

# ***Wayfair* Implementation Challenges—an industry prospective**

## **MTC—Uniformity Committee Meeting**

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## Help us help you!

- Businesses who are subject to nexus for indirect tax become agents of the states for purposes of tax collection and remittance
- Business face significant challenges at the state and local level when trying to comply with collection and remittance requirements



# Wayfair—what it all means

- The U.S. Supreme Court issued its decision on June 21, 2018 overturning *Quill* and *Bellas Hess*
  - New test: “**economic or virtual**” presence is sufficient for nexus
  - Case remanded to discuss discrimination & undue burden but case was settled prior to analysis on the issues
- While the case was remanded, the Court’s Majority indicated it “appears” South Dakota’s law minimized the burdens on interstate commerce because it has at least these **three features**:
  - 1) Includes a safe harbor for sellers with “limited business” in SD
    - Is “considerable amount of business” required?
  - 2) Does not apply retroactively
  - 3) South Dakota is a full member of the Streamlined Sales and Use Tax Agreement (SSUTA)

# Let's partner!

- We want to be a resource and are here to help!
  - Please reach out with any questions/comments
- A few other ideas. . .
  - Provide dedicated state point of contact to third party providers to help resolve filing issues in real time
  - Provide proactive notice regarding website changes to ensure successful filings



# Challenges at the state level

- State systems are creating challenges
  - Inability to handle required number of filings
  - Third-party account access
  - Lack of uniformity with state POAs
  - Ease process for adding/retrieving locations
- Gaps in current law:
  - Multiple Marketplace Facilitators
  - Relief of Marketplace Seller Liability
  - Lack of documentation guidance



## Possible solutions

- Continue the conversation:
  - Partner with industry to address systems challenges
  - Work with industry to create best practices whitepaper
- Creating a model POA to provide greater uniformity for third-party filers



# Challenges with local taxes

- *Wayfair* addressed a state-level sales tax & SCOTUS found S.D.'s membership in SSUTA significant
- Applying economic nexus and marketplace collection requirements at the local level raises constitutional questions
  - Burdens are substantial (*Pike*)



## Need to address burdens

- State collection of local taxes
  - Sales taxes
  - Accommodations/lodging taxes
  - Other local business taxes



- Update MTC Model on Collection and Remittance of Lodging Taxes by Accommodations Intermediaries
  - <https://www.mtc.gov/getattachment/Uniformity/Project-Teams/Collection-and-Remittance-of-Lodging-Taxes-by-Acco/Accommodations-Intermediaries-as-Adopted-8112.pdf.aspx>
- Tax Data Reporting

# Questions?

Thank you!!



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