

Wayfair and Marketplace Implementation

Presentation by
Comptroller of Public Accounts Office

Wayfair and HB 1525 Implementation

- Most tax collection issues raised in the *Wayfair* decision and marketplace legislation are addressed by Rule 3.286, Seller's and Purchaser's Responsibilities.
- Amendments to Rule 3.286 effective on January 1, 2019.
 - Notified remote sellers of their Texas use tax collection responsibilities.
 - Established a safe harbor provision for small remote sellers (total Texas revenue from sales into Texas less than \$500,000 during the preceding twelve-month period).
 - Required remote sellers above the safe harbor amount to begin collecting the use tax on October 1, 2019.

Wayfair and HB 1525 Implementation

- Adopted Amendments to Rule 3.286
 - Notified remote sellers, marketplace providers and marketplace sellers of their Texas use tax collection responsibilities.
 - Required remote sellers to aggregate their sales made on all mediums for purposes of determining if the safe harbor provision applies (effective January 1, 2020).
 - Established a procedure and information to be provided to request a waiver of implementation/exclusion of marketplace requirements and outlines the circumstances in which the Comptroller may issue an exception to certain marketplace providers
 - Has been adopted and was effective January 1, 2020.

Wayfair and HB 1525 Implementation

- Effective date for first collections was October 1, 2019
 - First Reports were due on November 20, 2019.
- Remote Seller and Marketplace Provider Registrations
 - New Remote Seller Registrations: 2,640
 - Registering to use the optional single local sales tax rate: 1,976
 - Marketplace Provider Registrations: 345
 - Excluded restaurant and grocery store order/delivery services from marketplace provider requirements
- Future Issues
 - Other fees and/or taxes collected by entities
 - Refinement of definition of marketplace provider or specific exclusions from definition

HB 2153 Implementation

- Optional single local tax rate for remote sellers
 - 1.75% tax rate effective October 1, 2019 through December 31, 2019 and Calendar year 2020
- Amending Rule 3.334, Local Sales and Use Taxes
 - Establishes rate and procedure for establishing rate in future
 - Establishes procedures for remote sellers to register to use optional local rate
 - Provides guidance that remote sellers that utilize a marketplace provider which may have placed their inventory in the state are not excluded from using the optional rate
 - Establishes that the collections will be proportionately distributed to the local jurisdictions
 - Establishes Refund option for purchasers
 - Provides guidance that purchasers paying the rate have no additional use tax liability

Proposed Local Sales Tax Rule 3.334

- Provides a clarification by addressing the question of where an internet order is received by recognizing the unique nature of internet orders.
 - Internet orders are received electronically on a server somewhere, often in the cloud, and do not require human contact for the order to be received by the business.
 - The proposed rule states that internet orders are not received at a place of business and then applies the existing consummation rules to source the sale to the place of business from which the orders are fulfilled or to the location where items are shipped or delivered
 - a website or software application is not an outlet or location of the seller and does not meet the definition of a place of business in the way a traditional business location does.
 - The proposed amendments provide clarity to businesses and local jurisdictions and prevents arbitrary shifting of local revenues from one jurisdiction to another.

Proposed Local Sales Tax Rule 3.334

- Proposed rule will have the following impacts:
 - A retailer's location that does nothing more than handle Internet orders, i.e. it does not receive in person or phone orders, is not a place of business.
 - A retailer with only one place of business that has all its inventory at that place of business and who fulfills its Internet orders from that place of business will continue to source local tax to that place of business.
 - A retailer with multiple places of business who fulfills its Internet orders from one of its places of business will source its local tax to the place of business that fulfilled the Internet order.
 - A distribution center that receives at least three orders in person (counter sales) or by phone is a place of business and any Internet orders fulfilled from that distribution center will source local tax to that distribution center.

