A Year After Online Sales Tax Ruling, Are States Reaping More Revenues?

Almost every state has jumped at the opportunity to tax online purchases.

One year after the U.S. Supreme Court overturned a decades-old ban on states collecting sales taxes from online sellers, nearly every state has instituted a tax.

The swift and relatively painless transition has been a strong rebuke to the argument that requiring online sellers to remit sales taxes to 40-some states would be too cumbersome for states and sellers. "It's absolutely amazing that just one year in, we've seen that kind of widespread geographic coverage," says Charles Maniace, vice president of regulatory analysis for the consulting firm Sovos.

As of this week, the District of Columbia and 42 of the 45 states with a sales tax have enacted laws or regulations requiring remote sellers to remit a sales tax. The remaining three states — Florida, Kansas and Missouri — have already proposed bills, "and it is only a matter of time before they are enacted," says the Urban Institute's Lucy Dadayan.

The action comes in response to the court's ruling in South Dakota v. Wayfair, issued one year ago today, calling the old precedent "flawed" and a "tax shelter for businesses." The 5-4 decision did away with the notion that governments can only collect sales taxes on purchases made from retailers with a physical presence in their state. In doing so, the court overturned two previous rulings that predated the world of e-commerce.

In addition to enacting laws for direct sellers, 32 states and Washington, D.C., have passed laws or regulations requiring marketplace facilitators to collect sales taxes on behalf of their sellers, according to the National Conference of State Legislatures. Marketplace facilitators are online brokers, such as Amazon or Ebay, that sell a third party's goods and services. More states are expected to take similar action in the coming year.

Has the Ruling Helped State Budgets?

Prior to the Wayfair ruling, some observers estimated that states were collectively missing out on anywhere from $13 billion to $23 billion a year in potential online sales tax revenue. It's too early to know whether those estimates are accurate.

For one, it's nearly impossible to separate out the impact of the ruling from economic growth that would have occurred anyway over the last year. Furthermore, the data for this year is incomplete because states began officially collecting online sales taxes at different points throughout the past 12 months — some will start collecting them later this year.

Still, there are signs that the new taxes are helping state budgets.

For starters, sales tax growth over the past fiscal year, which for most states will end on June 30, has exceeded expectations. According to the latest data from the National Association of State

Budget Officers (NASBO), 32 states are collecting more than they anticipated. The tax is outperforming budget forecasts by 1.4 percent, or $3.6 billion. That’s better than the income tax, which is exceeding forecasts by 0.6 percent.

In total, sales tax revenue is projected to grow by 3.5 percent in fiscal 2019, an increase NASBO attributes at least in part to the uptick in online sales tax collections.

And with more states implementing a tax over the coming year, states collectively are projecting even stronger growth — 4.8 percent in 2020. Among those, California is projecting $616 million in additional sales tax revenue, and New York is projecting $346 million more.

Still, Dadayan warns, the revenue boosts “might be more modest than expected if the economy slows down and if consumer spending declines.”

What’s Next?

With a tax in place, most states are now looking at how to make their process for collecting online sales taxes more efficient.

The main way they’re doing that is by defining how much business an online retailer needs to do for it to be worthwhile for the state to tax. This threshold is referred to as “economic nexus” in tax circles.

In most places, that means a retailer has to either sell more than $100,000 in goods or services, or conduct more than 200 transactions in a certain state over the course of a year to qualify as having an economic nexus. But that nexus doesn’t make sense for all states.

After it enacted its sales tax legislation this year, for example, California bumped up its nexus to $500,000 and got rid of the transaction minimum. The higher threshold makes more sense for a state with the fifth-largest economy in the world.

Other states are taking similar action to redefine what their threshold is, according to Sovos. So far, Colorado, Iowa, North Dakota and Washington have done away with their minimum transaction requirement but kept their $100,000 threshold.

Meanwhile, the threats to ban online sales taxes that emerged in the months following the Wayfair decision appear to have subsided. And while a bill still lingers in Congress that would create a federal sales tax standard for online sellers, it doesn’t appear to be heading anywhere.

States’ swift action to implement their own standards, plus their work with technology companies and vendors, has done a lot to quiet any concerns, says Sovos’ Maniace.

“There was a bit of ‘the world would come to an end’ reaction on the idea that governments would impose a sales tax on all these small businesses,” he says. “I think we’ve found that states have been pretty reasonable about things, and the technology is there to provide management and compliance in a way that’s affordable.”

GOVERNING.COM

BY LIZ FARMER | JUNE 21, 2019 AT 4:00 AM