



# Sales Tax Collection After Wayfair:





# Sales Tax Collection After Wayfair:

*Did States Get What They Need?*



## Background



***The 1992 Quill Decision***

**and**

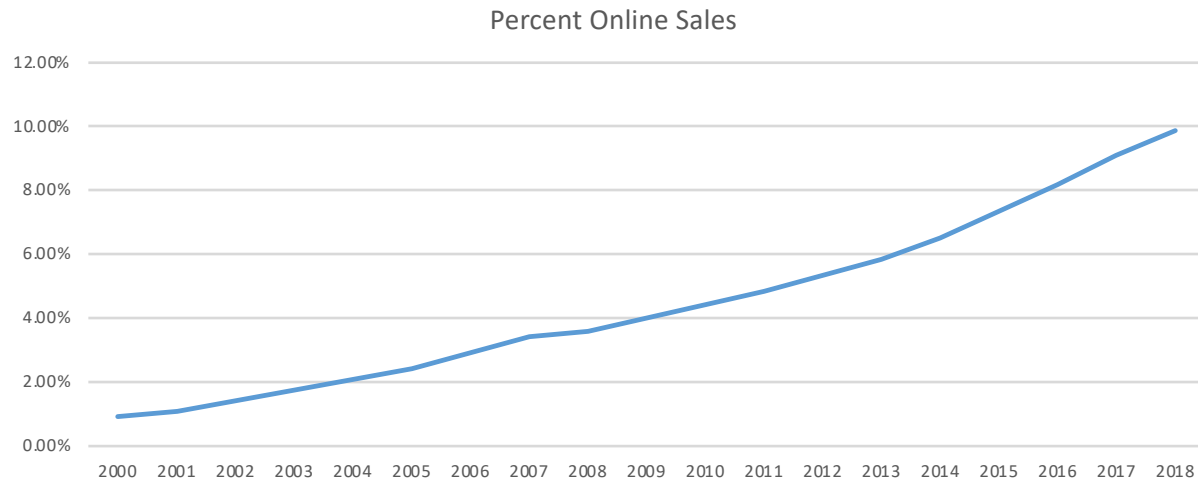
***The Growth of E-Commerce***





# The Growth of eCommerce

## U.S. **E**COMMERCE VS. **T**OTAL RETAIL SALES



Source: Economic Research Division, Federal Reserve Bank of St. Louis

## The Growth of e-Commerce

- Amazon Marketplace is now twice as large, and growing twice as fast, as Amazon's own sales
- 2.5 million total sellers on the Marketplace worldwide
- 20,000 sellers with over \$1 million in sales worldwide
- Walmart and others are working to expand their own marketplaces

*Source: Marketplacepulse.com*



# Pennsylvania Compliance Initiatives





# Pennsylvania Compliance Initiatives – Use Tax

- November 2005 to present – business use tax voluntary compliance initiative
- Ongoing transactional use tax program (including US Customs and audit referrals)
- Inclusion of consumer use tax reporting line on PA-40, the individual income tax return



# **Pennsylvania Compliance Initiative – Online Retailers**

- December 1, 2011 – Sales Tax Bulletin 2011-01
- September 1, 2012 – Amazon begins to collect PA sales tax on its direct sales / Many remote sellers follow suit through 2017
- Thousands of online retailers contacted
- Many large online retailers registered to collect PA sales tax

