Presentation to Louisiana Centralized Sales and Use Tax Administration Work Group

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• Introduction to COST

• Wayfair Decision – What the Court Held and What It Did Not Hold

• Specific Questions
Introduction to COST
COST Background

• Who we are
• What we do
Wayfair Decision – What the Court Held and What It Did Not Hold
South Dakota v. Wayfair – What the Court Held

- U.S. Supreme Court on June 21, 2018 issued its decision in *Wayfair* that overturned a physical presence requirement for sales/use tax collection (*Bellas Hess* (1967) and *Quill* (1992)) and in its place used an undefined “economic and virtual presence” test.
- The Court only addressed the first prong of *Compete Auto’s* (1977) four prong test – the prong that requires a taxpayer have “substantial nexus with the taxing state” before the taxpayer can be subject to a state’s tax.
- South Dakota’s $100,000 in sales or 200 transactions held by the Court to be sufficient because “the seller availed itself of the substantial privilege of carrying on a business in South Dakota.”
• The Court did not rule on the constitutionality of other states’ remote seller collection laws

• The Court did not rule on the constitutionality of South Dakota’s law
  • The Court remanded the case back to South Dakota to address “whether some other principle in the Court’s Commerce Clause doctrine might invalidate [South Dakota’s law]”
  • The Court noted these issues were not litigated or briefed; the Court did not resolve them
“That said, South Dakota’s tax system includes several features that appear designed to prevent discrimination against or undue burdens upon interstate commerce. First, the Act applies a safe harbor to those who transact only limited business in South Dakota. Second, the Act ensures that no obligation to remit the sales tax may be applied retroactively. S. B. 106 § 5. Third, South Dakota is one of more than 20 States that have adopted the Streamlined Sales and Use Tax Agreement.”
Will Louisiana’s decentralized sales and use tax collection system withstand Dormant Commerce Clause scrutiny?
Specific Questions
Contingent Fee / Private Auditing

- **Allows Contingent Fee Auditing**
- **Does Not Allow Contingent Fee and Private Contract Auditing**
- **Allows Private Contract Auditing**
- **Does Not Allow Contingent Fee, Some Locals Use Private Contract Auditing**

GA: HB 811 allows contingent-fee auditing. No current private-contract auditing.

MS: Recent legislation (SB 2973, 2017) allows contingent fee auditing.
Common Local Taxes in States Without a Local Sales Tax

- Real Estate Tax
- Personal Property Tax
- Local Income Tax
- Motor Vehicle Tax
- Transient Room (hotel) Tax
- Business Taxes
- Transfer Tax
- Food and Beverage Tax
Local sales tax is applied to the same tax base as the state-level sales tax, with limited exceptions in AZ, CO, GA, KS, LA, NY, PA, SC, and WV.
Questions ???