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SOUTH DAKOTA V. WAYFAIR INC. AND STREAMLINED SALES AND USE TAX AGREEMENT: EFFECTS ON STATE SALES TAX COLLECTIONS

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ABSTRACT

In *South Dakota v. Wayfair Inc.*, the U.S. Supreme Court reversed precedent cases addressing collection standards and regulations for sales taxes. These two precedent cases held that an out-of-state retailer's liability to collect and remit sales tax to the consumer's respective state was contingent on whether the seller had a physical nexus in that state. Additionally, a collaboration among states led to the creation of the Streamlined Sales and Use Tax Agreement (SSUTA), which offered voluntary guidelines and policies to assist states in not only modernizing but maximizing sales tax collection amounts. This research paper utilizes quantitative analyses to examine the effects of *South Dakota v. Wayfair Inc.* and the SSUTA upon state sales tax collection amounts.

INTRODUCTION

On June 21, 2018, in the case of *South Dakota v. Wayfair Inc.*, the U.S. Supreme Court overturned dual precedent cases from 1967 (*National Bellas Hess v. Illinois Department of Revenue*) and 1992 (*Quill Corporation v. North Dakota*). For several decades, these precedent cases crafted the litmus test in case law that controlled individual states' ability to collect interstate sales taxes from retail transactions. These two cases held that an out-of-state seller's responsibility to collect and transmit sales tax to the consumer's respective state depended on whether the seller had a physical presence (referred to as nexus) in that state. While not intended, many online retailers such as Wayfair and Amazon were permitted to avoid collecting sales tax and, as a result, held pricing advantages over traditional brick and mortar retailers.

A common grievance within state leadership structures over the past several decades has centered upon collecting sales taxes owed by consumers. With a myriad of tax jurisdictions spread among state, county, and local governmental entities, confusion has reigned over what taxes are owed to which state. It has long been a position among individual state lawmakers that vast amounts of sales tax revenues are going unreported and uncollected.

For these reasons, the impact of the landmark *South Dakota v. Wayfair Inc.* Supreme Court decision and the advent of the Streamlined Sales and Use Tax Agreement (SSUTA) upon the level of sales tax collections should be examined. Utilizing quantitative analyses such as multiple independent samples *t*-tests will provide insights into these relationships.

OVERVIEW OF SALES TAX

Sales tax is charged upon purchasing certain goods and services, imposed at the state and/or local levels. Of the 50 U.S. states, only five do not impose a sales tax – Alaska, Delaware, Montana, New Hampshire, and Oregon. Typically, the retailer collects the tax from customers and forwards the funds to the appropriate state or local government. In states that impose a sales tax, buyers that reside within a state's geographic boundaries are responsible for use tax if they purchase an item from a vendor in another state that would have been taxable if bought within the state of residence. Sales and use tax are mutually exclusive, meaning that only one tax applies to a single transaction. Therefore, if the customer purchases a taxable product or service in his or her resident state, the customer pays sales tax; if the customer purchases the same item from a vendor in another state, the customer pays use tax to his or her resident state.

Use tax was initially imposed due to mail-order and catalog sales when the out-of-state business also had a physical presence in the taxing state. This nexus could be satisfied by having physical retail stores or shipping warehouses within the state. While interstate sales certainly occurred during the years in which catalog sales were prevalent, these out-of-state sales increased exponentially as technology such as the internet and online stores became ubiquitous. Although use tax is imposed on the out-of-state transaction for the buyer, use tax reporting and payment are often voluntary. In addition, buyers are often unaware of the use tax liability for which they are responsible (Cavanaugh, 2012). Therefore, use tax compliance is not as high as sales tax compliance from the end-user.

Depending on the tax structure, individual states depend on sales tax revenue to varying degrees. States with no sales tax tend to rely more heavily on other sources of revenue, such as property or income tax. However, in 2016, general sales tax in Texas amounted to 62% of total taxes collected by the state; in Florida, this amount was slightly less but still a substantial 59%. For these and many other states, sales tax revenues provide a large percentage of fund inflows vital to the state budget. States have begun to adopt new sales tax laws that redefine the "nexus," or physical presence, criteria for taxation of internet-based retail transactions. However, the states cannot place a substantial or "undue" burden on interstate commerce. Sales and use taxation have become

more cumbersome as the number of taxing jurisdictions continues to increase. As of June 30, 2017, there were 10,708 sales tax jurisdictions in the United States (South Dakota v. Wayfair, Inc., et al., 2018).

