NAR Issue Summaries

Federal Tax / Internet Sales Tax Fairness

NAR Committee:

Commercial Federal Policy Committee

What is the fundamental issue?

"Internet sales tax fairness" is the concept that states should be able to require that online retailers, even those without a physical presence within their borders, to collect and remit sales tax on purchases by residents. This would create a more level playing-field between remote sellers and brick-and-mortar stores. The clients of commercial real estate practitioners, which have to charge sales tax, thus seem to have "higher" prices. (Technically consumers should report and remit their state sales taxes from remote purchases via their yearly tax returns, but most do not.) Though estimates vary, it is agreed that states are losing billions of dollars each year in uncollected sales taxes, and that number is on the rise.

From 1992 to June 2018, the controlling decision from the U.S. Supreme Court on this issue, *Quill Corporation* v. *North Dakota*, held that without a "physical presence," states could not require the sales tax collection. The *Quill* decision also stated that Congress would be best qualified to resolve the issue via legislation. In the 26 years since that decision, several bipartisan bills were introduced in Congress, but none were enacted. In the absence of federal legislation, many states passed laws attempting to skirt the physical presence requirement and capture some of the uncollected sales tax money.

In 2018, the Supreme Court heard the case *South Dakota v. Wayfair, Inc.*, a challenge to a South Dakota law requiring online sellers to collect sales tax. On June 21, 2018, the Supreme Court ruled that the South Dakota law could stand and that the previous "physical presence" requirement is out of date in an e-commerce era. This effectively overturned *Quill* and opens the door to other states enacting similar laws to South Dakota.

NAR has supported internet sales tax legislation in the House and Senate for many years, and is a member of the "Marketplace Fairness Coalition." NAR joined two amicus briefs sent to the Supreme Court for the Wayfair case, one urging the Court to take up the issue and the second urging the Court to support the South Dakota position, which ultimately prevailed.

I am a real estate professional. What does this mean for my business?

While consumers are required pay state sales and use taxes on the goods they purchase, out-of-state online and other remote sellers are not required to collect the tax in the same way that local businesses are. This unequal treatment puts local "brick-and-mortar" businesses at a competitive disadvantage. The resulting pressure on established retail districts and historic downtown areas can adversely affect overall economic sustainability in a community, and can also lead local jurisdictions to attempt to make up the lost revenue by increasing property taxes.

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NAR supports the passage of legislation to level the sales tax playing field for all retailers.

Internet and other remote sellers are often physically located far from their customers, and do not pay property and other taxes to help support the local infrastructure of the communities in which the customers live. "Brick-and-mortar" retailers do pay these taxes, and this fact should not put them at a competitive disadvantage.

Opposition Arguments:

Opponents of the NAR policy will say that imposing sales tax collection burdens on small Internet merchants will add a heavy burden of complexity and be costly and could drive some of them out of business. Others argue that even though consumers are already subject to use taxes on goods purchased from remote sellers, forcing sales tax collection is tantamount to a tax increase since the current law levy is largely unenforceable.

Legislative/Regulatory Status/Outlook

In January 2018, the U.S. Supreme Court heard arguments on *South Dakota v. Wayfair, Inc*., a case challenging a South Dakota law allowing the state to require that online sellers collect and remit sales tax to the state. On June 21, 2018, the Court announced its decision, to uphold the South Dakota law and overturn the *Quill* physical presence requirement. Under the South Dakota law, sellers that deliver more than $100K of goods or services into South Dakota, or engage in 200 or more separate transactions for the delivery of goods/services into the state per year must collect and remit state sales tax. In the wake of this decision, we expect to see other states enacting similar legislation, though there may be further challenges based on the scope of those laws. NAR joined two amicus briefs sent to the Court for this case supporting the South Dakota position, which ultimately prevailed.

Since the *Quill* ruling in 1992, 24 states have simplified their sales tax systems through the Streamlined Sales and Use Tax Agreement (SSUTA). The SSUTA provides one uniform system to administer and collect sales tax, eliminating the burden of the country's diverse sales tax systems on retailers.

Prior to the *Wayfair* decision, the outlook in the 115th Congress for internet sales-tax fairness legislation was unclear. In April 2017, S. 976, The Marketplace Fairness Act (Senators Lamar Alexander (R-TN), Mike Enzi (R-WY), Dick Durbin (D-IL), and Heidi Heitkamp (D-ND)) and H.R. 2193, the Remote Transactions Parity Act (Representatives Kristi Noem (R-SD), Steve Womack (R-AR), Steve Stivers (R-OH), Lou Barletta (R-PA), John Conyers (D-MI), Jackie Speier (D-CA), Peter Welch (D-VT), Suzan DelBene (D-WA), and David Cicilline (D-RI)) were introduced. NAR was supportive of both these bills, and worked with the Marketplace Fairness Coalition to advocate for their passage.

Current Legislation/Regulation (bill number or regulation)

South Dakota v. Wayfair, Inc.

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