gov/dor/)
Iowa	1/1/2019	https://tax.iowa.gov/south-dakota-v-wayfair
Kentucky	7/1/2019	https://revenue.ky.gov/News/Publications/Sales%20Tax%20Newsletters/Sales%20Tax%20Facts-June%202019%20(8pt).pdf
Maine	10/1/2019	https://legislature.maine.gov/legis/bills/getPDF.asp?paper=HP1064&item=1&snum=129

State	Effective Date	Marketplace Facilitator Legislation
Maryland	10/1/2019	For more information, contact the Comptroller of Maryland (https://taxes.marylandtaxes.gov/default.shtml)
Massachusetts	10/1/2019	https://www.mass.gov/info-details/remote-seller-and-marketplace-facilitator-faqs
Minnesota	10/1/2018	https://www.revenue.state.mn.us/businesses/sut/Pages/Marketplace-Providers.aspx
Nebraska	4/1/2019	For more information, contact the Nebraska Department of Revenue (http://www.revenue.nebraska.gov/index.html)
Nevada	10/1/2019	For more information, contact the Nevada Department of Taxation (https://tax.nv.gov/)
New Jersey	11/1/2018	https://www.state.nj.us/treasury/taxation/index.shtml
New Mexico	7/1/2019	http://realfile.tax.newmexico.gov/FYI-105%20-%20Gross%20Receipts%20&%20Compensating%20Taxes%20-%20An%20Overview.pdf
New York	6/1/2019	For more information, contact the New York Department of Taxation and Finance (https://www.tax.ny.gov/default.htm).
North Dakota	10/1/2019	For more information, contact the North Dakota Office of State Tax Commissioner (https://www.nd.gov/tax/)
Ohio	9/1/2019	For more information, contact the Ohio Department of Tax Commission (https://www.tax.ohio.gov/).
Oklahoma	7/1/2018	For more information, contact the Oklahoma Tax Commission (https://www.ok.gov/tax).
Pennsylvania	4/1/2018	https://www.revenue.pa.gov/GeneralTaxInformation/Tax%20Types%20and%20Information/SUT/MarketPlaceSales/Pages/Marketplace-Facilitators.aspx
Rhode Island	7/1/2019	http://www.tax.ri.gov/Advisory/ADV_2019_11.pdf

State	Effective Date	Marketplace Facilitator Legislation
South Carolina	4/29/2019	For more information, contact the South Carolina Department of Revenue (https://dor.sc.gov/)
South Dakota	3/1/2019	For more information please contact the South Dakota Department of Revenue.
Texas	10/1/2019	For more information, contact the Texas Comptroller of Public Accounts (https://comptroller.texas.gov/)
Utah	10/1/2019	For more information, contact the Utah State Tax Commission (https://tax.utah.gov/)
Vermont	6/7/2019	For more information, contact the Vermont Department of Taxes (https://tax.vermont.gov/).
Virginia	7/1/2019	https://www.tax.virginia.gov/remote-sellers-marketplace-facilitators-economic-nexus
Washington	1/1/2018	https://dor.wa.gov/find-taxes-rates/retail-sales-tax/tax-obligation-marketplace-facilitators
West Virginia	7/1/2019	https://public.wvtax.gov/Business/SalesAndUseTax/ECommerce/MarketplaceFacilitators/Pages/MarketplaceFacilitators.aspx
Wyoming	7/1/2019	For more information, contact the Wyoming Department of Revenue (http://revenue.wyo.gov/)

Appendix 4

Survey Questions

Question 1

Rank the following costs (rank only the ones that apply) with 1 being the highest cost.

1. Training of personnel on sales tax
2. Documenting tax-exempt sales
3. Customer service relating to sales tax issues
4. Sales tax-related software and license fees
5. Programming and servicing cash registers
6. Tax Return preparation and related costs (remittance, refund credits, and sales tax research)
7. Dealing with sales tax audits and appeals
8. Other compliance costs
9. Unrecovered sales tax paid, due to bad debt expense
10. Documentation on tax exempt sales
11. Debit/Credit Card fees for sales tax collections
12. Monitoring the bright lines preparing reconciliations from multiple platforms etc.
13. Quantifying the increase in headcount due to *Wayfair*, i.e., how many additional employees were hired to handle *Wayfair* compliance.
14. Monitoring the changes in Sales Tax legislation (filing deadlines, new rules, such as marketplace facilitators).
15. Mapping the products while selling online via own website or through multiple marketplace facilitators.

Question 2

How many retail sales transactions did you have per day?

Question 3.

How many different products did you sell at retail as of 2018 or 2019?

