



Arizona's Wayfair Bill Compounds Burdens on Remote Sellers (Part Four)

In this month's state and local tax (SALT) column, in consultation with Professor Richard Pomp, Busby continues explaining how H.B. 2757, Arizona's response to Wayfair, actually will compound the state's burden on remote sellers even though it also will dramatically simplify the state's overall sales tax structure. This is the fourth in a series of articles addressing Arizona's response to the Wayfair decision. In this column, Busby will address potential remedial actions the state could take.

Last month's column explained how H.B. 2757 compounds the burden Arizona imposes on remote sellers because it requires so many more of them to comply with the state's sourcing rules.

Other Burdens on Remote Sales into Arizona

In addition to retaining its sourcing rules, Arizona has not simplified its sales tax structure in other key ways that may also make it difficult for the state to defend its new economic nexus thresholds against a constitutional challenge.

While the Wayfair Court did not hold that states must adopt the Streamlined Sales and Use Tax Agreement in order to implement economic nexus standards, it explained that the SSUTA is important because it:

- “standardizes taxes to reduce administrative and compliance costs;”
- “requires a single, state level tax administration;”
- “requires ... uniform definitions of products and services;”
- “requires ... simplified tax rate structures;”
- “requires ... other uniform rules;” and
- “provides sellers access to sales tax administration software paid for by the State” and that “[s]ellers who choose to use such software are immune from audit liability.”

South Dakota adopted the SSUTA in order to simplify its sales tax system in all six of these key ways emphasized by the Court.

Simplifying the state's sales tax structure by moving to a single statewide retail sales tax base probably was the most important thing Arizona could have done to prepare itself to defend its new economic nexus thresholds against a constitutional challenge. But, because the state still has not implemented most of the key simplifications the Wayfair Court emphasized, it may not be able to defend its economic nexus rules.

Comparing Arizona's sales tax structure to South Dakota's sales tax structure — the latter is the only sales tax structure to date that includes economic nexus thresholds that have withstood scrutiny by the Supreme Court — demonstrates that Arizona has not done nearly as much as South Dakota did to simplify its sales tax system. This is seen by contrasting Arizona's sales tax structure with



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the Court's observations about South Dakota's structure and the SSUTA.

First, the SSUTA "standardizes taxes to reduce administrative and compliance costs." By moving to a single state-wide retail sales tax base, Arizona dramatically simplified its sales tax structure. However, Arizona's sales tax system is still different from the sales tax systems in effect in the 23 SSUTA states. Because Arizona imposes a transaction privilege tax rather than a true sales tax, it is unique among the 45 states that impose some form of

a sales tax. In that respect, Arizona has not standardized its taxes compared to other states.

Second, SSUTA "requires a single, state level tax administration." To its credit, by early 2017, the Arizona Department of Revenue was issuing all local sales tax licenses, overseeing all sales tax audits and processing all sales tax returns. At this point, Arizona seems to be on solid ground on this issue.

Third, the SSUTA "requires ... uniform definitions of products and ser-

vices." As explained above, by moving to a single statewide retail sales tax base, Arizona dramatically simplified its sales tax structure, but its definitions are still different from the definitions in effect in the 23 states that have adopted the SSUTA. In that respect, Arizona's definitions still are not uniform.

Fourth, the SSUTA "requires ... simplified tax rate structures." As explained in my last column, this probably is the most significant of the obstacles that remain for the state to address in order to survive remote vendor constitutional challenges. And the tiered rates in effect in many Arizona cities and towns, where purchases up to a certain amount are taxed at one rate while the remainder of the same transaction is taxed at a different rate, won't help the state's cause if it is forced to defend its system. If the state wants its economic nexus thresholds upheld, it should act quickly to simplify its sourcing and tax rate structures.

Fifth, the SSUTA "requires ... other uniform rules." Once again, by moving to a single state-wide retail sales tax base, Arizona dramatically simplified its sales tax structure, but its rules still will be very different from the rules in the 23 SSUTA states. In that respect, Arizona's rules still are not uniform.

Finally, the SSUTA "provides sellers access to sales tax administration software paid for by the State," and "sellers who choose to use such software are immune from audit liability." Arizona does not provide sellers with access to free sales tax administration software or with immunity from audit liability for using such software. If Arizona is not going to adapt SSUTA — which would resolve the first, third and fifth points above — it should seriously consider offering free software to retailers to help them navigate the state's unique sales tax system and provide immunity from audit liabilities for retailers that rely on it. If the software accounts for the Arizona municipalities' complicated tiered rate structures, it may help mitigate the fourth point as well. ●

October Board of Directors Meeting Highlights

Among other actions at its October 16, 2019 meeting, the ASCPA Board of Directors reviewed the following:

Consent Agenda

The consent agenda, which included the board minutes, financial statements and investment policy, was approved.

Report from the Life and Honorary Committee

Mike Allen chaired the committee which included Mark Landy, Bruce Nordstrom, Peggy Ullmann and Cindie Hubiak. Julie Klewer was approved as life member by the board.

Branding Update and Message Confirmation

Heidi Frei provided an update on the ASCPA's branding activities. The board confirmed the ASCPA brand language.

Trends Report Observations

The board reviewed the recently issued AICPA Trends Report (<https://www.aicpa.org/content/dam/aicpa/interestareas/accountingeducation/newsandpublications/downloadabledocuments/2019-trends-report.pdf>). They discussed how that data and other items impact the ASCPA.

Strategic Plan Update

Cindie Hubiak provided an update on the ASCPA's progress on its strategic measurements.

A Day in the Life

Rob Dubberly, Kelly Damron and Mike Allen each shared a view of the challenges and joys they experience in their life and job.

If you have questions or would like additional information, please contact Cindie Hubiak at (602) 324-2888; AZ toll free at (888) 237-0700, ext. 203; or chubiak@ascpa.com