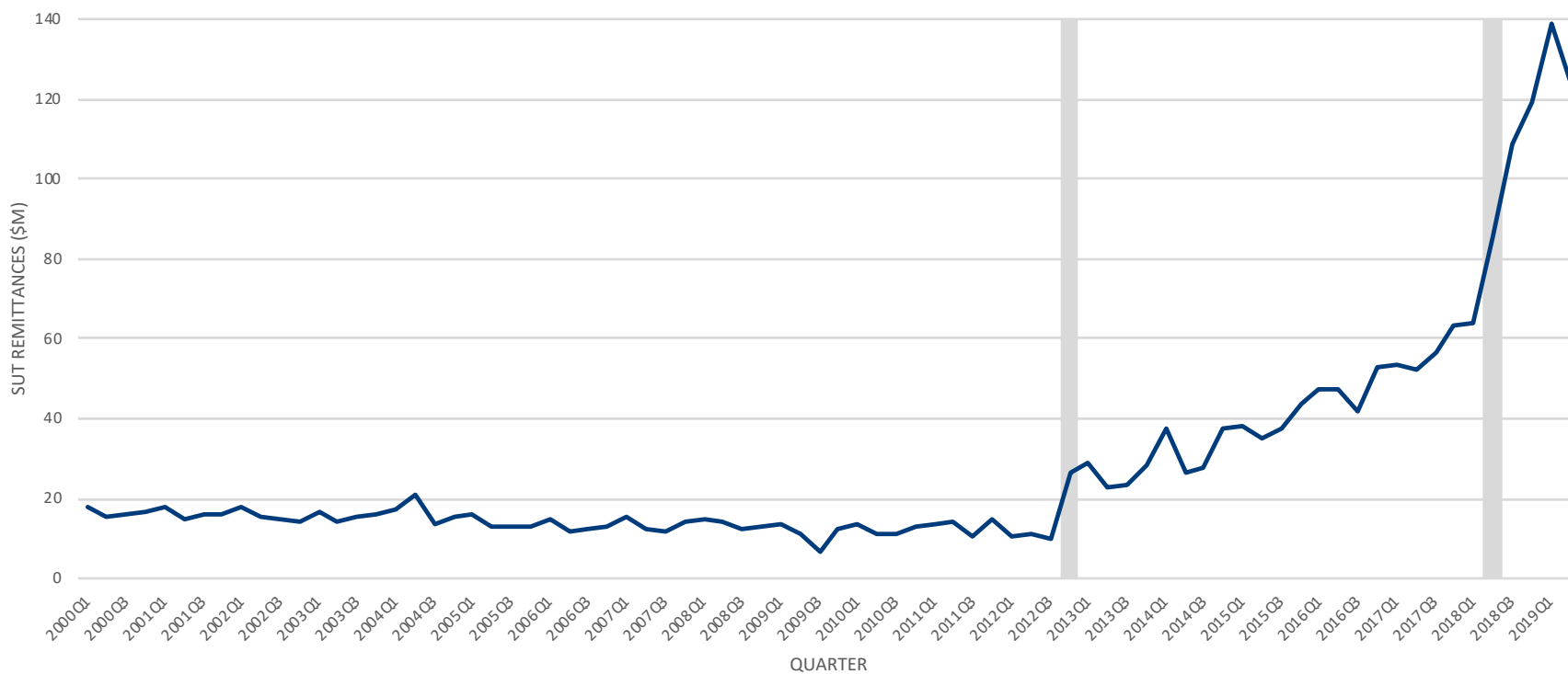




## Pennsylvania Compliance Initiative – Marketplace Sales

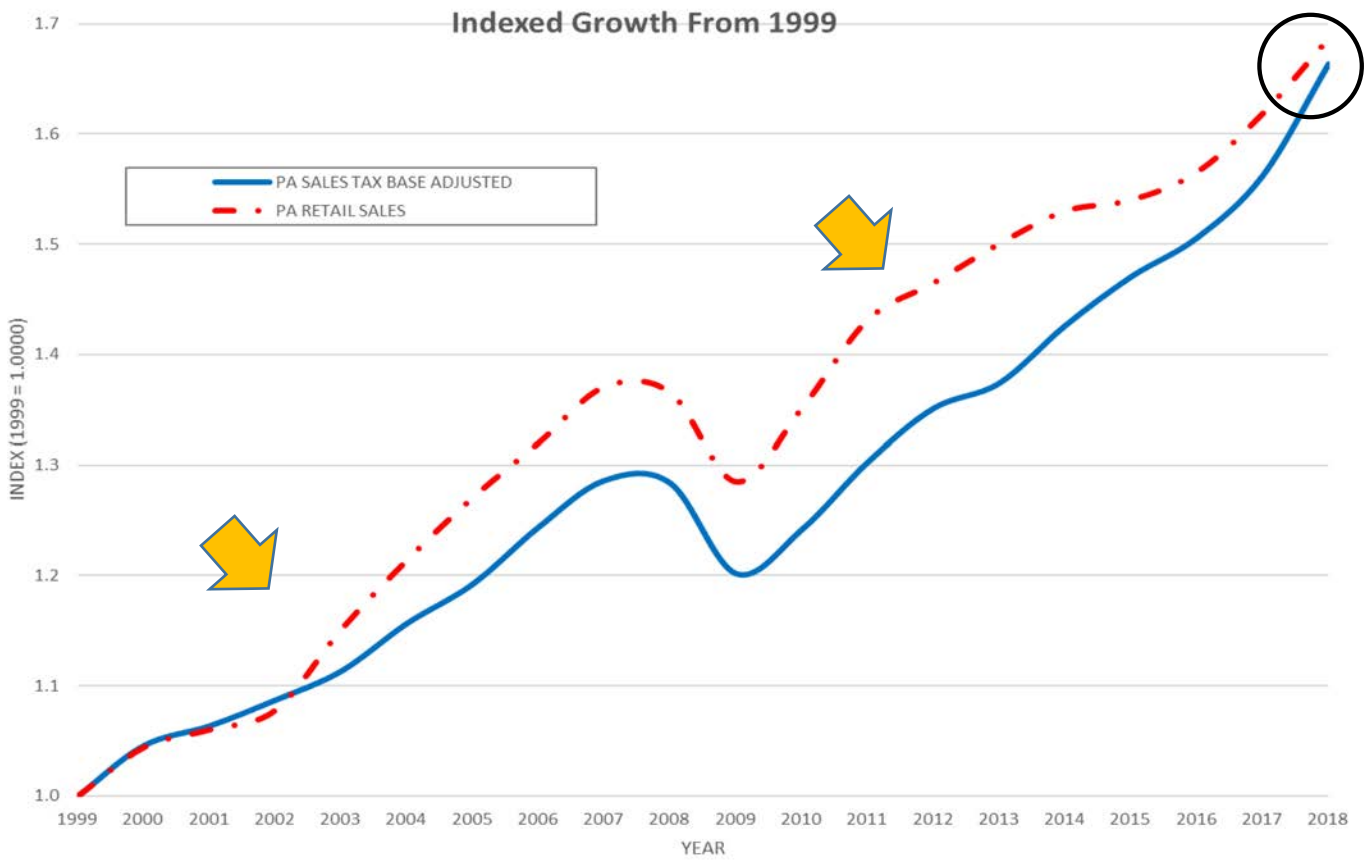
- October 30, 2017 – Act 43 of 2017 establishes Marketplaces Sales provisions
- Marketplace facilitators and online retailers with annual PA taxable sales over \$10,000 had to *elect* to collect PA sales tax or comply with use tax notice and reporting requirements
- Marketplace Sales is not economic nexus

## SUT - REMITTANCES FROM E-COMMERCE ENTITIES



### PA SALES TAX v. RETAIL SALES

Indexed Growth From 1999





Supreme Court of the United States  
South Dakota v. Wayfair Decision  
June 21, 2018

## Wayfair - The Court noted:

- *“Several features that appear designed to prevent discrimination against or undue burdens upon interstate commerce”* in South Dakota’s law
  - Safe harbor or threshold level of in-state sales activity, to protect small merchants
  - Prospective application
  - Member of the Streamline Sales and Use Tax Agreement (SSUTA), designed to “reduce administrative and compliance costs”

Wayfair: The Court noted (continued):

*These features of the law **prevented discrimination** on businesses whose virtual presence in a state was limited.*



