

Fulfilling the Streamlined Mission in the post-*Wayfair* era

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This Governing Board and the business community started with a common purpose:

“The purpose of the SSUTA is to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance. The Agreement focuses on improving sales and use tax administration systems for all sellers and for all types of commerce through all of the following:

1. State level administration of sales and use tax collections.
2. Uniformity in the state and local tax bases.
3. Uniformity of major tax base definitions.
4. Central, electronic registration system for all member states.
5. Simplification of state and local tax rates.
6. Uniform sourcing rules for all taxable transactions.
7. Simplified administration of exemptions.
8. Simplified tax returns.
9. Simplification of tax remittances.
10. Protection of consumer privacy.”

And anticipated that if the states achieved these purposes, then *“Congress has the authority to allow states to require remote sellers to collect tax.”*

What changed after the *Wayfair* ruling?

The Governing Board reiterated its commitment to further simplification efforts:

“We understand that the work to implement this decision in a fair and efficient manner has just begun. As we have done over the last 18 plus years, we will continue to work with the business community to ensure that implementation of this decision is fair, efficient and transparent for all taxpayers and administrable for sellers, purchasers and the states.”

However, several states are **ignoring SSUTA** and **the *Wayfair* standards**:

- Imposing retroactive taxes
- Inadequate small business exception
- Not SSUTA compliant

And SSUTA might not exactly meet two ***Wayfair* assumptions** (p.23):

“It also provides sellers access to sales tax administration software paid for by the State”

“Sellers who choose to use such software are immune from audit liability.”

What might Congress do after *Wayfair*?

The *Wayfair* opinion acknowledged there are burdens associated with sales tax collection, and expressly recognized,

“Congress may legislate to address these problems if it deems it necessary and fit to do so.”

So, the Governing Board and industry should advance existing and proposed SSUTA provisions – as conditions for state imposition of sales tax collection obligations on remote sellers.

And Federal legislation could include:

1. No state may impose retroactive taxes – prior to *Wayfair*
2. No state may impose taxes on remote sellers until [date]
3. An adequate small business exception – based on national sales
4. An incentive to adopt SSUTA in order to impose tax on remote sellers
5. SSUTA must include **minimum required simplifications**

Suggested Simplifications

Simplification	SSUTA and proposed federal legislation
1. Tax rates. A single tax rate for remote sales – no greater than weighted average of state and local rates.	SSUTA allows different rates in each jurisdiction
2. Tax base. Uniform definitions of taxable products, services, and exemptions.	SSUTA has this
3. Caps & thresholds. No caps or thresholds on taxable value of goods or services	SSUTA allows thresholds for clothing
4. Transaction terms. Uniform definitions of sales price, delivery charges, etc.	SSUTA allows differences and requires only disclosure of practices
5. Refunds and discounts. Uniform rules for refunds, returns, discounts, and coupons.	Add to SSUTA
6. Returns and tax remittance. Uniform return and electronic remittance form. Establish a multi-state remittance clearinghouse by 2021.	Add to SSUTA
7. Rounding and bad debts. Uniform rule for rounding and for treatment of bad debts.	SSUTA has this
8. Tax holidays. Uniform dates & rules for tax holidays.	Add to SSUTA

Suggested Simplifications (cont'd)

Simplification	SSUTA and proposed federal legislation
9. Exempt and direct-pay rules. single Compliant Purchaser Certificate (e.g., sale-for-resale, exempt purchaser, etc.)	Add to SSUTA
10. Audits. Single audit on behalf of all participating states at option of seller.	SSUTA allows each state to audit any seller
11. No pay-to-play on appeals. Appeal of assessments through state court system without requiring prior payment of assessed amount.	Would be part of federal bill
12. Mediation. At taxpayer's option, a non-binding independent ADR "evaluative mediation" of protests.	Add to SSUTA
13. Define "physical presence". Precise definition of "physical presence" to avoid disputes over who is a remote seller and what constitutes a remote sale.	Would be part of federal bill
14. Retroactive taxation. No imposition of back-taxes on a remote seller who lacked the federal statutory definition of "physical presence."	Would be part of federal bill

Suggested Simplifications (cont'd)

Simplification	SSUTA and proposed federal legislation
15. Certification of participating states. Annual certification by an independent federal agency of state compliance with simplification requirements.	Would be part of federal bill
16. Preemption. No state or local tax authority may impose sales tax, gross receipts tax, license fees or reporting obligation on a seller lacking “physical presence” except as allowed in federal law.	Would be part of federal bill
17. Vendor compensation. Vendor discount reflecting the true cost of sales tax collection and remittance. Sellers using software & services paid for by states would not require compensation	SSUTA requires states to pay certified service providers only for “voluntary” sellers
18. Judicial review. Federal district courts have exclusive jurisdiction over claims about compliance with federal law	Would be part of federal bill
19. Small Business Exception.	Would be part of federal bill
20. Payment by mail order & check. Protection from consumer error in computing sales tax.	Add to SSUTA

A Bipartisan Bill from House Judiciary: **HR 6824**

1. Prevents imposition of retroactive taxes -- before the *Wayfair* ruling on 21-Jun-2018.
2. Prevents states from imposing new sales tax burdens on remote sellers before Jan-2019 to allow time for implementation.
3. Requires small business protection, based on annual national sales of \$10 million. (the \$100K threshold in South Dakota equates to \$38M in national sales)
4. Allows a state to tax small remote businesses if the state is part of a compact (such as SST) that Congress has approved.