"AMAZON TAX" LAW

In 2008, the state of New York issued tax guidance in hopes of collecting sales tax from out-of-state online retailers. Amazon.com had been highly criticized by traditional retailers and state governments for not collecting sales tax in several states that imposed the tax (Ropp & McNamara, 2014). In response, New York adopted its "click-through" nexus statute (South Dakota v. Wayfair, Inc., et al., 2018). The expanded "nexus" definition includes online retail transactions when a customer clicks a link on an in-state website that takes them to an out-of-state vendor's website (Klamm & Zuber, 2012). Eighteen other states have now followed suit, enacting similar statutes (South Dakota v. Wayfair, Inc., et al., 2018).

SOUTH DAKOTA V. WAYFAIR, INC. (2018)

In 2016, South Dakota enacted a law requiring out-of-state vendors with more than \$100,000 in sales or at least 200 separate transactions to collect and remit sales tax. Wayfair, Inc., a leading online retailer of household goods, and other major virtual retailers, argued that the act was unconstitutional. In June 2018, the U. S. Supreme Court overturned *Quill* and *National Bellas Hess*, stating the physical presence rule is an incorrect interpretation of the Commerce Clause. According to the Court, physical presence is not required to generate a substantial nexus. A substantial presence or nexus can also be created based on the economic activities and virtual connections of a business within a state. Nexus is established when a seller has the substantial privilege of conducting business in a jurisdiction and becomes liable to collect and remit sales tax. The court noted the South Dakota system, in consideration of the Commerce Clause, attempts to reduce the burden of sales tax compliance for remote sellers. For example, the South Dakota act applies prospectively and establishes sales thresholds that provide a safe harbor for sellers without a substantial presence. In addition, South Dakota adopted the Streamlined Sales and Use Tax Agreement (South Dakota v. Wayfair, Inc., et al., 2018).

STREAMLINED SALES AND USE TAX AGREEMENT (SSUTA)

In 2005 the Streamlined Sales and Use Tax Agreement (SSUTA) became effective. This agreement was the result of coordinated state efforts to increase

sales tax collections while concurrently decreasing the burden of compliance for remote sellers (Hofmann, McSwain & McSwain, 2013). Significant sales tax compliance burdens arise for several reasons. First, there are over 10,000 state and local sales tax jurisdictions in the country. Each jurisdiction has its own tax rate, the definition of taxable items, acceptable tax-exempt items, remote seller effective dates, and sales thresholds. To complicate matters, the registration process can be different for each state. Some states require registration in each jurisdiction, while others allow for a single state-level registration. A remote seller may need a sales analysis by jurisdiction to determine sales tax registration requirements (Brennan, Jr., 2019). Of the 45 states that levy a sales tax, 35 also have local sales tax rates. Furthermore, state and local requirements may change as definitions, dates, rates, and regulations are updated. Since the *Wayfair* decision in 2018, most states have adopted revised sales tax collection laws.

In addition to expanding sales tax collections for the states, a major objective of the SSUTA is to significantly reduce the compliance burden for remote sellers by streamlining the system. Two key features of the agreement are uniformity and simplicity. Member states must agree on uniform definitions of sales tax terms, uniform state and local tax bases, uniform sourcing rules, and uniform administration of exempt sales. The state and local tax rates are simplified as well as the tax return format and remittance process. Administration of all sales tax is done at the state level. States pay an annual fee to fund the system and must also meet certain technical requirements. States may also need to make changes to existing regulations to meet all the requirements of the agreement (SST State Guide, 2019). The agreement benefits remote sellers by providing one application to register in all member states rather than registering in each taxing jurisdiction. Other incentives are a single location for administration, free sales tax administration software, and limited amnesty for prior sales (Hutchens, 2015).

The Streamlined Sales and Use Tax Agreement guides remote sellers for each state. Table 1 reflects the current status of membership in the SSUTA. To date, 24 of 45 taxing states have adopted the requirements of the SSUTA. The most recent activity was in 2014 when Ohio moved from associate to full membership. Associate members, such as Tennessee, have achieved substantial compliance with the SSUTA terms but not with each required provision.

Since the *Wayfair* decision in 2018, most states have enacted or changed economic presence effective dates and thresholds as indicated in Table 2. All but three taxing states have established effective dates for compliance. Proposed economic nexus legislation failed to pass in Florida, Kansas, and Missouri. In *Wayfair*, the thresholds set by South Dakota of \$100,000 in sales or 200 transactions were noted as a safe harbor for small sellers. Thirty-five states have set thresholds like South Dakota, although several have eliminated

the transaction threshold. Of the SSUTA member states, 19 established the same thresholds as South Dakota.