# Wayfair: The Pennsylvania Approach



## **The Pennsylvania Department of Revenue *Initial* solution (See Sales and Use Tax Bulletin 2019-01):**

\$100K gross sales in prior calendar year

7/1/2019 effective date for economic presence sellers to begin collecting and remitting PA sales tax

### **And simplification**

Already central collection of sales tax with one base and one rate

Contract with Certified Service Providers (CSPs) to assist economic presence sellers





# Wayfair: The Pennsylvania Approach Act 13 of 2019



## Wayfair: The Pennsylvania Approach Act 13 of 2019

- Effective July 1, 2019 Pennsylvania's definition of "maintaining a place of business" is expanded to include economic presence
- Businesses with economic presence must register to collect and remit Pennsylvania sales tax
- Economic presence is defined as making annual gross sales to Pennsylvania customers of at least \$100,000
- No transaction threshold



# Wayfair: The Pennsylvania Approach Act 13 of 2019

## **CALCULATING GROSS SALES**

- Includes taxable and nontaxable sales made on all channels.
- Measured by Calendar year
  - Calendar year 2018 – July 1, 2019 through March 31, 2020
  - Calendar Year 2019 – April 1, 2020 through March 31, 2021 (Same for subsequent years)



# The Pennsylvania Approach Act 13 of 2019 and CSP Initiative

- The Act applies prospectively
- Leveraging the certification of Streamline Sales Tax Governing Board (SSTBG), procure services of Certified Service Providers (CSPs)
  - Provide a taxability matrix
  - Working with a CSP can relieve the seller of certain liabilities upon audit.



## The PA CSP Composite Return

- Each CSP will file a single composite return and payment per month
- Structure is analogous to marketplace platforms filing one return for all marketplace sellers
- Each CSP will also upload to DOR a file showing detail by seller with dollar amounts included in the composite each month for analysis and tracking
- Removes sellers from state processes of registration and account maintenance
- Provides significant simplification for small remote sellers



# Pennsylvania Certified Service Providers

## Client Responsibilities

- Provide accurate information about products at the transactional level
- Provide an annual attestation that they have no physical presence in Pennsylvania. The DOR Attestation form is provided by CSP to the client.



## Pennsylvania Certified Service Providers

- **AccurateTax** – <https://www.accuratetax.com>
- **Avalara** – <https://www.avalara.com>
- **Sovos** – <https://sovos.com>
- **TaxCloud** – <https://TaxCloud.com>



## Pennsylvania Certified Service Providers

Taxpayers *not eligible* to use a CSP:

- Physical presence in Pennsylvania





## Pennsylvania Certified Service Providers

Taxpayers *not eligible* to use a CSP:

- Physical presence in Pennsylvania
- Compliance issues



## Filing Direct– No CSP

Taxpayers with economic presence may choose to file directly with the department

- ✓ Must obtain a sales tax license
- ✓ Must charge, collect, remit PA sales tax and file returns



## Filing Direct – No CSP

Taxpayers with economic presence may choose to file directly with the department

- ✓ Must obtain a sales tax license
- ✓ Must charge, collect, remit PA sales tax and file returns
- ✓ Must determine taxability of items sold to PA customers

## Pennsylvania Act 13 of 2019

### Wayfair Supreme Court Decision

- ✓ Safe harbor or threshold level of in-state sales activity, to protect small merchants
- ✓ Prospective application
- ✓ Provides resource designed to “*reduce administrative and compliance costs*”

### Pennsylvania Economic Presence

- ✓ \$100,000 gross annual PA sales – no transaction threshold
- ✓ Begins July 1, 2019 – No look back period
- ✓ Pennsylvania has contracted with SSTGB approved Certified Service Providers to assist out of states businesses with sales tax administration at reduced costs

