



FTA National Tech Conference

Wayfair is here is your company ready?

AUGUST, 2018

Agenda

- Meeting Objective
- Introductions
- Remember Y2K
- Supreme Court Ruling South Dakota vs Wayfair
- Prior to the Wayfair ruling.
- Since the Wayfair ruling.
- How does this affect Excise taxes, IE Vapor, Tobacco, and Alcohol
- So what does this mean to the Tax Tech World.
- Summary.



Who is Avalara?



Avalara helps businesses of all sizes achieve compliance with sales, excise, and other transactional tax requirements by delivering comprehensive, automated, cloud-based solutions that are fast, accurate, and easy to use.

- Founded in 2004 went public June 15, 2018 NYSE AVLR
- End-to-end suite of solutions to manage complex tax obligations
- Compliance with taxing authorities in North America, and internationally
- Integrated with leading accounting, ERP, e-commerce, CTRM, and other business applications.





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Avalara

- BBA Sam Houston State University
- MBA Sam Houston State University
- Central Intelligence Agency
- FMC Wellhead Equipment
- Coca-Cola
- SAP America Platinum Consultant
- FuelQuest (ZYTAX)
- Avalara



How many of you are old enough to Remember Y2K

- If you raised your hand**
- Did you work on a Y2K Project
- Did you support work on a Y2K Project

- If you did not raise your hand**
- Are you familiar with the Y2K issue

Remember Y2K

- In the early 1990's computer companies noted that due to previous technical data limits, years were expressed in 2 characters IE: 1992 was simply 92. Date formats for programs, data, etc. was all uniformly 2 digit formats.
- Companies started to become aware that all their current technology was at risk of critical malfunction, based on this limit. The US Government mandated financial institutions fix the issue, and government programs underwent programs to upgrade to enable a four digit year. This very large undertaking World wide was one of the key factors for the economic growth in the 1990's.



Remember Y2K

- As private companies soon started to make upgrades and wholesale new ERP implementations. Cost of Software and consulting services, and Hardware increased as demand out stripped resources.
- At this point you may be asking “YEAH SO WHAT?”
- My response is “What does the word NEXUS mean to you?”





South Dakota VS. Wayfair.

April 2018

South Dakota V. Wayfair, Inc.

- ***South Dakota v. Wayfair, Inc.***, was a United States Supreme Court case in which the court held that states may charge tax on purchases made from out-of-state sellers, even if the seller does not have a physical presence in the taxing state. The decision overturned *Quill Corp. v. North Dakota* (1992), which had held that the Dormant Commerce Clause barred states from compelling retailers to collect sales or use taxes in connection with mail order or Internet sales made to their residents unless those retailers have a physical presence in the taxing state.



South Dakota V. Wayfair, Inc.

- Since the decision of *Quill* in 1992, the volume of interstate sales via electronic channels, particularly purchases from Internet vendors, has grown rapidly, and the Government Accounting Office has estimated that in 2017 states had lost over US\$13 billion in taxes they could not collect.
- Following a statement made in a concurrence opinion by Justice Anthony Kennedy in a 2015 related case which suggested that it was time to review the decision of *Quill* in the wake of modern technology, more than 20 states passed "kill *Quill*" legislation intending to collect sales tax from out-of-state vendors, purposely to provide the necessary legal vehicle to take to the Supreme Court; South Dakota's was the first to make it through lower courts to the Supreme Court.



South Dakota V. Wayfair, Inc.

- The Court granted a writ of certiorari in January 2018, heard the case on April 17, 2018, and issued its decision on June 21, 2018.
- The Court's 5–4 majority decision overturned *Quill*, ruling that the physical presence rule decided from *Quill* was "unsound and incorrect" in the current age of Internet services.
- Ok so now you might be saying, interesting but “YEAH SO WHAT”



Prior to the Wayfair Ruling

Remember those 20 states making KILL QUILL Legislation

Prior to SD vs Wayfair

- Twenty states passed some type of Kill Quill Legislation.
- States with these policies in place should be watched post South Dakota v. Wayfair, Inc., decision. And since such laws haven't yet been expressly prohibited, other states could look to adopt them now that economic nexus has been struck down.



Four types of Kill Quill Legislation

- **Economic Nexus** – Several States have passed laws similar to South Dakota's prior to the Supreme court Decision
- States that have adopted or considered economic nexus policies similar to South Dakota's should be closely watched now that the court has ruled in favor of South Dakota.
- AL, CT, GA, HI, IL, IN, IO, KY, LA, ME, MA, MS, ND, OH, PA, RI, SD, TN, VT, WA, WY



Four types of Kill Quill Legislation

- **States with non-collecting seller use tax reporting.** While the Supreme Court expressly prohibited states from taxing sales by sellers with no physical presence in the state in Quill, it allowed Colorado to impose use tax notice and reporting requirements on non-collecting sellers in Direct Marketing Association v. Brohl (2015).
- AL, CO, GA, IA, KY, LA, OK, PA, RI, VT, WA,



