Mapping a path forward after Wayfair

CPAs should educate themselves and their clients on the current nexus standard for sales taxes.

Compiled by Deborah K. Rood, CPA

Why is the *Wayfair* case important?

The U.S. Supreme Court in South Dakota v. Wayfair, Inc., 138 S. Ct. 2080 (2018), eliminated the physical presence requirement for states to require businesses to collect and remit state sales tax. It established economic nexus as the sales tax nexus standard. CPAs may face professional liability claims if clients fail to collect and remit state sales tax properly.

Taxing claims

tax returns).



Claims asserted in 2018 against CPAs in the AICPA Professional Liability Insurance Program. CNA Claim Database, underwritten by Continental Casualty Company. Copyright ©2019. All rights reserved.

Economic nexus jurisdictions Enacted with \$100,000 or 200 transactions threshold Enacted with alternative threshold(s) Proposed legislation No state sales tax Source: Sales Tax Institute. A 'baffling' prospect 'Correctly calculating and remitting

sales taxes on all e-commerce sales

will likely prove baffling for many

retailers. Over 10,000 jurisdictions

tax rates, [and] different rules ..."

in dissent in Wavfair

levy sales taxes, each with "different

— Chief Justice John Roberts, writing

Assume an interr \$10 million in sal remit is detected

Big money

Assume an internet-based client fails to collect and remit any state sales taxes on its \$10 million in sales to customers in all 50 states. Assume the client's failure to collect and remit is detected seven years later by South Dakota and the 40 other states with similar *Wayfair* laws. Using South Dakota's 4.5% sales tax rate, the client has a \$9,000 annual unpaid sales tax liability to that state, ballooning to nearly \$2.6 million for all 41 states for the seven-year period before penalties and interest. Whom will the client blame?

Tips for mitigating liability

- ► Understand Wayfair.
- Inform all clients of Wayfair.
- Discuss Wayfair with clients to whom the decision most likely applies.

For more, see "No Fair to *Wayfair* for a CPA Firm's Professional Liability Risk," by Deborah K. Rood, CPA, available at tinyurl.com/y6eo7w6o.

Highs and lows

10.02%

Louisiana's average combined state and local tax rate, the highest in the country.

1.76%

Alaska's average combined state and local tax rate, the lowest in the country among states that collect sales tax at the state and/or local level.

Filling state and local coffers



The number of states that collect statewide sales taxes. The District of Columbia also collects sales taxes.

District of



States that allow local governments to collect sales taxes.

Source: The Tax Foundation.

Alaska

risk control consulting director at CNA. For more information about this infographic, contact specialtyriskcontrol@cna.com. Continental Casualty Co., one of the CNA insurance companies, is the underwriter of the AICPA Professional Liability Insurance Program. Aon Insurance

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12Journal of AccountancyJuly 2019journal of accountancy.com