- Less than 1,000
- 1,000 to 5,000
- 5,000 to 10,000
- 10,000 to 25,000
- 25,000 to 50,000
- 50,000 to 100,000
- 100,000 or more

Question 4

What percent of your retail sales in dollars during 2018/2019 were through the following channels? (Total must add to 100%)

- Retail store sales
- Catalogue sales (mail, phone, tv, fax)

- Internet sales through your own website
- Internet sales using marketplace facilitators (for example Amazon, eBay)

Question 5

Please provide the following information for your US retail activities in 2018/2019

- Gross sales before returns and allowances
- Taxable sales

Question 6

How much were your remote sales (catalogue/internet), if any, in 2018/2019?

- Shipments to all US locations (gross sales)
- Collections on which you collect and remit sales tax (gross sales)

Question 7

How many states (including District of Columbia) did you ship to in 2018/2019?

- Number of states shipped to
- Number of states shipped for which you collect and remit tax

Question 8

Please indicate below the number of retail stores you had in each state (including District of Columbia), if any, as of 2018/2019.

AL	KY	ND
AK	LA	OH
AZ	ME	OK
AR	MD	OR
CA	MA	PA
CO	MI	RI
CT	MN	SC
DC	MS	SD
DE	MO	TN
FL	MT	TX
GA	NE	UT
HI	NV	VT
ID	NH	VA
IL	NJ	WA
IN	NM	WV
IA	NY	WI
KS	NC	WY

Question 9

How many employees did you have at the end of 2018/2019? (if in any of the department is less than 1, use fractions)

- Employees in tax department
- Employees in accounting department
- Employees in customer service
- Cashiers
- Employees working on Wayfair compliance
- Employees working with ecommerce (maybe internet order processing)
- Other employees

Question 10

What percent of your retail business in 2018/2019 were?

- Returned or exchanged
- Written off as bad debt expense

Question 11

Approximately what percent of your total sales dollars were paid in the following ways in 2018/2019? (Must total to 100%)

- Cash
- Checks
- Debit Cards
- Credit Cards
- Gift cards
- In-house credit cards
- Cryptocurrency
- Other (specify)

Question 12

For each of the following types of payment, indicate the average percentage fee you paid to the credit card company or other financial institution in 2018/2019 (include only fees that are determined as percentage of the sales price)

- Fees for debit cards
- Fee for in-house credit cards
- Fee for other credit cards
- Fee for using marketplace facilitator services

Question 13

How many cash registers (including POS terminals and other online means/calculators) did you use in 2018/2019?

Question 14

Approximately what percent of all the cash registers used by your employees were of the following types in 2018/2019?

- Manual (including a cash box and a calculator)
- Semi-manual (without electronic data files)
- Automatic (with electronic data files)
- Outsourced (was performed by the third party such as Amazon, Taxjar or others)

Question 15

What was the approximate cost for a new cash register of each type that you used in your retail business in 2018/2019 (mark NA if an option does not apply)?

- Manual (including a cash box and a calculator)
- Semi-manual (without electronic data files)
- Automatic (with electronic data files)
- Outsourced (was done by the third party such as Amazon, Taxjar or others)

Question 16

Would you be inclined to sell less goods online if sales tax compliance increases?

- Yes
- No

Sales tax compliance costs:

1. Please estimate additional annual costs you incurred in 2018/2019 due to ecommerce retail sales – the cost that would have been avoided in 2018/2019. Do not include your sales tax remittance themselves, just the cost of complying with Wayfair (sales tax on ecommerce). Exclude compliance costs related to the use tax payment on your own purchases.
2. Take into account all relevant costs of personnel, software, equipment, supplies and assistance from outside service providers (CPA firms, Marketplace sellers, online software services etc.)
3. Calculate annual cost of equipment and software by dividing the approximate purchase price by the expected number of service years. For lease agreements use annual lease payment.
4. We acknowledge that you may not be able to determine exact figures for some of the costs. Please provide your best estimates.

Question 17

Training Personnel on sales tax

Question 18

Documenting sales tax, filing in correspondence with states 'deadlines , remittance costs, monitoring rates and filing deadlines changes, costs of obtaining sellers permits.

Question 19

Documenting tax-exempt sales

Question 20

Sales tax related software acquisitions and license fees

Question 21

Product mapping to apply appropriate state and local sales tax

Question 22

Research and legal advice related to sales tax

Question 23

Dealing with sales tax audits, appeals (including any fees and penalties)

Question 24

Other costs not mentioned above (for example costs related to data storage, sales tax registration etc.)

Question 25

If you are unable to breakdown your costs into the above categories, what is your best estimate of the total additional costs incurred because of the implementation of the sales tax on online sales. (if you provided answers to questions 17-24, please ignore this one.) Total annual sales tax compliance cost in 2018/2019.

Question 26

Of your sales tax compliance costs reported above in Questions 17-24, or in Question 25, about how much in total comprised payments to outside service providers (lawyers, accountants, online marketplaces, programmers etc.) (portion of total sales tax compliance cost paid to outside service providers)

Question 27

How many state and local sales tax returns did you file in 2018/2019? State return that includes local schedules, counts as one return)

- Number of state sales tax returns
- Number of local sales tax returns

Question 28

To how many taxing jurisdictions did you submit sales tax returns in 2018/2019?