Critics of the SSUTA note that only 24 states have made the necessary changes to their sales tax regulations to obtain membership. This lack of participation by larger states may indicate the costs to join may be greater than any benefits (Hutchens, 2015). Staying in compliance with the detailed requirements of the SSUTA may also prove difficult. The governor of Kansas recently vetoed a bill which, if passed, would have put the state out of compliance with the SSUTA simply over differing definitions of food items (Cole, 2019). Establishing and maintaining acceptable uniform definitions and tax bases will continue to challenge member states and any states seeking membership (Hofmann, McSwain & McSwain, 2013).

States will face challenges in simplifying the sales tax compliance process whether they are members of the SSUTA or not. Some states, such as Alabama, have already taken steps to address the issue. Alabama conforms to the South Dakota characteristics by setting a small seller threshold of \$250,000 and applying the economic presence date prospectively. However, Alabama did not seek membership in the SSUTA and instead set up its own Simplified Sellers Use Tax Program (SSUT). This program allows sellers without a physical presence to collect, report, and remit a flat 8 percent sellers use tax on all sales into the state. Amnesty is provided for periods preceding October 2019, and sellers have a single point system to file all state and local sales taxes.

METHODOLOGY & DATA COLLECTION

Sales tax data from the United States Census Bureau was collected from the 45 U.S. states that collect a sales tax beginning with the calendar year 2017. Because the preferred method of sales tax collections was reported quarterly, the same reporting periods were maintained for this study. Sales tax data chosen to represent the time period prior to the U.S. Supreme Court decision in *South Dakota v. Wayfair Inc.* consisted of six quarters from January 2017 until June 2018. Additionally, sales tax data chosen to represent the time period following *South Dakota v. Wayfair Inc.* consisted of five quarters from July 2018 until September 2018. At the time of data collection for this study, the third quarter of 2019 was the most recent sales tax data available from the U.S. Census Bureau.

RESULTS OF STUDY

A series of independent samples t-tests were conducted to examine any possible differences in sales tax collections among states and time periods. Specifically, the following relationships were examined:

1. Differences in sales tax collections between individual states that were members of the SSUTA and states who were not members.
2. Differences in time periods between sales tax collections prior to the *South Dakota v. Wayfair Inc.* decision and sales tax collection subsequent to this Supreme Court case.

In the analysis of sales tax collections prior to the *Wayfair* ruling (which included all of 2017 and the initial two quarters of 2018), the SSUTA group (N = 144) displayed sales collections of $M = 1,262,639,410$ ($SD = 1,021,469,153$). By comparison, the group of states who were not members of SSUTA (N = 126) reported numerically larger amounts of $M = 2,345,302,754$ ($SD = 2,770,705,593$). An independent samples t-test indicated a significant difference between sales tax collections from those states that were members of SSUTA and states that were not members; $t(268) = 4.36, p < .01$. A closer examination of the results reveals that, on average, states that were not members of the SSUTA had larger sales tax collections than the individual states who chose to participate in the voluntary tax streamlining agreement.

Additionally, sales tax collections were examined in the time period subsequent to *Wayfair* (encompassing the final two quarters of 2018 until the third quarter of 2019). The non-SSUTA group (N = 105) displayed tax collections of $M = 2,345,302,754$ ($SD = 2,770,705,593$). Comparatively, the SSUTA group of states (N = 120) were numerically smaller $M = 1,345,459,942$ ($SD = 1,082,484,523$). An independent samples t-test indicated a significant difference was found between sales tax collections from those states that were not members of SSUTA and states that were members; $t(128) = -3.75, p < .01$. A similar interpretation of the results yielded a conclusion that numerically larger collections occurred in states who were not members of the SSUTA group.

