

Streamlined Sales Tax Governing Board State and Local Advisory Council Common Questions Related to Implementation of *Wayfair* Decision

Numerous questions have been raised to the Streamlined Sales Tax Governing Board since the *Wayfair vs. South Dakota* decision was issued. The SSTGB has created a chart that addresses many of the questions on a state by state basis. (See xxxx) In addition, below are questions with responses and examples to help provide guidance regarding the implementation of state laws under the *Wayfair* decision.

- Are you a “Remote Seller”?

A “Remote Seller” is generally a seller that does not have a physical presence in a state but who sells products or services for delivery into that state.

- If a state applies its economic nexus threshold based on “gross sales,” how is the threshold computed?

Proposed Response: If the threshold is applied based on “gross sales,” all sales and transactions into the state are included in determining whether the seller meets or exceeds the threshold, including sales for resale and other exempt or nontaxable sales.

Example –

Company A has \$400,000 (400 transactions) in total sales to State 1 for the calendar year that are made up of the following:

- \$220,000 (220 transactions) of those sales are to wholesalers that provided exemption certificates claiming sales for resale.
- \$75,000 (75 transactions) of those sales are to purchasers claiming exemption for purposes other than resale (use in manufacturing (exemption certificate on file, sales to exempt entities).
- \$10,000 (10 transactions) of those sales are sales that qualify for product exemptions.
- \$95,000 (95 transactions) are taxable sales to purchasers.

Company A has \$400,000 (400 transactions) in gross sales for purposes of computing the thresholds.

- If a state applies its threshold based on “retail sales,” how is the threshold computed?

Proposed Response: “Retail sales” are defined in the SST agreement, in part, as any sale other than a sale for resale. Since sales for resale are specifically excluded from the definition of “retail sale,” they are not included in the threshold computation. However, sales that are not taxable because of the provision of an exemption certificate or that are exempt due to a product exemption, such as food in certain states, are included in the computation.

Example –

Company A has \$400,000 (400 transactions) in total sales to State 1 for the calendar year that are made up of the following:

- \$220,000 (220 transactions) of those sales are to wholesalers that provided exemption certificates claiming sales for resale.
- \$75,000 (75 transactions) of those sales are to purchasers claiming exemption for purposes other than resale (use in manufacturing, sales to exempt entities).
- \$10,000 (10 transactions) of those sales are sales that qualify for product exemptions.

**Streamlined Sales Tax Governing Board
State and Local Advisory Council
Common Questions Related to Implementation of *Wayfair* Decision**

- \$95,000 (95 transactions) are taxable sales to purchasers.

Company A has \$180,000 (180 transactions) in sales that count toward the threshold computation.

- If a state applies its threshold based on “taxable sales” how is the threshold computed?

Proposed Response – “Taxable sales” means all transactions that are (or should be) taxed. Transactions that are not taxed due to the provision of an exemption certificate or other documentation on the part of the purchaser are not included in “taxable sales.”

Example –

Company A has \$400,000 (400 transactions) in total sales to State 1 for the calendar year that are made up of the following:

- \$220,000 (220 transactions) of those sales are to wholesalers that provided exemption certificates claiming sales for resale.
- \$75,000 (75 transactions) of those sales are to purchasers claiming exemption for purposes other than resale (use in manufacturing, sales to exempt entities).
- \$10,000 (10 transactions) of those sales are sales that qualify for product exemptions.
- \$95,000 (95 transactions) are taxable sales to purchasers.

Company A has \$95,000 (95 transactions) in “taxable sales” that count toward the threshold computation.