Four types of Kill Quill Legislation

- **States with marketplace sales taxes:** A number of states now require marketplace facilitators like Amazon, eBay, Etsy, and Walmart to collect and remit taxes on behalf of their third-party (marketplace) sellers. Like all sales and use tax laws, the taxes imposed on marketplace sellers vary by state. Facilitators may have to have a physical presence in the state, like a warehouse or fulfillment center, or they may simply have to do a certain amount of business in the state.
- AL,AR,CT,IA,MN,OK,PA,RI,VA,WA,



Four Types of Kill Quill Legislation

- **States with cookie (software) nexus**
- A handful of states maintain an out-of-state business develops a physical presence in a state when it places software or web cookies on in-state computers and devices to enhance or facilitate sales. Like economic nexus laws, cookie nexus laws are being challenged.
- AL,AR,CA,CO,CT,GA,ID,IL,IA,KS,LA,ME,MI,MN,MO,NV,NJ,NY,NC,OH,OK,PA,RI,TN,TX,UT,VT,VA,WA,WV.



SINCE JUNE 21, 2018

STATES THAT HAVE ALREADY PASSED LEGISLATION SIMILAR TO SD.

States Passing Laws Since June 21 2018

	Start date	Monetary Limit	Transaction Limit
ALABAMA	10/01/2018	\$250,000.00	NA
CONNECTICUT	12/01/2018	\$250,000.00	200
GEORGIA	01/01/2019	\$250,000.00	200
HAWAII	07/01/2018	\$100,000.00	200
ILLINOIS	10/01/2018	\$100,000.00	200
IOWA	01/01/2019	\$100,000.00	200
KENTUCKY	07/01/2018	\$100,000.00	200



States Passing Laws Since June 21 2018

	Start date	Monetary Limit	Transaction Limit
LOUISIANA	10/01/2018	\$100,000.00	200
MAINE	12/01/2018	\$100,000.00	200
MINNESOTA	01/01/2019	\$100,000.00	100
MISSISSIPPI	12/01/2018	\$250,000.00	NA
NORTH DAKOTA	10/01/2018	\$100,000.00	200
VERMONT	07/01/2018	\$100,000.00	200
WISCONSIN	10/01/2018	\$100,000.00	200



States already passing Laws very similar to SD

- **Wayfair doesn't give states carte blanche**
- While the Wayfair ruling does allow states to tax businesses based on economic and virtual contacts, it doesn't necessarily give them carte blanche.
- The Supreme Court found that “South Dakota’s tax system includes several features that appear designed to prevent discrimination against or undue burdens upon interstate commerce.”



South Dakota Special Features

- South Dakota affords small merchants “a reasonable degree of protection” from taxation. Remote vendors must have more than \$100,000 in gross revenue from South Dakota sales, or 200 or more separate transactions of the same in the current or previous calendar year to trigger a tax collection obligation.
- The law ensures no obligation to remit the sales tax may be applied retroactively.
- South Dakota is member of the Streamlined Sales and Use Tax Agreement, which reduces administrative and compliance costs by requiring a single, state level tax administration, uniform definitions of products and services, simplified tax rate structures, and more. It also provides sellers access to sales tax administration software paid for by the state, and sellers that use such software are immune from audit liability.



South Dakota Special Features

- States with remote sales tax policies at odds with any of the above could be vulnerable to legal challenges should they try to enforce them. But states with Wayfair-style economic nexus laws are well positioned.
- It will take time for the full implications of the Wayfair ruling to be felt.



South Dakota Special Features

- Furthermore, Congress could get involved;
 - a bill that would prevent states from taxing most remote sales [has already been introduced](#).
 - Measures that would expand state tax authority (e.g., the [Remote Transactions Parity Act](#) and the [Marketplace Fairness Act](#)) have long been on the table but held in committee.
- In the meantime, businesses that sell in multiple states should track changing state nexus laws and develop a plan to ensure compliance.



