

STATE AND LOCAL TAX UPDATE – PENNSYLVANIA AND MULTI-STATE ISSUES

Presented By:
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» Agenda

- Pennsylvania Tax Updates
 - Corporate Net Income Tax
 - Sales and Use Tax
 - Credits and Incentives
- Multi-State – Wayfair Supreme Court Updates
 - Wayfair Summary
 - Update - State Enactments
 - Wayfair Application Issues
 - Wayfair Impact Beyond Sales and Use Tax



» Pennsylvania Tax Updates – Corporate Income Taxes

- Corporate Net Income Tax
 - Net operating losses (NOLs)
 - Fixed dollar limit
 - Percentage limit
 - Nextel & RB Alden court cases
 - Pennsylvania conformity - Tax Cuts and Jobs Act 2017
 - <https://www.revenue.pa.gov/GeneralTaxInformation/TaxLawPoliciesBulletinsNotices/Pages/Tax-Cuts-Jobs-Act-2017.aspx>
 - Mostly follows federal treatment
 - Net interest deduction limitation – Corporation Tax Bulletin 2019-03
 - GILTI & Foreign Derived Intangible Income– Corporation Tax Bulletin 2019-02



» Pennsylvania Tax Updates – Corporate Income Taxes (continued)

- Corporate Net Income Tax Cont'd
 - Economic nexus – Corporation Tax Bulletin 2019-04
 - Effective January 1, 2020
 - \$500,000 of Pennsylvania sales creates nexus
 - Public Law 86-272 exemption
 - New reporting requirement
 - Exemption must be claimed on RCT-101 schedule



› Pennsylvania Tax Updates – Sales and Use Tax

- Sales and Use Taxes
 - Act 13 of 2019
 - Eliminates \$10,000 use tax notification
 - Creates Wayfair threshold of \$100,000 sales, Effective July 1, 2019
 - New Exemptions
 - Exemption for building materials and supplies for construction or repair of animal housing facility
 - Exempts food and beverage sales by non-profit organizations when sales are used to support youth development
 - Exempts food and beverage sales by volunteer fire organizations
 - Sales and Use Tax Bulletin 2019-03 – Sales Tax Absorption
 - Sales and use Tax Bulletin 2019-04 – Direct Pay Permit Use



› Pennsylvania Tax Updates – Credits and Incentives

- Credits and Incentives
 - Pennsylvania conforms to Federal Opportunity Zones
 - Increases caps on credits for:
 - Film Tax Credit
 - Entertainment Economic Enhancement
 - Resource Enhancement Tax Credit
 - Historic Preservation Tax Credit
 - Rural Jobs Tax Credit
 - New Jobs Tax Credit to be eliminated, no new approvals after June 30, 2020



› South Dakota v. Wayfair Updates

Business Concerns Regarding Wayfair

- The sales safe harbor treatment
 - Wholesale v. retail sales
 - Sale of tangible property v. services
 - Taxable v. exempt sales
 - Trend of disregarding transaction thresholds based on possible minimal dollar of sales
- Measurement of thresholds
 - Calendar basis (prior or current)
 - Rolling 4 quarters
- When to withdraw from a state?



› South Dakota v. Wayfair Updates

- Administrative
 - Registration for sales and use tax
 - In-house
 - Service providers
 - Streamlined sales tax registration
 - Sales tax compliance
 - Internal
 - Service providers – Certified Service Provider
 - Prepayment requirements



› South Dakota v. Wayfair Updates

- Impact of Wayfair on voluntary disclosure and amnesty programs
- Possibility of states asserting lower safe harbor than Wayfair
- The impact on Wayfair on local sales tax jurisdictions
 - Centralized registration
 - Centralized filing
 - Possible flat tax rate on remote sellers
 - “Home rule” local collection (ex. Colorado)



› South Dakota v. Wayfair Updates

- Impact on non-US companies
- Treatment of Marketplace facilitators (Amazon, Ebay, Etsy, etc.)
 - Does the collection of tax apply to just property or also services?
 - Mandatory or does seller have opt-out ability?
 - Do marketplace facilitators enjoy deductions and price adjustments available to retailers (discounts, coupons, etc.)?
 - Can marketplace sellers be audited?
 - Whose responsibility is it to collect and maintain exemption certificates?



› South Dakota v. Wayfair Updates

- Increased discovery based on sales and use tax registrations
- Impact on Wayfair to other types of taxes
 - Philadelphia Business Income and receipt tax
 - Sales and use tax notification – Pennsylvania, Oklahoma and Washington
 - State taxes that already have bright-line standards (Ohio Commercial Activity, Texas Franchise Tax (2020), Oregon Gross Receipts/Commercial Activity (2020) and Washington Business and Occupation Tax as examples)
- Use of similar economic nexus standards to state income taxes (the end of Public Law 86-272?)



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