THE BARRIERS CREATED BY COMPLEXITY

A State-by-State Analysis of Local Sales Tax Laws in Light of the Wayfair Ruling

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The Quill majority expressed concern that without the physical presence rule ‘a state tax might unduly burden interstate commerce’ by subjecting retailers to tax-collection obligations in thousands of different taxing jurisdictions... But the administrative costs of compliance, especially in the modern economy with its Internet technology, are largely unrelated to whether a company happens to have a physical presence in a State.

-Kennedy, 2018

**South Dakota v. Wayfair**

Specifics of SD highlighted:

- Safe Harbor
- No retroactive collection
- **SSUTA**
- Sales tax administration software
Current Economic Nexus Laws

[Map showing states with different economic nexus laws, with legends for various categories such as No STs, No, Only LSTs, etc.]
LOCAL SALES TAX COMPLEXITY
Rate Discretion

- Variation of tax rates across the state
- Low: Fixed rates or low autonomy over LSTs
  - Wisconsin: Counties have a 0.5% rate and a 0.1% rate for stadiums
- Medium: Fixed rate increments or rate limits
  - California: Bradley-Burns Uniform LST (1%) and other instruments like a LOST-T
- High: No (or high) rate limits and high rate setting autonomy
  - Alabama: Local rates range from 1-7%
Overlapping Jurisdictions

- Occurs when there are a combination of county, municipal, and special district LSTs available
- For example, Oklahoma City
  - Spread out over 4 counties: Canadian (0.35%), Pottawatomie (1.495%), Cleveland (0.25%), and Oklahoma (0%)
  - Zip code: 73170 spans to municipalities and two counties
Differences in Tax Bases

• Type One: State and local tax base are the same
• Type Two: State and local differ, but local is uniform
  – Georgia: food is taxed by all LSTs
• Type Three: State and local differ, local differs by instrument
  – North Carolina: food is taxed by 3 of 5 LSTs
• Type Four: State and local differ, local chooses base
  – Alaska: LST base set by jurisdictions
# Local Sales Tax Rate Complexity & Tax Base Complexity

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**Base Complexity**
Alabama & Louisiana

- High degree of local autonomy in rate setting
- Louisiana local governments can choose exemptions
- Decentralized collection
- Refunds based on population, not rate

- Remote vendors: flat rate collected state wide
  - Alabama 8%
    - Actual range 5-11%
  - Louisiana 8.45%
    - 4.45-11.45%

* Proposed legislation
“They can find me, or if they can't find me, they can call my mother because I'm accountable.”
-Mike Curtis, Livingston Parish School Board's sales tax division

“Why on Earth does Louisiana need to do it differently when every other state has a single point of collection. Why do we have to be different?”
-Jim Patterson, LABI's taxation and finance director
Tennessee & Texas

- Proposed legislation for flat local rate
  - Tennessee 9.25%
    - 8.5-9.75%
  - Texas 8.25%
    - 6.25-8.25%
**States Without Economic Nexus**

- Alaska (and Montana)
- Florida
- Tennessee
- Missouri
- Kansas
- Arizona

On Montana’s local resort tax:

“That is so different from what you would find for any actual local sales tax that a rat is not only smelled but also dancing to the Hokey Pokey!” – John Mikesell
States With Economic Nexus: At Risk

- Comprehensive nexus:
  - New York
    - Self-administered local consumptions taxes
  - South Carolina
    - Local governments set aspects of their tax base and not members of SSUTA

- Evolving policy to become more inclusive:
  - New Mexico (2021), Mississippi, & Idaho
  - West Virginia, Ohio, Illinois, Oklahoma, & Colorado
  - Louisiana & Alabama
Colorado

- Substantial nexus=$100,000 in gross sales
  - 12/1/2018, but grace period until 6/1/2019
- Home-rule
  - Greater LST autonomy
  - Self-collected vs. State-collected
- State-collected: special districts, 50 counties, & ~150 municipalities (24 home-rule)
  - Must conform to state tax base
- Self-collected: 2 counties & 72 municipalities
- Has CSPs for state-collected
Policy
• LST policies are likely to evolve & grow
  – For example, Virginia poised to begin allowing local option sales taxes
  – States may broaden jurisdictional eligibility
• Challenges may cause greater simplification and/or broader CSP adoption

Research
• Tax policy
• Financial Management
Thank you

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