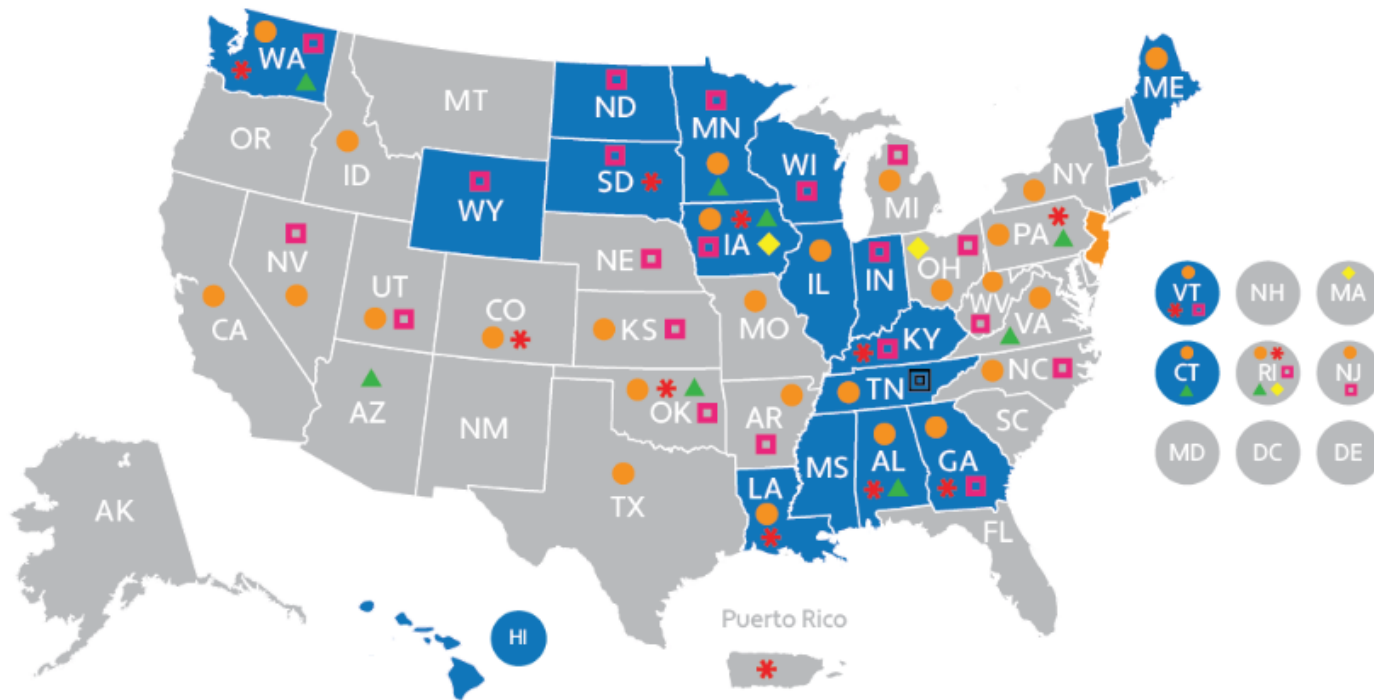
YEAH SO WHAT!

How does this effect IT?

The Big Picture

Various types of nexus by state (as of July 2018)

- States with economic nexus
- States with affiliate or click-through nexus
- * States with use tax reporting for non-collecting sellers
- Streamlined Sales Tax (SST) state
- SST associate member state
- ▲ States that tax marketplace sales
- ◆ States with cookie/software nexus



Tax Determination and Tax Compliance Reporting

- **These two processes are automated and maintained by IT**
- **The answer to every tax question is?**
 - **IT DEPENDS ON THE STATE**
- **In the next set of slides we will highlight the impact on IT.**



Tax Determination Operating Environment 2018 & 2019

- Rapid changes in Sales and Use tax Nexus and filing laws
- Short lead times for implementation
- Tax rate changes covering 50 states and local jurisdictions
- Product taxability at a SKU Level
- Federal law vs State law
- Migration time lines
- Cascade effect on Excise taxes
- Dollar value based restrictions
- Quantity based restrictions



Tax Compliance Reporting Operating Environment 2018 & 2019

- Rapid changes in Sales and Use tax filing laws
- New and Varied Tax Reporting Requirements
 - Some states have local JD Reporting Requirements
 - Data extraction and retention requirements vary by State
 - Product categories vary by State
- Short lead times for implementation
- Tax rate changes for 50 States and Local Jurisdictions
- Federal law vs State law
- Migration time lines
- Cascade effect on Excise taxes



Tax Compliance Reporting Operating Environment 2018 & 2019

- Data storage and retrieval for multiple jurisdictions
 - Some states have local JD Reporting Requirements
 - Data extraction and retention requirements vary by State
 - Product categories vary by State
- eFile requirements for Multiple states
 - XML
 - EDI
 - Excel
 - CSV
 - ETC



Tax Compliance Reporting Operating Environment 2018 & 2019

- Exemption Certificate Management
 - Prior to Wayfair ruling companies only needed to manage exemption certificates in states they were registered in. (States they had Nexus in)
 - Campaigns will need to be launched to add the new states your company will file in.
 - Storage space will need to be increased
 - Recovery and reporting of certs will need to be automated
 - Each year certs will have to be renewed.
 - Certificate requirements vary by state.



Resources & Hardware

- In Summary
 - Is your organization prepared for the impact on current resources?
 - Is your organization prepared for the impact on hardware and increased storage requirements?
 - Is your organization prepared for the compressed timelines from Law signature to actual compliance?
 - Does your staff have the current Bandwidth to support the rapid and highly volatile tax determination and compliance reporting for 50 States?
 - Does your company have an existing relationship with consulting firms that help augment the resource requirement to meet imposed compliance deadlines.
 - Is your tax team staffed to analyze and define requirement to IT in a timely manner



Companies have two options

1. Plan and prepare in advance to have to file in all 50 states.
2. Sit back and wait and see what actually shakes out the play catchup, and pay premium prices for outside resources that will also be strained to the limits.





Bubba Lange

SVP Solution Engineering

Avalara

- [QUESTIONS:](#)
- Bubba@Avalara.com
- 936-203-7766