



# **Presentation to Louisiana Centralized Sales and Use Tax Administration Work Group**

**Patrick J. Reynolds, COST**  
**September 18, 2020**



# Agenda

- **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 *Comptel 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”



## *South Dakota v. Wayfair* – What the Court Did Not Hold

- 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



## *South Dakota v. Wayfair* – Guidance

“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.”





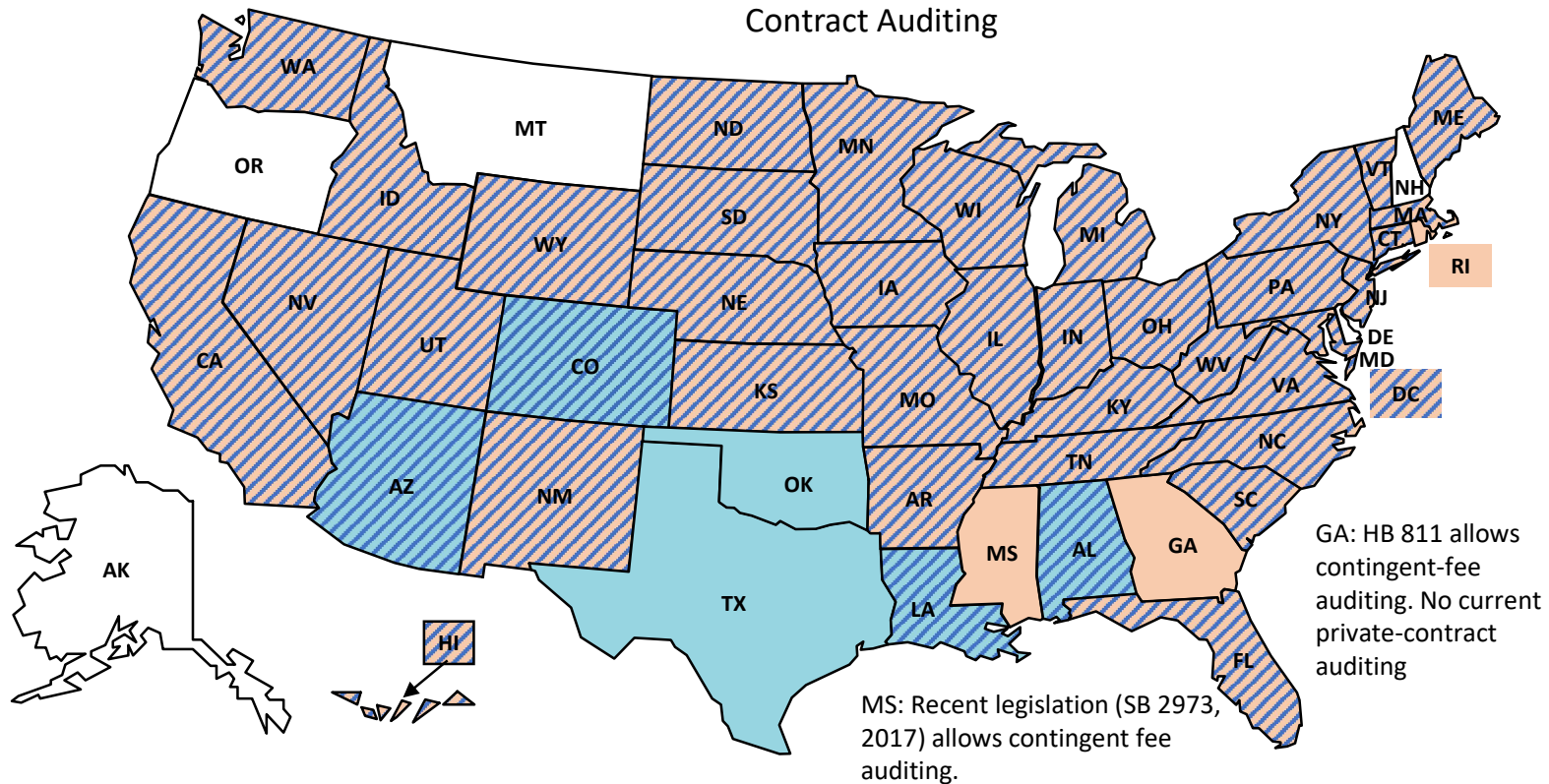
# Risk

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







## 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



## Exclusions and Exemptions applied to Local Sales 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 ???**