What Wayfair Means for Manufacturers

The Supreme Court's 2018 Wayfair decision redrew the sales and use tax picture for businesses of every kind. Manufacturing companies nationwide must now navigate a very different situation in a post-Wayfair world, with changes that impact both the sales and supply sides of the business.

In South Dakota v. Wayfair, the court found that a physical presence in the state is no longer a requirement to establish nexus. States can require companies providing goods or services to customers within the state to collect, report and remit sales tax even if these transactions occur exclusively online, by phone or by mail.

The decision's effects reach deep into how companies establish nexus as well as their processes for administering sales and use tax. In addition to learning a new set of rules, manufacturers must also prepare for a more dynamic landscape as states rewrite and refine their laws governing economic nexus and sales tax.

How can manufacturers adapt? Remaining in compliance with newly expanded sales and use tax requirements will demand time and close attention, so the first step is accepting that the business needs to devote appropriate resources to managing these changes. Once recognized, manufacturers can take proactive steps to fulfill their post-Wayfair compliance obligations.

- **Determine where economic nexus exists.** With economic nexus replacing physical presence standards, manufacturers must evaluate revenue generated in each state where they do business against the state's definition of economic nexus. Determining economic nexus can require analysis of both sales and number of transactions in each jurisdiction. Revenue required to establish economic nexus varies widely between states, but as little as $1 worth of revenue can create sales tax nexus in certain cases. Revenue thresholds may or may not include tax-exempt sales, depending on the state. In addition, states act independently in determining which goods and services are exempt from sales and use tax. Establishing accurate taxable sales numbers within the state may be quite time-consuming for manufacturers with sales in multiple states.

- **Register in states where the business has economic nexus.** After confirming nexus, businesses must register in each of the relevant states and begin collecting, reporting, and remitting sales tax as needed to comply with state laws. For most manufacturers, Wayfair's impact includes registering and filing sales tax returns in a number of states where no such requirement previously existed. Manufacturers should note that the obligation to file sales tax returns potentially exists even where all sales in the state are tax-exempt.

- **Strengthen exemption certificate protocols.** Managing the resale and exemption certificate process is also more demanding as a result of Wayfair. Here again, individual states create their own exemption policies including expiration dates and application processes. Manufacturers should document each customer's exemption status and create robust processes to monitor the validity of exemption certificates. State tax authorities will likely intensify their sales tax auditing programs, and manufacturers that lack clear, well-organized records run the risk of incurring additional taxes and penalties.

> *For many manufacturers, sales and use tax responsibilities now feel like a situation where questions outnumber answers. However, there is no question that compliance demands a wealth of detailed, state-specific information that is frequently updated.*

- **Address supply-side changes**. Vendors are also making changes following the Wayfair decision and states' responses, so manufacturers should pay close attention to their own purchases. Issue current tax exemption certificates to all suppliers and closely scrutinize invoices to avoid paying sales tax on purchases that qualify as exempt.

- **Continually monitor changes to individual states' laws.** After South Dakota's court win, other states have been quick to amend their own tax policies. As of August 2019, 43 states have established or updated their rules regarding economic nexus, although some will not go into effect until October 1. Taxing remote sales promises a significant boost to state coffers, and as time goes on, other states will no doubt follow a similar path. The now-dynamic nature of sales and use tax means manufacturers must remain alert to potential future changes in every state where the company generates revenue.

- **Evaluate internal capacities.** With more states to file in, more certificates to manage, and more detailed tracking necessary to distinguish taxable from tax-exempt sales, manufacturers must take a realistic inventory of their internal resources for meeting these needs. Assess your processes for reporting taxes, managing exemptions, maintaining records and the overseeing of these duties. Do you need additional staff or assistance from specialists outside the company? Midsized and larger manufacturing businesses may want to consider automation to minimize added staff hours while making it easier to monitor changing state sales tax laws and exemption policies.

For many manufacturers, sales and use tax responsibilities now feel like a situation where questions outnumber answers. However, there is no question that compliance demands a wealth of detailed, state-specific information that is frequently updated. Do not risk the costs of noncompliance. Contact the state tax professionals at Mauldin & Jenkins for the expertise your manufacturing business needs to help you meet the challenges of a post-Wayfair world.

Jeff Dorris
SALT Practice Leader
Mauldin & Jenkins
jdorris@mjcpa.com
770-955-8600
MJCPA.com