



IMPLEMENTING *SOUTH DAKOTA V. WAYFAIR, INC.*

MuniServices/ Avenu was invited to participate in the California Department of Tax and Fee Administration's (CDTFA) October 24, 2018 stakeholder meeting to discuss the implementation of *South Dakota v. Wayfair, Inc.* We raised several issues during the meeting, including those related to administrative costs, the CROS system, and also asked for clarification as to how local and district taxes will be treated and allocated. Our letter to the CDTFA raised questions about revenue flow.

See: <https://www.avenuinsights.com/wp-content/uploads/2018/10/MuniServices-Avenu-CDTFA-Wayfair-Stakeholder-Meeting-on-October-24-2018-Pre-Meeting-Comments.pdf>.

Public Comment Deadline is November 7, 2018

The CDTFA is accepting comments with respect to implementing *Wayfair* until November 7, 2018. Send comments to: BTFD-BTC.InformationRequests@cdtfa.ca.gov

Does California Have the Authority to Implement Wayfair?

AB 155, Statutes of 2011 expanded California's use tax collection requirements within the physical presence framework established by *Quill*. The CDTFA's Director and legal team believe the CDTFA has the authority and is required to implement remote sales tax collection and remittance under the state's long-arm statute, a catchall that requires sales tax compliance from retailers to the fullest extent allowed under the commerce clause.

Reference: Section 3, Section 6203 (c) of the Revenue and Taxation Code;
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120AB155; and
https://lao.ca.gov/handouts/state_admin/2018/Use-Tax-101518.pdf

Timing for Implementation / CDTFA's Public Notice for Implementation Is Expected by Year-End

We understand that the CDTFA will issue a public notice by the end of this year with requirements for implementation in early 2019 that would require remote sellers to collect and remit sales taxes. *An exact date at this time is not known and we anticipate the notice to outline the relevant dates.*

How Will Local Tax Be Treated As Per the CDTFA / Impact on County Pool

"Currently, the Bradley-Burns local use tax is generally allocated through the county-wide pool to the jurisdiction of the customer's location when the seller is located outside California. Under *Wayfair*, this will continue to be the case. The local use tax due on the sale will continue to be allocated through the county-wide pool where the customer is located with distributions to the jurisdictions within the county based on a pro-rata share of all revenues directly allocated within the county. For in-state retailers, current law requires the local sales tax be allocated to the jurisdiction of the retailer's location where principal negotiations take place. Since the allocation of local sales tax is based on the retailer's location, the fact that a retailer may have nexus in additional jurisdictions does not impact local sales tax allocation. Under *Wayfair*, local sales tax will continue to be allocated in this manner for an in-state retailer that may now have economic nexus in other locations throughout the state." *We also expect a CDTFA update or notice as to when locals can anticipate revenue to begin flowing.*



How Will District Taxes Be Treated As Per the CDTFA

“Under current law, district use tax is due when the property is delivered to the customer in a district that imposes a district tax. However, if the retailer is not engaged in business in the district where the customer is located, the retailer is not required to collect the district tax. Instead, the retailer is only required to collect the state rate of 7.25 percent, and the purchaser is liable for the district use tax. Since the definition of a retailer engaged in business in a district is expanding from a physical presence test to also include economic nexus, many retailers that were not required to collect a district tax will be required to collect district use taxes going forward. This new collection requirement may apply to both out-of-state retailers and in-state retailers that meet the economic nexus threshold in a district.” *MuniServices has asked for further clarification with respect to District Taxes. Please contact Janis Varney at Janis.Varney@avenuinights.com for further detail.*

Thresholds Set Forth in Wayfair and Its Application to California / Establishing Substantial Nexus

The South Dakota threshold is \$100,000 in annual gross revenue from sales into the state, or 200-plus yearly in-state sales. During the October 24, 2018 meeting the CDTFA indicated it expects to establish nexus through a “look back” period going back the past 12 months. *We anticipate the CDTFA notice to outline how this will work. It would also be up to the Legislature to consider if they want a higher sales level threshold.*

Will Some Form of SCA 20 Return in 2019 Considering Wayfair’s Implementation?

SCA 20 from 2018 and upon voter approval would have changed the allocation of tax revenue for online transactions to point-of- destination. It is unclear at this time, but we have been told to expect some effort for tax reform proposals to surface in 2019 from the Legislature. MuniServices as part of its participation in the League’s City Manager’s Sales Tax Working Group that formed as a result of SCA 20 has put forth the following as part of overall tax reform discussions:

- **Modernize:** Broaden sales tax to services and digital downloads; increase flexibility of the regulations to meet the challenges and changes of the future.
- **“Pooling”:** End pooling of online retail sales, third party vehicle sales made at DMV, and lower threshold to \$100,000 from \$500,000 on out-of-state sales.
- **Destination Sourcing:** Allocate local sales tax to the destination of buyer for *all* on-line retail sales.
- **Exemptions:** Remove as many of the existing exemptions as politically and practically possible.
- **“Rebates” / Warehouse Distribution/ Incentives:** “Revisit” the intent of SB 533 from 2015 (sales tax rebates) as part of the overall SCA 20 and tax reform discussion and whether the law is working for all local governments.

Contact

Please contact your Client Service Executive for additional information.

Other contacts include: Janis Varney (Sales and Use Tax) Janis.Varney@avenuinights.com; Brenda Narayan (Government Relations) Brenda.Narayan@avenuinights.com; or Fran Mancina (Government Relations) Fran.Mancina@avenuinights.com.