- Number of state jurisdictions
- Number of local jurisdictions

Question 29

Approximately how much did you remit in sales tax in 2018/2019? (exclude use tax paid on your own purchases)

- Amount of sales tax remitted to all taxing jurisdictions

Question 30

How much sales tax did you pay in 2018/2019 that came out of your own pocket (company's) because the customer defaulted.

Question 31

Approximately how much of the sales tax you collected in 2018/2019 were you allowed to retain as discount for timely payment (Vendor Discount).

- Vendor Discount in \$

Question 32

What percent of your sales tax collections are received prior to remittance to the respective tax authorities?

- Percentage received prior to remittance

Of this amount what is the average number of days between collections and remittance?

- Days

Question 33

What percent of your sales tax collections are received after remittance to the respective tax authorities?

- Percentage received after remittance

Of this amount what is the average number of days between collections and remittance?

- Days

Question 34

Of tax-exempt sales in 2018/2019, what percent was related to each of the following reasons? (total must equal to 100%)

- Nontaxable goods and services
- Resale certificates
- Out-of-state sales in the states where the brig lines were not met
- Sales to exempt organizations (i.e., government, charities)
- Other exempt sales

Question 35

Approximately what percent of your sales tax documentation (including documentation for exempt sales) was stored as follows? (total must equal to 100%)

- Electronically
- In paper files
- In other ways

Question 36

How many sales tax audits were either started or ongoing in 2018/2019? (exclude use tax audits)

- Number of audits in 2018/2019, if any.

Question 37

How many years do your sales tax audits typically cover?

- Number of years

Question 38

Did you have any ongoing appeals of sales tax audit finding?

- Yes (how many)
- No

Question 39

Describe the nature of your primary type business

Question 40

How long have you been in business in the United States? (check one of the following)

- Less than 3 years
- Three or more years

Do you have any comments about this questionnaire or issues raised here, please write them below? DO you have any issues in mid that were not suggested by this questionnaire? Please provide the description below.

Appendix 5

Avalara CertExpress_(Avalara 2019)

Avalara enables buyers to generate, share, and manage certificates electronically and to respond quickly to requests from vendors that use Avalara CertCapture. Avalara states that it is the leading exemption certificate management platform for sellers. It can be used when buying online or in-store, from any mobile device or PC.

Alvara's Streamlined Sales Tax and Avalara service provides registration in 24 SSUTA states, filing, tax calculation, help with nexus laws and obligations, audit protection, and uniform definitions and rules.

"Avalara's Returns Supplemental Terms" as of January 1, 2019 sets forth the information Avalara requests the it requests from its clients. The information includes: (Avalara 2019).

- (i) a list of taxing jurisdictions for which Customer requests Avalara prepare returns (each a "**Filing Jurisdiction**");
- (ii) the dates for filing Returns in each of the Filing Jurisdictions (the "**Filing Calendar**");
- (iii) the entities (e.g., Customer or its Affiliates) for which Avalara will be preparing Returns (the "**Filing Entities**");
- (iv) tax registration numbers and log-in information for each entity in each Filing Jurisdiction sufficient to allow Avalara to identify and access Customer's account in that Filing Jurisdiction (the "**Account Information**");
- (v) copies of previous filings in the Filing Jurisdictions;

Tax Jar (TaxJar 2019)

Tax Jar is an online service provider that helps businesses automate sales tax calculations, reporting and filing. Tax jar offers a quick integration with online marketplaces such as Shopify, Amazon, Magento, Oracle NetSuite, Square, Etsy, Walmart, BigCommerce and many others. The company offers services as basic plans for customers that range from 1,000 up to 500,000 transactions per month (TaxJar 2019). This online sales tax service provider states that it will provide accurate reports for sales tax collected in states, local jurisdictions such as counties, cities and the like. The company provides an option of online sales tax returns filing and simple comparison of actual sales tax collected versus the amount that should have been collected. This software purportedly allows the customer to connect to multiple online platforms and to monitor sales, however it does not collect sales tax for the software client (seller) (TaxJar 2019). The software does not provide an option to register with the states where the bright-line was met. Tax Jar state, however, that it can manage various taxability rules in various states for products that might be sold by the seller (TaxJar 2019).

One Source (Thomson Reuters/Tax & Accounting 2017)

One Source by Thomson Reuters offers indirect compliance software for US sellers. In managing sales tax, this software provider allows the seller to receive an access to automatic monthly sales tax updates including tax rates, tax forms and updates on filing deadline changes. This software offers electronic filing in 27 states and a system for managing exemption certificates (Thomson Reuters/Tax & Accounting 2017).

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