Differences in time periods between sales tax collections prior to the *South Dakota v. Wayfair Inc.* decision and sales tax collection subsequent to this Supreme Court case were also examined. This pair of independent samples t-tests revealed the impact *South Dakota v. Wayfair Inc.* might have upon the level of sales tax collections. In the pre-and post-*Wayfair* analysis of sales tax collections of states that were members of SSUTA (N = 144 and N = 120, respectively), no significant differences were found between sales tax collections prior to the passage of *South Dakota v. Wayfair Inc.* and collections subsequent to the case; $t(264) = -0.64, p = .526$. Also found to have no significant effects were non-members of SSUTA between sales tax collections prior to the passage of *South Dakota v. Wayfair Inc.* (N = 126) and collections that occurred after the case verdict (N = 105); $t(229) = -0.37, p = .709$. A more detailed examination of the data revealed that while sales tax collections subsequent to the *South Dakota v. Wayfair Inc.* decision were numerically superior, these increases were not found to be statistically significant. These insignificant differences were found to exist within the group of states that

were members of SSUTA and the group of states who were non-members, respectively.

DISCUSSION & CONCLUSION

In the majority of the past related literature, it was suggested that the dual precedent cases controlling sales tax collections (*National Bellas Hess v. Illinois Department of Revenue* and *Quill Corporation v. North Dakota*) were antiquated and no longer relevant to properly govern modern issues (Einav, Knopfle, Levin, & Sundaresan, 2014). These cases were litigated in eras where mail-order catalogs were prevalent and online retail sales represented an emerging technology (Afonso, 2019). By most accounts, these dual cases (passed 42 and 27 years ago, respectively); were inadequate to address interstate sales through online retailers. As online sales have grown to represent a significant percentage of all retail sales, various levels of government officials have expressed concerns that attempting to apply older case law to new technology leaves vast amounts of tax revenues uncollected (Mikesell & Ross, 2019).

The passage of *South Dakota v. Wayfair Inc.* created a watershed moment that overturned the older cases and provided a much-needed modernization for these sales tax collection policies. State officials were ecstatic as a significant increase in sales taxes was anticipated when this Supreme Court verdict was administered (Conroy, Cutler, & Weiler, 2016). This was not the scenario when the data was analyzed. In this study, sales tax collections prior to the Wayfair decision were not significantly different from those collected in the final half of 2018 and the initial three quarters of 2019. To clarify, the anticipated significant increase in sales tax collections did not occur.

Finding no significant increase was a notably different outcome than expected based on forecasts from previous literature (Hoopes, Thornock, & Williams, 2019; Mikesell & Ross, 2019). One possible consideration could be the relatively short time period of sales tax collections of approximately 18 months. A similar collection of sales tax data in the near future would provide a larger sample size.

Another possibility is some sales tax was already being collected by large online retailers before the *Wayfair* decision. As the economic nexus definition expanded after 2008 due to "Amazon tax" laws, many online retailers began collecting sales tax for multiple states. Data examined by researchers in 2012 indicated the average online retailer in the study collected sales tax in about 18 states which represented almost half of total national state and local sales tax collections. Therefore, only a little more than fifty percent of sales tax obligations would be a new requirement for the average online retailer in the study (Bruce, 2013). As an example, Amazon was collecting sales tax from

about half its customers by 2014. Furthermore, by 2013 over 1,900 online retailers chose to collect and remit sales tax on remote sales as part of the Streamlined Sales and Use Tax Agreement (Volk, 2014).

Although many large online retailers began collecting sales tax before the Wayfair ruling, most online retailers are small businesses. It is estimated that over 99 percent of online retailers have sales of less than \$150,000 and number in the millions. The economic nexus sales thresholds established by various states range from no threshold to \$500,000 in sales, with \$100,000 being the most common small seller exception threshold. The small seller is exempt from collecting sales tax if below the threshold. However, the buyer is still responsible for submitting use tax, but compliance is typically low. It appears that the revenue impact of Wayfair may be lessened due to the large number of small online retailers excepted from collecting sales tax (Bruce, 2013).

Participation by states as members in the Streamlined Sales and Use Tax Agreement (SSUTA) was another relationship that was examined. The quantitative analysis of this participation was found to have a significant effect on sales tax collections. The present study resulted in a significant difference between states that were members of SSUTA and states that were not. The study found that states who did not join the SSUTA had larger sales tax collections.

A previous study by Alfonso (2019) agreed with this study's outcome. This study indicated that a possible cause for this difference could be that many states with larger populations chose not to join the SSUTA. A perceived explanation would be that states with larger populations would have increased access to financial resources and less need of collaboration with other states in a sales tax policy-led streamlining agreement.

Additionally, participation in the streamlining agreement involves significant costs to change state sales tax codes and to comply with other membership requirements. According to Hutchens (2015), these costs may outweigh the expected financial benefits for states with larger populations. Other hindrances to the membership for some large states are significant political opposition and the streamlining agreements lack of flexibility (Bologna, 2019).