- ~~If a remote seller sells their product through multiple channels (making sales through a marketplace and/or on its own website and shipped from their fixed location), how is the threshold applied? Is the number of transactions/dollar amount of sales for all the channels included in the computation or is each sales channel computed separately?~~

~~Proposed Response: A remote seller making sales through multiple channels (i.e., making sales through a marketplace and on its own website and shipped from their fixed location) shall include sales both made through the marketplace and on its own website when computing the sales and/or transactions amounts to determine if the threshold of a particular state is met.~~

~~Example –~~

- ~~Seller A offers its products for sale (a) on Marketplace X’s marketplace; and (b) on Seller A’s own website.~~
- ~~Seller A’s sales on Marketplace X’s marketplace are \$120,000 in State 1, \$95,000 in State 2 and \$25,000 in State 3.~~
- ~~Seller A’s sales from its own website are \$75,000 in State 1, \$20,000 in State 2 and \$80,000 in State 3.~~

~~Each state determines whether a remote seller selling through a marketplace is required to include the sales made through the marketplace in its computation of the economic nexus threshold. If the state requires the remote seller to include sales made through the marketplace in its computation, Seller A would include all sales of its products, including those made through its own website as well as those sold~~

**Streamlined Sales Tax Governing Board
State and Local Advisory Council
Common Questions Related to Implementation of *Wayfair* Decision**

~~on Marketplace X's marketplace. Seller A is responsible for reporting the sales from its own website and from its brick and mortar location to each of the states, Seller A would include \$225,000 for State 1 (\$120,000 from the marketplace, \$75,000 from website and \$30,000 shipped from its store location), \$185,000 for State 2 (\$95,000, \$20,000 from website and \$70,000 shipped from its store location) and \$115,000 \$140,000 for State 3 (\$25,000 from the marketplace, \$80,000 from website and \$35,000 shipped from its store location).~~

~~In computing the threshold, the Marketplace includes all sales made from Marketplace X's marketplace, including sales of its own products and products of the third party seller. In the example above, Marketplace X would include the \$120,000 in State 1, \$95,000 in State 2 and \$25,000 in State 3 in its computation to determine if it exceeds the threshold in each of those states respectively.~~

- ~~• What happens if the 200 transactions or \$100,000 threshold was not reached in the previous calendar year, but is reached part way through the current calendar year? Is tax due on the first 200 transactions/\$100,000 in sales or is tax due beginning on the 201st transaction or first dollar past \$100,000?~~

~~Proposed Response: In a state that bases the threshold on the previous calendar year or the current calendar year, if the threshold was not reached in the previous calendar year, but is reached part way through the current calendar year, the seller is responsible for collecting and remitting the tax on those transactions and sales that occur after the threshold has been met for the remaining part of the current year and all of the following year. The seller is not responsible for collecting and remitting the tax on the transactions that occurred prior to meeting the threshold. If the state bases the threshold solely on the previous calendar year, the remote seller is not required to collect and remit tax in the current year. [Alternative response: If the threshold is met in the current year, the seller shall register and begin remitting tax for the period beginning the first day of the calendar month that begins at least 30 calendar days after the threshold is met.]~~

- ~~• What happens if the transaction to go over the \$100,000 threshold is a \$25,000 transaction (seller was at \$90,000 in sales and then makes \$25,000 sale)? Is tax due on the entire \$25,000, just \$15,000 (amount in excess of \$100,000), or something else?~~

~~Proposed Response: If the threshold is reached part way through a transaction, the seller is not responsible for the tax on that transaction, but is responsible for the tax on any subsequent transactions. (Note: The purchaser is still responsible for reporting any tax due on this transactions directly to the state.)~~

- ~~• When does a remote seller that crosses the threshold have to start collecting? Is it effective immediately, the 1st of next month, the 1st of next quarter, or the 1st of next year?~~

~~Proposed Response In a state that bases the threshold on the previous calendar year or the current calendar year, if the threshold was not reached in the previous calendar year, but is reached part way through the current calendar year, the seller is responsible for collecting and remitting the tax on those transactions and sales that occur after the threshold has been met for the remaining part of the current~~

**Streamlined Sales Tax Governing Board
State and Local Advisory Council
Common Questions Related to Implementation of *Wayfair* Decision**

year and all of the following year. The seller is not responsible for collecting and remitting the tax on the transactions that occurred prior to meeting the threshold. If the state bases the threshold solely on the previous calendar year, the remote seller is not required to collect and remit tax in the current year. If the threshold is reached part way through a transaction, the seller is not responsible for the tax on that transaction, but is responsible for the tax on any subsequent transactions.

