Wayfair: Update on State Sales Tax

BY Kelly Brown

It has been a year since the landmark case of *South Dakota v. Wayfair, Inc*. was decided. One by one, states continue to pass economic nexus provisions for sales tax. Economic nexus requires out-of-state businesses to collect sales tax (on taxable goods and services) for states in which they are not physically present once the business reaches a certain sales dollar threshold or a set number of transactions. Businesses have been scrambling to assess their risk and ensure they are compliant with these new sales tax laws.

Since last June, when the *Wayfair* case was remanded back to South Dakota, states with laws similar to South Dakota's have begun enforcement. Others without laws previously in place have drafted and passed legislation so they too could increase their collection of sales tax in a world of consumers who are increasingly moving from brick and mortar stores to online marketplaces. Five states (AK, DE, MT, NH and OR) do not have a state sales tax. Currently, three (FL, LA and MO) of the 45 states that do have sales tax have not yet adopted an economic nexus provision for sales tax. Of those three, each one has begun the drafting process, but final versions have not yet been signed into law.

If all states' sales tax laws were consistent, it would not be such a hard pill for businesses to swallow. However, when we look at the various states' rules to compare what is taxable, they are all across the board. The differences are especially evident in the tech realm: Some states tax downloads, others tax digital goods and yet others tax SaaS (software as a service). Some tax all three of these; others tax none of the three.

Some states have multiple tax rates for different types of items or buyers. Even more states have local taxes to be collected that vary by county, city, township or mandated taxing jurisdictions. These circumstances can make neighbors on the same street subject to different tax rates based on their exact address, and it adds an additional layer of complexity for business compliance.

In determining economic nexus, some states have a dollar threshold **or** a number of transactions threshold, whereby crossing **either** line would subject a business to collecting sales tax within the state. Others require **both** a dollar threshold **and** a number of transactions threshold to be met, so that **both** must be present to trigger the collection obligation. Some laws base the dollar amounts on taxable sales only, where others use gross receipts. “Transactions” too can be tricky, since what counts as a transaction is often not explicitly defined.

Further, determining how quickly a business needs to react to hitting the threshold is a concern. In some states, the next transaction after hitting the threshold is subject to tax collection. Others allow for implementation in the next month, quarter or year.

One misconception is that *Wayfair* applies only to online retailers. The implications are more far-reaching. In many states, in addition to tangible goods, services are also subject to sales tax. In this global economy, it is not only online retailers who cross state lines. *Wayfair* impacts all businesses with sales outside of their home state.

Yeo & Yeo is working with businesses to evaluate sales tax collection obligations. We assess risk and obligations by looking at not only what the business does, but also how it is done and where. We analyze sales by state along with other business activity. Working with key personnel within the business, we identify filing obligations and assist with registrations and voluntary disclosure agreements. This allows employees to focus on their business while we work through the intricacies state by state.

Could your business be at risk? We are available to discuss your business operations and determine whether an in-depth analysis is warranted. Please reach out to us at 800.968.0010.