The financial impact of *South Dakota v. Wayfair Inc.* on state sales tax collections will continue to unfold as economic nexus compliance dates take effect. As states seek to collect sales tax without imposing an undue burden on small retailers, the potential benefit of joining the Streamlined Sales and Use Tax Agreement remains uncertain.

Table 1: Streamlined Sales and Use Tax Agreement Member States

State	Streamlined Sales Tax Member	State	Streamlined Sales Tax Member
Arkansas	2008	North Dakota	2005
Georgia	2011	Ohio	2014
Indiana	2005	Oklahoma	2005
Iowa	2005	Rhode Island	2007
Kansas	2005	South Dakota	2005
Kentucky	2005	Tennessee	2005 (Associate)
Michigan	2005	Utah	2012
Minnesota	2005	Vermont	2007
Nebraska	2005	Washington	2008
Nevada	2008	West Virginia	2005
New Jersey	2005	Wisconsin	2009
North Carolina	2005	Wyoming	2008

Source: <https://www.streamlinedsalestax.org>

Table 2: Remote Seller Guidance - Individual States

State	Economic Nexus Compliance Date	Sales Thresholds	Streamlined Sales Tax Member
Alabama	10/1/2018	\$250,000	-
Arizona	10/1/2019 2020 2021	\$200,000 \$150,000 \$100,000	-
Arkansas	7/1/2019	\$100,000 or 200 transactions	2008
California	4/1/2019	\$500,000	-
Colorado	12/1/2018	\$100,000	-
Connecticut	7/1/2019	\$100,000 and 200 transactions	-
Florida	N/A	NA	-
Georgia	1/1/2019 1/1/2020	\$250,000 or 200 transactions \$100,000 or 200	2011
Hawaii	7/1/2018	\$100,000 or 200 transactions	-
Idaho	6/1/2019	\$100,000	-
Illinois	10/1/2018	\$100,000 or 200 transactions	-
Indiana	10/1/2018	\$100,000 or 200 transactions	2005
Iowa	1/1/2019	\$100,000 or 200 transactions	2005
Kansas	10/1/2019	None	2005
Kentucky	10/1/2018	\$100,000 or 200 transactions	2005

Table 2: Remote Seller Guidance - Individual States (continued)

State	Economic Nexus Compliance Date	Sales Thresholds	Streamlined Sales Tax Member
Louisiana	No later than 7/1/2020	\$100,000 or 200 transactions	-
Maine	7/1/2018	\$100,000 or 200 transactions	-
Maryland	10/1/2018	\$100,000 or 200 transactions	-
Massachusetts	10/1/2017	\$500,000 and 100 transactions	-
Michigan	10/1/2018	\$100,000 or 200 transactions	2005
Minnesota	10/1/2018	\$100,000 in 10 transactions or 100 transactions	2005
Mississippi	9/1/2018	\$250,000	-
Missouri	N/A	N/A	-
Nebraska	1/1/2019	\$100,000 or 200 transactions	2005
Nevada	10/1/2018	\$100,000 or 200 transactions	2008
New Jersey	11/1/2018	\$100,000 or 200 transactions	2005
New Mexico	7/1/2019	\$100,000	-
New York	6/21/2018	\$300,000 and 100 transactions	-
North Carolina	11/1/2018	\$100,000 or 200 transactions	2005
North Dakota	10/1/2018	\$100,000 or 200 transactions	2005
Ohio	8/21/2019	\$100,000 or 200 transactions	2014
Oklahoma	11/1/2019	\$100,000	2005
Pennsylvania	7/1/2019	\$100,000	-
Rhode Island	7/1/2019	\$100,000 or 200 transactions	2007
South Carolina	11/1/2018	\$100,000	-
South Dakota	11/1/2018	\$100,000 or 200 transactions	2005
Tennessee	10/1/2019	\$500,000	2005, Associate
Texas	10/1/2019	\$500,000	-
Utah	1/1/2019	\$100,000 or 200 transactions	2012
Vermont	7/1/2018	\$100,000 or 200 transactions	2007
Virginia	7/1/2019	\$100,000 or 200 transactions	-
Washington	10/1/2018	\$100,000	2008
West Virginia	1/1/2019	\$100,000 or 200 transactions	2005
Wisconsin	10/1/2018	\$100,000 or 200 transactions	2009
Wyoming	2/1/2019	\$100,000 or 200 transactions	2008

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