- Is a remote seller that only engages in nontaxable sales (i.e. wholesale only, all sales to manufacturers, etc.) required to obtain a sales tax permit/license?

Proposed response: The following states do not require a seller that only engages in nontaxable sales to obtain a sales tax permit/license.

- Kentucky
- Michigan
- Minnesota
- Oklahoma
- Rhode Island
- Wisconsin

- Does a remote seller that exceeds a State’s economic nexus threshold but otherwise meets the definition of a “volunteer seller” under the contract the Streamlined Sales Tax Governing Board has with the CSPs qualify for free CSP services?

Proposed Response: If a remote seller is only required to report and remit sales tax in a state because it meets the economic nexus threshold of a state, the remote seller qualifies for free CSP services.

- Did the Wayfair decision change the registration obligations of sellers with physical presence in the state? If a seller is below the economic nexus threshold but has transient physical presence in the state, are they liable required to collect that state’s tax or not? For example, a seller is a few days in the state for a few days for installation, training or a trade show.

Proposed Response: The requirements for sellers that have a physical presence in a state to register to collect and remit the tax did not change under the *Wayfair* decision. Therefore, if a seller has transient physical presence in a state, the seller would need to check with that state to determine if the seller is required to collect and remit that state’s sales or use tax.

Implementation Dates

- ~~How much time will the state provide sellers to implement collection processes once the seller reaches the threshold?~~

~~Proposed Response: Each state makes its own determination as to when a seller that reaches the threshold is required to start collecting and remitting the applicable sales or use tax.~~

- ~~Can a state delay the date a seller needs to register to say first day of month that is at least 30 days after they reach the threshold?~~

Streamlined Sales Tax Governing Board State and Local Advisory Council Common Questions Related to Implementation of *Wayfair* Decision

~~Proposed Response: Each state will make this determination. Some states have indicated that they will allow sellers a certain amount of time after they reach the threshold to begin collecting and remitting their tax.~~

- ~~• Will the states allow a seller that has contracted with a CSP a period of time to get the system set up to start collecting and remitting the tax?~~

~~Proposed Response: Reasonable accommodation — Is it different when a CSP is involved?~~

~~Rule 401.1 of the SSUTA rules provides: For a volunteer seller registering as a Model 1 Seller, the seller's obligation under SSUTA to collect and remit will commence no later than the first day of the calendar month 60 days after registration on the central registration system.~~

- ~~• Some sellers don't have the ability to use a standard tax calculation engine and are not true "internet retailers." It will take time for these sellers to implement a collection and reporting system. Will the states hold a seller liable for tax they can't collect because they don't have the ability to collect for some period of time in these situations? Remote sellers may not be ready to collect and remit by the state's implementation date. Will the states allow more time?~~

~~Proposed Response: Each state will make this determination. Generally, States will work with remote sellers.~~

- ~~• If a marketplace does not allow a remote seller to begin collection of sales tax until the remote seller has obtained its ID number and a state is delayed in providing the State ID number, what option does the remote seller have?~~

~~Proposed Response: Sellers can register in any of the 24 Streamlined Member States and immediately receive their Streamlined Sales Tax Identification number (SSTID) upon submitting their application. This number may be used for every one of the Streamlined member states.~~

- ~~• Once a seller has selected a CSP, how quickly can the CSP onboard businesses that aren't on their system yet? Do the CSPs have long wait times to get customers up that aren't currently a customer of theirs?~~

~~Proposed Response: Each CSP has an onboarding process for their customers. Some of the CSPs may be able to onboard a new customer quicker than others. Therefore, a seller should contact the CSP to determine how quickly they can onboard its business.~~

Drop Shipper and Drop Shipments

- How are drop shippers and drop shipments affected?

