2018-2019 State & Local Tax Recap

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Agenda:

1. *South Dakota v. Wayfair* and state tax nexus
2. State response to federal tax reform
3. Apportionment – Market-Based Sourcing
South Dakota v. Wayfair

South Dakota v. Wayfair – RECAP

- Senate Bill 106 imposes a sales tax collection and remittance obligation on remote sellers without physical presence in South Dakota when gross revenue from sales of tangible personal property (TPP) or services exceeds:
  - $100,000, or
  - Sales occur in 200 or more separate transactions
- South Dakota Supreme Court overturned the law under Quill
- U.S. Supreme Court agreed to hear the case in January

- On June 21, 2018, SCOTUS overrules Quill in a 5-4 decision
  - “Flawed on its own terms”
  - Physical presence no longer required to establish sales and use tax (SUT) nexus
Who is Impacted by Wayfair?

- The following businesses will be impacted:
  - Selling goods/property across state lines
  - Selling services across state lines
    - Including those ‘traditionally exempt’ services!
  - Multistate or localized businesses making large quantities of purchases from remote vendors
- In the context of the Wayfair decision, do you know where you need to collect sales tax?
- Do you know where you need to register?

What should businesses be thinking about?

- What are the correct tax rates?
- What is taxable? (An item that’s exempt in one state may be taxable in another.)
- How often must a return be filed?
- Must I register with the state and when?
- Are local sales taxes also due?
- When will the first sales taxes be due?
- Do I need to expand my exemption certificate maintenance system?
- Do I need to update my tax software?
- Do I need to purchase a software solution and how much will this cost?
- What if I’m unable to prepare in time?
- How do I source sales for sales and use tax purposes?
<table>
<thead>
<tr>
<th>State</th>
<th>Economic Nexus Threshold</th>
</tr>
</thead>
<tbody>
<tr>
<td>AL</td>
<td>Over $250,000, effective 10/1/2016</td>
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<tr>
<td>CA</td>
<td>Over $100,000 or 200 transactions, effective 4/1/2019</td>
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<tr>
<td>CO</td>
<td>Over $100,000 or 200 transactions, effective 1/1/2018 (grace period to 6/30/2019)</td>
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<tr>
<td>CT</td>
<td>Over $250,000, effective 10/1/2016</td>
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<tr>
<td>DC</td>
<td>Over $100,000 or 200 transactions, effective 1/1/2018</td>
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<tr>
<td>FL</td>
<td>Over $100,000 or 200 transactions, effective 1/1/2018</td>
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<tr>
<td>HI</td>
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<tr>
<td>IA</td>
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<tr>
<td>IL</td>
<td>Over $100,000 or 200 transactions, effective 1/1/2018</td>
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<tr>
<td>IN</td>
<td>Over $100,000 or 200 transactions, effective 1/1/2018</td>
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<tr>
<td>KY</td>
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<tr>
<td>MN</td>
<td>Over $100,000, effective 10/1/2016</td>
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<tr>
<td>MS</td>
<td>Over $250,000, effective 8/1/2016</td>
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<tr>
<td>NC</td>
<td>Over $100,000 or 200 transactions, effective 1/1/2018</td>
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<td>ND</td>
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<td>NY</td>
<td>Over $100,000 or 200 transactions, effective 1/1/2018</td>
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<tr>
<td>OH</td>
<td>Over $250,000, effective 8/1/2016</td>
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<tr>
<td>OK</td>
<td>Over $100,000 or 200 transactions, effective 1/1/2018</td>
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<tr>
<td>OR</td>
<td>Over $100,000 or 200 transactions, effective 8/1/2016</td>
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<tr>
<td>PA</td>
<td>Over $100,000 or 200 transactions, effective 1/1/2018</td>
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<td>RI</td>
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<td>SC</td>
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<td>SD</td>
<td>Over $1,000,000, effective 1/1/2019</td>
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<tr>
<td>TN</td>
<td>Over $100,000, effective after legal challenge</td>
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<td>TX</td>
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<td>UT</td>
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<td>VA</td>
<td>Over $100,000 or 200 transactions, effective 7/1/2016</td>
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<td>VT</td>
<td>Over $100,000 or 200 transactions, effective 7/1/2016</td>
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<tr>
<td>WA</td>
<td>Over $1,000,000 as an alternative to notice reporting (less than $1,000,000 threshold B2C), effective 1/1/2018</td>
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<tr>
<td>WI</td>
<td>Over $100,000 or 200 transactions, effective 10/1/2016</td>
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<tr>
<td>WV</td>
<td>Over $100,000, effective July 1, 2019</td>
</tr>
<tr>
<td>WY</td>
<td>Over $100,000 or 200 transactions, effective 8/1/2016</td>
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</tbody>
</table>

* May be invalid due to Wisconsin Circuit Court granting temporary injunction.

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**What's Next?**

- **Congressional action**
  - At least six remote seller bills have been introduced
  - HJC Chairman was against the Court deciding this issue
  - Mobile Workforce (federal legislation impacting states 2-for-1 special)

- **Further litigation over the South Dakota law**
  - Complete Auto review
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State Response to Federal Tax Reform
Federal Reform
Response by the States –
Domestic Provisions

- **CT** – Personal income tax credit to offset tax on pass-through entities
  - Decoupled from limitation deduction for net interest expense
- **GA** – Decoupled from limitation deduction for net interest expense
  - GILTI – Not a deduction
  - GILTI – Subtraction from income
- **HI** – Decoupled from QBI

Federal Reform
Response by the States –
Domestic Provisions (continued)

- **IN** – Decoupled from federal law regarding NOL carryover periods
- **KY** – Decoupled from QBI
- **MO** – Steep rate reductions
- **NE** – Restored personal exemption
- **NJ** – Allows government to create charitable funds to allow donors to receive property tax credits
- **NY** – State operated charitable funds
Federal Reform
Response by the States –
Domestic Provisions
(continued)

- OR – Add back QBI
- PA – Full expensing
- TN – Decoupled from QBI and net interest expense deduction
- VT – Corporations may pay taxes on deferred foreign income in installments
- VA – Taxpayers may itemize regardless of federal return

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History of Income Tax Apportionment
Cost of Performance Sourcing

- Historically, most states have used the Cost of Performance approach for sourcing services
  - Allocates income to states based upon where cost of performing services were incurred

Income Tax Apportionment Trends
Market-Based Sourcing

- Many states are moving toward market-based sourcing, particularly for sales of services and intangibles
- Under a market-based approach, sales of services are assigned to the state in which the services or benefits of the services are received or delivered, or where the customer or marketplace is located
Market-Based Sourcing Solutions

OVERVIEW: Variety of State Approaches

- 35 states now require or provide election to use market-based sourcing
- General rules of sourcing services
  - “Delivered to a location” in the state
  - “Where benefit of the service is received”
  - “Where receipts derived”

Questions?

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