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Sent: Monday, March 2, 2020 9:17 AM
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Subject: Wayfair Implementation and Marketplace Facilitator Work Group--Survey Results

To Wayfair Implementation and Marketplace Facilitator Work Group:

The Work Group met by teleconference on February 5, 2020 at 2pm EST to receive a presentation from Beth Sosidka, AT&T, requesting that the Multistate Tax Commission send letters to state tax administrators encouraging them to recommend to their state legislatures that the NCSL model marketplace facilitator legislation (previously distributed) be enacted.

Work Group Chair Tommy Hoyt (TX) requested a survey of participating states regarding this request. The results of that survey are provided below:

1. Recommend that the Work Group forward the above request to the Uniformity Committee for its consideration.

Response: ___ ND NM UT

2. Recommend that the Work Group not forward the above request to the Uniformity Committee for its consideration.

Response: ___ CO KS NC WA

3. Recommend the above request remain with the Work Group for further study.

Response: ___ IA KY MA MN PA SD TN TX

Comments received:

KY DOR: For the KY Department of Revenue, we believe these issues are not ripe for enacting wholesale legislation at this time. We recommend the above request should remain with the Work Group for monitoring during the current legislative cycle and observing how current implementations unfold in respective states.

With the perspective of additional time, the issues may then be ready for further study.

MA DOR: Some of the proposed rules look appropriate, but this is model legislation that seems intended to replace pre-existing state statutes in their entirety. It does not seem to me that result should necessarily follow if a state's pre-existing rules are largely ok. And that is particularly so because I think in many states legislative changes need to be customized to the pre-existing law, and cannot simply be accomplished by passing "overlay" statutory language. I also think that in some cases – e.g., the use of the narrow approach to the definition of a marketplace facilitator as opposed to the broad approach – the determination as to whether a change would be advisable and what change that should be might best be determined, at this point, by the states' actual experiences under their current statutes. The need for some of the other rules – e.g., that pertaining to "derivatives clearing organizations" – is also unclear to me.

PA DOR's RESPONSE: The technical issue before the working group is a narrow one – AT&T is seeking a large seller exemption from the general marketplace facilitator sales tax collection provisions. PA DOR may be open to this narrow request with a better understanding of the type and number of large sellers in online marketplaces. However, the suggested MTC action that all state tax administrators receive letters recommending the adoption of the NCSL model marketplace facilitator legislation is a broad-based action which we don't view as helpful for specifically addressing just the issue (large seller exemption) under consideration.

WA DOR Comment: While Washington does not object to providing this model legislation to states as another resource or example to consider when drafting/amending marketplace legislation, it does not recommend sending letters to state administrators encouraging them to promote adoption of this legislation. This model legislation has been offered late in the process, well after most states have already adopted marketplace legislation. As such, there does not seem to be a great need to amend already enacted legislation at this time, particularly if the recently enacted legislation is working and no pervasive issues have cropped up.

Based on the survey responses, Work Group Chair Tommy Hoyt indicates that the AT&T request will not be forwarded to the Uniformity Committee at this time and will remain with the Work Group for further study.

Public Notice will be provided of scheduling of any future meetings of the Work Group.

Please let me know if you have any questions.

Richard Cram

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