



**AICPA Oral Testimony for March 3, 2020 hearing of the
House Small Business Committee Subcommittee on Economic Growth, Tax and Capital Access
on *South Dakota v. Wayfair, Inc.*: Online Sales Taxes and their Impact on Main Street**

Chairman Kim, Ranking Member Hern, and Members of the Subcommittee, thank you for the opportunity to testify on behalf of the AICPA. In 2018, the Supreme Court expanded the states' right to require out of state sellers (commonly referred to as "remote sellers"), to collect and remit sales tax by modifying the long-standing nexus test. With this ruling, the Court endorsed a South Dakota statute requiring remote sellers to register, collect and remit sales tax, if they meet at least *one* of two *economic* thresholds – either gross revenue from sales delivered into the state over \$100,000, *or* engaging in at least 200 transactions involving items delivered into the state.

So, how have the states' responded? As a whole, they responded quickly, but not consistently. About half of the states adopted the same economic thresholds as South Dakota. The other half adopted variations (such as, different sales thresholds, or requiring that *both* the transaction and sales thresholds are met). And in at least one state, the rules apply once the *first* sale is made to an in-state customer. There's also a lack of uniformity in determining *how* and *when* the economic thresholds apply. For example, some states count only *taxable* sales, while others use gross sales.

How does this impact small businesses? Businesses that traditionally maintained a physical footprint in just one or two states, now must consider whether their sales to customers in a national marketplace subject them to the new rules. Nexus standards, threshold calculations, rate determinations, and filing compliance are only some of the burdens on remote businesses,

and especially small businesses, that do not have the resources, revenue, or time, to accurately comply with the various rules across the nation.

There are also situations where businesses have to register, even when their sales are tax-exempt, and file “zero dollar” tax returns. In that case, a business spends time complying with the law, even though the state will not get any additional revenue. Similar problems arise when states use a threshold based on the number of transactions. For example, a business selling a product valued at \$10 to 200 customers with an 8% sales tax must collect and remit a grand total of \$160. The compliance cost *clearly* exceeds this amount.

Taken as a whole, there are often prohibitive costs attached to ensuring that the compliance is performed correctly. If left unchecked, the lack of uniformity in which the states have reacted could impair small business growth, result in a loss in productivity, and hamper their accountants’ ability to efficiently and effectively serve them.

How can we help small businesses? If Congress decides to address these small business issues, we have a few suggestions. To start, small businesses need more consistency between sales and income tax nexus rules. Businesses are faced with a challenge when it comes to the question of nexus – are they subject to sales tax, income tax, or both? The answer in many cases is unclear. While it is impossible to completely align all sales and income tax rules, it is possible for Congress to address the *minimum* standards for which these rules apply.

A natural starting point is the standard established by the Multistate Tax Commission in 2002. It provides a safe harbor to determine if businesses are subject to business activity taxes. However, it’s time to *modernize* the approach, since the MTC has not changed the amounts for almost twenty years.

We recommend a uniform three-part test. If you exceed one part, you have nexus in the state. First, for sales, there should be one dollar threshold for all of the states. The threshold

should apply to *taxable* sales (for sales tax), and *gross* sales (for income tax). The second part, for property located in the state, we would suggest a \$100,000 threshold (for sales and income tax); and finally, the third part, for payroll, we also suggest \$100,000.

There are several approaches to determining what is the right dollar threshold for sales. Some states use the \$500,000 amount from the 2002 standard. However, if inflation is taken into account, that amount would be roughly \$750,000. Finally, a \$1 million threshold would ensure that more small businesses are covered under a safe harbor.

I don't have time to get into all of our other suggestions, but I want to note one area of growing concern. Small businesses selling both directly and through a marketplace facilitator must deal with even more complicated and inconsistent rules. In order to simplify compliance and avoid situations in which the double collection of sales tax may occur, businesses need consistent and clear definitions, including what constitutes a marketplace facilitator.

Thank you for the opportunity to testify, and I am happy to answer any questions.