One Year After Wayfair: What Nonprofits Need to Know

By Marc Berger and Katherine Gauntt

It's been more than a year since the Supreme Court announced the landmark decision in the *South Dakota v Wayfair* case, opening the door for states to require organizations to collect and remit sales tax even if the organization has no in-state physical presence. The impact of the decision has proven to be far-reaching.

Since that time, organizations selling goods and services across state lines, including nonprofits, have had to navigate the fallout. While we covered this decision in depth earlier this year, as we mark the one-year anniversary of *Wayfair*, it's important to take a look at what's changed, and what challenges may still be on the horizon for nonprofits.

The Wayfair Domino Effect

Prior to the *Wayfair* decision, most nonprofits selling goods and services didn't have a physical presence in states beyond their home states, and thus, did not collect sales tax.

But the *Wayfair* decision had a domino effect: States began adding or revising statutory language to accommodate an economic nexus standard for remote sellers. Several states already had laws on the books that automatically went into effect following the decision. As of the publication of this article, all but three states (Florida, Kansas and Missouri) have enacted economic nexus rules. Organizations selling things like promotional items, event tickets or other goods or services are likely affected in some way.

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Each state has differing economic thresholds that require organizations to collect sales taxes, and the deadlines for compliance vary state-by-state as well. Even if no tax is collected, the requirement to file a return remains. This patchwork of regulations and deadlines may leave many nonprofits struggling to understand where their obligations lie, and how quickly they need to address them.

Complicating matters, the state thresholds vary in terms of dollar amount and number of transactions required to trigger economic nexus and the deadlines to comply also vary. For nonprofits, knowing where and when they're required to administer sales tax is often half the battle.

For up-to-date information on state thresholds and effective dates, check out our interactive *Wayfair* map.

Automation Offers a Potential Solution

One possible solution for monitoring the thousands of shifting tax rates that may apply in a post-*Wayfair* world is the use of automated software that monitors these changes in real time. Automated software solutions offer several benefits, including:

- Tracking tens of thousands of tax rates in real time
- Access to taxability information to determine how products and services are taxed in various jurisdictions
- A history of transaction data that can be used to compile tax returns and provide a single source of information in the event of a sales tax audit
- Assistance with managing exemption certificates for tax-exempt sales

For nonprofits, which typically have fewer resources than for-profit companies, a full-service automated solution might seem out of reach. However, there are many simple products that offer basic services — such as tax rate tracking — at a lower cost. Ultimately, while there are costs associated with these services, they may be eclipsed by the administrative and resource burden that comes with keeping pace with constant change without them.

For more information about how automation can assist with *Wayfair* compliance, read our recent Insight.

Marketplace Facilitator Laws, The Next Frontier

While *Wayfair* had obvious effects on the e-commerce sector, its impacts also extend to the middlemen of retail sales transactions. New sales tax laws are now requiring marketplace facilitators — third-party entities that facilitate sales, such as Amazon — to collect and remit sales and use taxes on behalf of retailers. These laws help to substantially reduce the number of remote sellers that state tax authorities may seek to audit. We expect nearly all states will enact marketplace facilitator tax laws soon.

By nature, marketplace facilitators don't have intimate knowledge of the goods or services being sold as the retailers themselves do. This lack of familiarity could result in a fair amount of under-collected sales tax if these sales are not properly accounted for or mapped to the correct taxability classification. This under-collecting is compounded by the fact that there is lack of regulatory clarity around who should ultimately be responsible for the correct amount of sales taxes collected and reported to the taxing agencies, whether it's the retailer or the company facilitating the sale.

While nonprofits might not seem like marketplace facilitators, there is still a lot of confusion about what constitutes a dealer or seller under these laws. It's possible nonprofits that maintain online marketplaces or facilitate online auctions could be considered facilitators. With so much up in the air regarding these laws, it's critical that organizations keep a close eye on the latest developments in any state where they do business.

Don't Forget Purchasing Exemptions

While much of the commentary around *Wayfair* has focused on selling, it highlights the importance of purchasing considerations, as well. As sellers begin to increasingly collect sales tax on purchases, nonprofits should be sure to understand and maximize any exemptions they qualify for due to their nonprofit status.

While the details vary, many states exempt nonprofits from paying sales tax on purchases if they are made exclusively for charitable purposes. According to the National Council of Nonprofits, more than half of U.S. states give broad sales tax exemptions for purchases by nonprofits, and an additional 15 states allow limited exemptions by certain types of nonprofits or specific organizations.

For nonprofits to take advantage of these exemptions, they need to keep track of where they exist, and work with their vendors to ensure they either do not pay sales tax on purchases or receive sales tax credits on applicable purchases. Ideally, every time an organization begins to work with a new vendor, they should determine if the purchase is exempt from sales tax and provide the vendor with applicable exemption certificates. It's also important to note that some types of nonprofit organizations, like associations, generally don't qualify for these exemptions.

When *Wayfair* was first decided, many nonprofits assumed they wouldn't be affected but in the year since have had to come to the realization that they may be responsible for collecting and remitting sales taxes in states where they have economic nexus. While this has created concerns about the administrative burden nonprofits might face to stay *Wayfair* compliant, it's important to remember that sales tax is ultimately a cost to the buyer, not the nonprofit seller. That is, of course, provided the nonprofit is compliant. If they fail to collect and remit the sales tax, there could be actual liability in the form of an audit assessment to the organization.

As the impacts of *Wayfair* continue to unfold, it's crucial that nonprofits stay up to date on the latest developments and take proactive steps to get — and stay — compliant.

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