Proposed Response: SSUTA Section 317 provides that in the case of drop shipment sales, member states must allow a third party vendor (e.g., drop shipper) to claim a resale exemption based on an exemption certificate provided by its customer/re-seller or any other acceptable information

Streamlined Sales Tax Governing Board State and Local Advisory Council Common Questions Related to Implementation of *Wayfair* Decision

available to the third party vendor evidencing qualification for a resale exemption, regardless of whether the customer/re-seller is registered to collect and remit sales and use tax in the state where the sale is sourced.

SSUTA Rule 317.2 provides additional information related to drop shipments

Exemption Administration

- Are sellers required to obtain and maintain paper copies of exemption certificates?

Proposed Response: ~~No.~~ Pursuant to SSTGB Rule 317.1.A.10, member states shall relieve a seller of the tax otherwise applicable if the seller obtains a fully completed paper exemption certificate or captures the Standard Data Elements from an electronic form. [LINK TO EXEMPTION INFORMATION](#). ~~A fully-completed paper exemption certificate includes all information fields requested on the Streamlined Sales and Use Tax Agreement's Certificate of Exemption and Multistate Supplemental Form except for the exemption reason identification numbers requested in Section 5 of the paper Certificate of Exemption. The Standard Data Elements are the same as for a fully completed paper exemption certificate except the signature of the authorized purchaser is not required. A faxed exemption certificate is considered a paper exemption certificate and requires a signature. Sellers that enter the Standard Data Elements from a paper exemption certificate into electronic format are not required to retain the paper copy of the exemption certificate.~~

Central Registration System Issues

- Not every state has an economic nexus law or provision in place. ~~Therefore, sellers that don't have to collect the applicable tax in a state generally don't want to.~~ Are sellers required to register in every Streamlined full member state or can they select the states in which they want to register?

Proposed Response: The SSTRS was revised to allow sellers to select only those states in which they want to register.

- If a seller registers through Streamlined and later hits the threshold in another state or wants to begin collecting in ~~another that~~ states, will the seller be able to easily update its registration to register for that next state?

Proposed Response: Once a seller is registered through the SSTRS in a state, the seller will be able to update its registration to add the additional state(s), provided that the state is ~~either~~ a member of Streamlined ~~or has elected to participate in the SSTRS~~.

- When a company registers through the SSTRS, can they set the effective date of their registration for a state to be in the future? This would allow sellers to get registered early so that they have their permit when they are ready to open.

Proposed Response: At the time the seller registers, the SSTRS allows a seller to register and set their first sales date up to the first day of the calendar month that is no more than 60 days in the future.

**Streamlined Sales Tax Governing Board
State and Local Advisory Council
Common Questions Related to Implementation of *Wayfair* Decision**

- If sellers are allowed to pick and choose which states they want to register for using the SSTRS, will the SST states in which the seller did not register still have access to that seller's registration information?

Proposed Response: When a seller registers through the SSTRS, their registration information will only be transmitted to those states in which the seller has elected to register. However, states that are full SST members are allowed access to an extract which ~~shows~~ identifies everyone registered through the SSTRS.

- Many non-U.S. companies sell in the U.S. (non-US ecommerce sellers). These taxpayers often have no address in the U.S. and officers who are not US citizens and have no SSN or ITIN. Is the SSTRS designed to allow registration by foreign country clients with no US address, no SSN/ITIN for officers?

Proposed Response: The ~~current~~ SSTRS allows foreign sellers that have no EIN or ITIN to register using this system. At the time of registration, the seller indicates "Other" for type of identification number and a number is assigned for registration purposes. (Note: If the seller has a United States location or mailing address, then either an EIN or SSN is required.)