



# *Wayfair* and Marketplace

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# Administrative Rule

- Many of the tax collection issues raised in the *Wayfair* decision are or will be addressed by agency rules.
- Amendments to Rule 3.286 became effective on January 1, 2019.
  - Reflects the statutory provisions in Texas Tax Code Section 151.107 (Retailers Engaged in Business in this State).
    - 151.107(a)(4) – “engages in regular or systematic solicitation of sales of taxable items in this state by distribution of catalogs, ..., or other advertising, ... for the purpose of effecting sales of taxable items.
    - 151.107(a)(5) – “solicits orders for taxable items by mail or through other media and under federal law is subject to or permitted to be made subject to ... collection of the taxes imposed by this chapter;

## Administrative Rule (cont.)

- The amended rule notifies remote sellers about their Texas use tax collection responsibilities.
- The agency has adopted a safe harbor provision for small remote sellers (total Texas revenue from sales into Texas less than \$500,000 during the preceding twelve-month period).
- Under Rule 3.286, remote sellers above the safe harbor amount will be obligated to collect the use tax beginning on October 1, 2019.



# What Did the Legislature do?

New Laws Post 86<sup>th</sup>  
Legislative Session



# Marketplace Provider Collection

HB 1525

# Marketplace Provider Collection

- Marketplace Provider – a person who owns or operates a marketplace and processes sales or payments (directly or indirectly) for third party sellers.
- Marketplace provider shall:
  - have the rights and duties of a seller on sales made through the marketplace;
  - collect and remit sales and use tax and report on all sales made through the marketplace; and
  - certify that it will collect and remit sales and use tax on the marketplace seller’s behalf.
- Marketplace sellers must furnish information to allow the marketplace provider to collect and remit correctly.
- Destination sourcing for local tax on sales of taxable items by a marketplace provider for a marketplace seller.
- The Comptroller will amend Rules 3.286 and 3.334 to implement this law.



# Marketplace Implementation Issues

- Exclusion of certain marketplace type business models?
- Authorize delays or partial delays of implementation for certain marketplace providers?
- Identifying marketplace providers for compliance
- Actively soliciting feedback

# What's Next?

- Oct. 1, 2019
  - Remote sellers required to obtain permit and begin collecting (July 1, 2018 – June 30, 2019)
  - Remote sellers may begin using the single local tax rate
  - Marketplace providers must begin collecting on third-party sales
- Webpage update
  - FAQs
  - New forms
- Amending rules
- Actively soliciting feedback





## To Aggregate or Not – That is the Question?

- How does a remote seller calculate whether it meets the threshold?
  - Count both marketplace and website sales
  - Count website sales only
- States are split
- Texas for now – no aggregation



# Single Local Tax Rate for Remote Sellers

- Eases undue burdens - Approximately 1,600 local taxing jurisdictions in Texas
- Estimated average local rate in the previous fiscal year (approximately 1.75%)
- Election for Remote Sellers
- Notification to the Comptroller's office
- Proportionately distribute to the local jurisdictions
- Refund option for purchasers
- The Comptroller will amend Rule 3.334 to implement this law.



# Estimating the Revenue Gains



# Three Estimates

- Administrative Rule: \$200 million annually.
- HB 1525, Marketplace Providers: \$300 million annually.
- Single Local Tax Rate: 1.75%.



# Administrative Rule Impact

- \$286.2 Billion – 2015 US Web sales by Top 500



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- 14% – share of firms not collecting Texas tax
- 22% – growth to FY 20, firms not collecting Texas Tax (4% per year)



# Administrative Rule Impact

- \$286.2 Billion – 2015 US Web sales by Top 500
- 8% – Texas share of US personal income
- 14% – share of sales, firms not collecting Texas tax
- 22% – growth to FY 20, firms not collecting
- 95% – share subject to tax

# Administrative Rule Impact

- \$286.2 Billion – 2015 US Web sales by Top 500
- 8% – Texas share of US personal income
- 14% – share of sales, firms not collecting Texas tax
- 22% – growth to FY 20, firms not collecting
- 95% – share subject to tax
- 85% – assumed voluntary compliance rate

# Administrative Rule Impact

- \$286.2 Billion – 2015 US Web sales by Top 500
- 8% – Texas share of US personal income
- 14% – share of sales, firms not collecting Texas tax
- 22% – growth to FY 20, firms not collecting
- 95% – share subject to tax
- 85% – assumed voluntary compliance rate
- 6.25% – state sales tax rate

# Administrative Rule Impact

\$286.2 Billion – 2015 US Web sales by Top 500

\*.08 – Texas share of US personal income

\*.14 – share of sales, firms not collecting Texas tax

\*1.22 – growth to FY 20, firms not collecting

\*.95 – share subject to tax

\*.85 – assumed voluntary compliance rate

\*.0625 – state sales tax rate

\$197.4 Million

# HB 1525 Impact

- As with administrative rule, we made a cautious estimate.
- Data showed sales via marketplace sellers dominated by the largest providers.
- Reduced total sales to account for those made by the marketplace providers themselves.



# HB 1525 Impact

- Also adjusted for share of taxable sales.
- Data indicated many of the Top 500 online merchants sold via Amazon and EBay.
- Reduced initial estimate to account for unknown firms captured by administrative rule or already collecting taxes in Texas.

# Single Local Sales Tax Rate

- (Local Sales Tax Collections/State Sales Tax Collections) \* State Tax Rate
- Calculation for CY 2020, based on FY 2019 collections:  
$$(\$9,759,242,507 / \$33,960,758,775) * .0625$$
$$= .017961, \text{ rounds to } .0175$$



Questions?