Proposed Local Sales Tax Rule 3.334

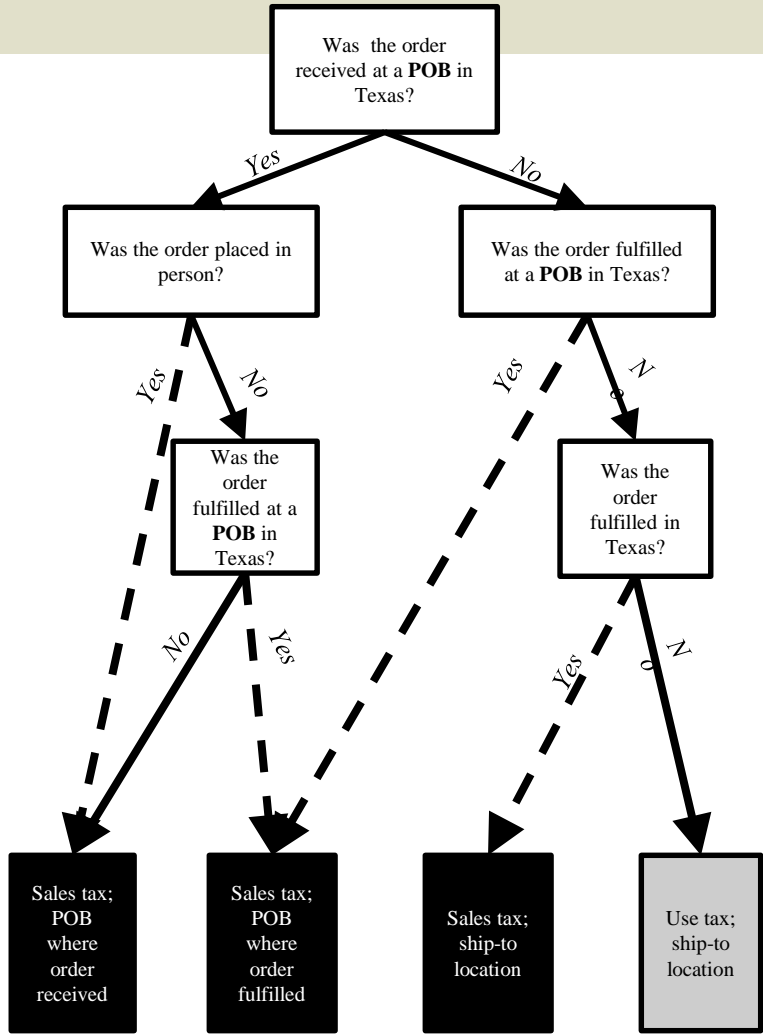
- Provides a clarification related to Traveling Salespersons
 - The statute provides local tax is sourced to the place of business of the retailer from which its employees or agents who take orders operate if the order was not fulfilled by another place of business of the retailer.
 - In other words, the location from which the traveling salesperson operates must be a place of business on its own, i.e. through walk ins or phone orders. The mere fact that a traveling salesperson operates out of a location does not make that location a place of business.

Proposed Local Sales Tax Rule 3.334

- Proposed rule will have the following impacts related to traveling salespersons:
 - A traveling salesperson whose only activity is marketing, will not have sales to attribute to a place of business. (The rule does not make a change to this provision, but only clarifies how this provision should have been applied.)
 - A traveling salesperson assigned to an administrative office, which is not a place of business, and who takes orders will source local tax to the place of business that fulfills the orders, and not to the administrative office.
 - A traveling salesperson assigned to an administrative office, which is not a place of business, and who takes orders that are not fulfilled by a place of business will source the local tax to where the item is shipped or delivered.
 - A traveling salesperson who operates from a place of business and takes orders, will source the local tax to that place of business if the order was not fulfilled by another place of business of the retailer.

Proposed Local Sales Tax Rule 3.334

- The proposed rule provides a temporary exception from the sourcing provisions regarding Internet orders for economic development agreements adopted under Local Government Code, Chapters 380 and 381 and entered into before September 1, 2019. The exception will last for three years, expiring on December 31, 2022.
- The propose rule does not impact sourcing of local tax collected on walk-in sales or sales made over the phone.



Questions?

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