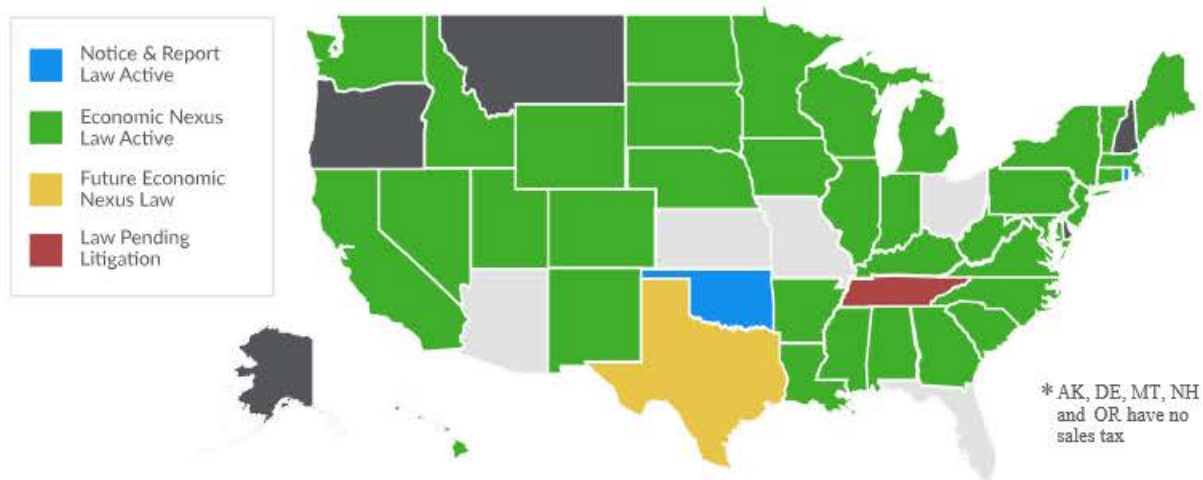


## What about Act 43 of 2017?

- Taxpayers with economic presence no longer have an election to collect sales tax or comply with notice and reporting requirements. Taxpayers *must* collect sales tax if they make taxable sales and have economic presence.
- Taxpayers with no physical or economic presence in Pennsylvania have no sales tax obligations.

# The National Sales Tax Landscape

This map shows the states that have enabled economic nexus or notice & report laws



*Updated July 12, 2019*

Source: [blog.TaxJar.com](http://blog.TaxJar.com)

## What Remains?: Unreachable sales tax

- *“Even After Wayfair, Billions in Sales Tax Will Remain Uncollected”* by Liz Malm and Joe Crosby, April 2019
- Provides an estimate for sellers who are:
  - Below \$1 million in total U.S. sales
  - Selling outside of any marketplace
  - In non-SSUTA states
  - In 2017

## What Remains?: Unreachable sales tax (2)

- Estimate of \$3.8 billion total unreachable sales tax under those assumptions
- PA estimate is \$245 million in unreachable tax revenue
  - May be overstated, so TIFWIW
- Suggests that a substantial amount of unreachable sales tax remains





## What Remains?: States continue to have strong reasons to work toward simplification

- To protect the gains we have made in the Wayfair case
- To make it feasible for additional small vendors to make a business decision to collect sales tax
- These small sellers are the new “voluntary” sellers post-Wayfair

## What Remains?: Foreign Web Sites

- Present special enforcement challenges and issues
- May have assets in US banks, inventory storage, etc. that can be attached
- But to the extent that foreign sellers reach the US market through a U.S. marketplace, collection may not be a problem

## Summary and Wrap-up

- After agitating for change for 25 years post-Quill, states are now in the best position ever for narrowing the tax gap significantly
- There is both the “push” from new jurisprudence, and the “pull” of competition driving sellers toward marketplaces who can handle tax collection duties
- Non-SSUTA states can leverage the CSPs to satisfy the Court’s concern about excess burden without adopting the uniform definitions
- Even after these gains, there is still a lot of unreachable sales tax
- States should continue to work to simplify sales tax compliance to protect the gains already made, and make it easier for sellers to agree to collect