

The Pennsylvania Experience After Wayfair

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Background - Sales Tax Nexus In Pennsylvania

SUT Bulletin 2011-01

Under Pennsylvania law, the definition of “maintaining a business in PA” is very broad.

In December 2011, PA DOR issued SUT Bulletin 2011-01, establishing nexus for remote sellers.

Remote Seller Enforcement

Physical presence nexus – 7 tests from Sales and Use Tax Bulletin 2011-01. Examples:

Storing property including inventory

Click through a PA-based entity's website

White glove service in PA

Independent agent or corporate affiliate activity in PA

Pennsylvania is the “Keystone State” – about a third of the United States lives within driving distance

Remote Seller Enforcement

Important actions and results:

Detailed research of public data/websites identified sellers whose activities met the physical presence criteria

Coordinated departmental approach – discovery, audits and counsel

Many major online sellers began collecting and remitting PA sales tax. All Wayfair litigants were registered with PA prior to the decision.

Act 43-2017 – Marketplace Sales

HB 542 (Act 43-2017) was signed into law on October 30, 2017.

The bill was passed as part of the budget passage.

The marketplace sales language is intended to raise revenue for 2018-19 and after. There were several other tax provisions passed as well in this bill.

Main Components of Act 43-2017.

Requires persons with taxable sales into PA greater than \$10,000 to file an election

Option 1 - Register to collect and remit Pennsylvania sales tax.

Option 2 - Comply with Pennsylvania's notice and reporting requirements

Main Components of Act 43-2017.

Definition of “Marketplace Facilitator” with the responsibility to collect on all marketplace sales

This is important because Marketplaces are becoming a more dominant share of all retail sales.

Act 43-2017 Timeline

October 30, 2017 – Enactment of statute

February 1, 2018 – Guidance published

March 1, 2018 – Election due (failure to elect deemed a notice/reporting election)

April 1, 2018 – Notice/reporting or collection due

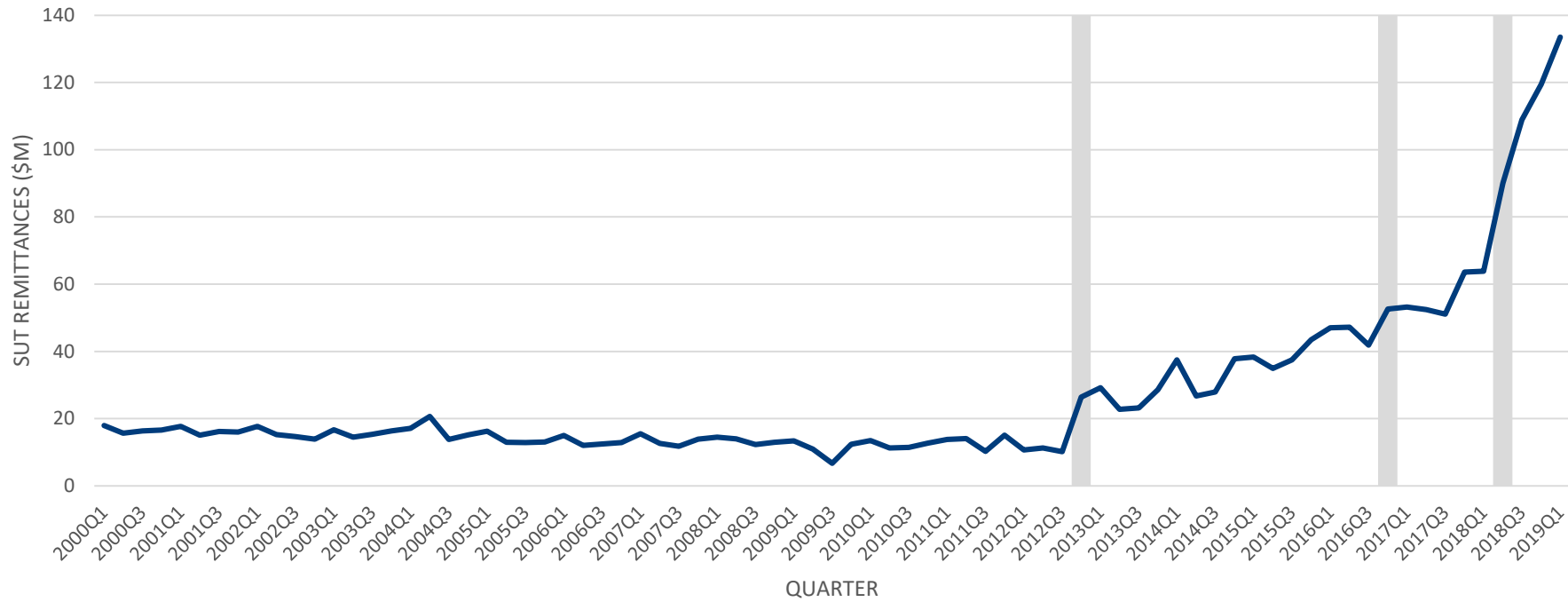
January 31, 2019 – Reports due to purchasers and department

Elections

For the 2018-19 collection period, 442 companies have filed elections.

233 companies have elected to report. 191 companies have elected to collect.

SUT - REMITTANCES FROM E-COMMERCE ENTITIES



Use Tax Collections

In Pennsylvania, an individual filer can report use tax on his PA-40 return.

Use Tax collections on the PA-40 have steadily declined since tax year 2012 and represent a small number of users.

The number did increase in tax year 2018, the first year after notices were received.

Economic Nexus and CSP Solution

Economic Nexus

According to *Wayfair*

Substantial nexus

Prospective application

Not burdensome – implication was to ‘simplify’

Economic Nexus - Wayfair

Challenges

What is the path forward for states that are not part of Streamlined?

How to reduce “administrative and compliance costs”?

Major political hurdles, such as large numbers of local jurisdictions with authority to impose sales tax

Economic Nexus

The Pennsylvania Department of Revenue solution (See Sales and Use Tax Bulletin 2019-01):

\$100K gross sales in prior calendar year

7/1/2019 effective date for economic nexus sellers to begin collecting and remitting PA sales tax

And simplification

Already central collection of sales tax with one base and one rate

Contract with Certified Service Providers (CSPs) to assist economic nexus sellers

PA DOR / CSPs Partnership

PA DOR / CSPs Partnership

Procurement approach

Leveraged certification of CSPs with Streamlined Sales Tax Governing Board (SSTGB)

Built shared understanding of capabilities and possible solution with CSPs

Invitation for Bid (IFB) to qualified was used rather than an RFP (an open procurement)

Used PA DOR's contingent fee authority

PA DOR / CSPs Partnership

Business components

Single CSP registration

Composite return and payment

Taxability and exemption approach

Economic nexus attestation (annual)

PA DOR / CSPs Partnership

Project timeline

10/18 - Begin development of the business model

01/19 – Economic nexus policy articulated

03/19 – Issuance of procurement (IFB)

04/19 – Responses and PA DOR acceptance of bids

05/19 – 06/19 – Implementation

Successes and Next Steps

Successes and Next Steps

PA DOR 'wins'

Early passage of Marketplace and strong financial success

Strong contributor to MTC Marketplace whitepaper referenced for marketplace legislation

Marketplace sales tax revenue in 1st year greatly exceeded estimate

And now ... creative response post-*Wayfair*. Use of CSPs to simplify compliance by economic nexus sellers in PA.

Next Steps Discussion and Questions

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