

***Wayfair* May Have a Minimal Effect on Municipal Nexus in Arizona**

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In this edition of SALT From My Saddle, Busby posits that even if the *Wayfair* decision permits economic nexus and all 91 Arizona municipalities adopt \$100,000 economic nexus thresholds like South Dakota's, most remote vendors still may not have to collect and remit sales taxes for most Arizona municipalities.

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In *South Dakota v. Wayfair Inc.*, the U.S. Supreme Court may rock the state and local tax world by rejecting *Quill*'s requirement that vendors have physical presence in a state before the state may require them to collect and remit sales taxes. If the court also approves South Dakota's \$100,000 economic nexus standard, other states are likely to pass similar laws requiring remote vendors to collect and remit sales taxes from their customers if they satisfy similar economic nexus thresholds.

However, what impact, if any, would such changes have on municipal sales tax collection responsibilities in Arizona, where 91

municipalities impose sales taxes under their own municipal tax codes?

Municipal Taxes in Arizona Are Not Imposed by State Statute

Of the 45 states that collect sales taxes, Arizona is one of just four that permits its municipalities to impose sales taxes under their own municipal tax codes. The other 41 states impose municipal sales taxes under their state tax codes and distribute a portion of the taxes they collect to their municipalities.

Because municipal sales taxes in most other states are imposed under state tax codes, when those states have sufficient nexus to collect sales taxes from transactions in interstate commerce, the municipalities in those states receive a portion of the taxes the state collects.

Separate Municipal Nexus Determinations in Arizona

However, in Arizona, municipalities frequently may not be entitled to taxes on proceeds from remote vendors even when the state is entitled to taxes on the same transactions. Such situations arise when a remote vendor establishes nexus with Arizona and one or more municipalities in the state, but not with all municipalities in the state.

For example, assume that a remote vendor establishes nexus with Arizona by sending employees, or engaging an unrelated third party, to install products it sold to customers in Tucson over several days, and that the vendor does not own nor lease property or have another form of a physical presence in Arizona.

By sending employees or agents to Tucson to install products for customers over several days, the remote vendor establishes nexus with the state

of Arizona and the city of Tucson. So, the state could require the vendor to file sales tax returns and pay state and county taxes on those transactions and any subsequent transactions with customers in Arizona during the same calendar year (even if the subsequent transactions are online transactions and do not involve installations or other physical presence in Arizona by the vendor or its agents). Similarly, Tucson could require the vendor to do the same thing — but only for transactions with customers located in Tucson.

However, under this scenario, the vendor established nexus only with the state and with Tucson, so other municipalities in Arizona could not require the vendor to pay sales taxes on proceeds from subsequent transactions with customers located within their municipal limits.

Arizona Municipal Tax Collection Responsibilities in a Post-Wayfair World

Even if the *Wayfair* decision permits economic nexus and Arizona's 91 municipalities amend their tax codes to require vendors to collect and remit taxes if they sell at least \$100,000 worth of products to customers within their municipal limits, most remote vendors probably still would not trigger nexus with most Arizona municipalities.

Rather, in a post-*Wayfair* world, vendor sales volumes and municipal populations may make all the difference. For example, only two Arizona cities, Phoenix and Tucson, are home to more than 500,000 people. Eight Arizona cities house 100,000 to 500,000 people. Thirty-five Arizona cities are home to 10,000 to 100,000 people, and 46 Arizona municipalities have fewer than 10,000 people.¹ Given the size of Arizona's municipalities and their autonomous taxing authority, while the world's largest remote vendors probably would trigger nexus in Arizona's largest cities in a post-*Wayfair* world, most vendors probably still would not trigger nexus in most Arizona municipalities.

Thus, depending on the outcome of *Wayfair*, Arizona municipalities may want to reevaluate how much they value the autonomy of maintaining their own tax codes — especially

because the Department of Revenue now collects all municipal taxes. Historically, they preferred this autonomy, but they may soon come to realize — as the businesses that have been forced to comply with numerous municipal tax codes in Arizona have long known — that such autonomy comes at a great price. ■

¹World Population Review (2018).