

Addressing Online Sales Tax

**H.R. 2193 REMOTE TRANSACTIONS PARITY ACT Rep. Kristi Noem [R-SD-At Large]
S. 976 MARKETPLACE FAIRNESS ACT Sen. Michael Enzi [R-WY]**

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WHY IS IT GOOD FOR OUR INDUSTRY?

With the Supreme Court decision in South Dakota v. Wayfair, Congress needs to create national standards so businesses aren't faced with the logistical nightmare of trying to comply with differing requirements in the 12,000 taxing jurisdictions nationwide. This is particularly important since 31 states already have some law requiring sales tax to be collected without a physical presence, and the Supreme Court decision did not clearly identify which aspects of those state laws could be considered an undue burden on interstate commerce. The Remote Transactions Parity Act and Marketplace Fairness Act create a nationwide clearing house system to simplify the sales tax collection process and protects businesses from unnecessary audits.

MORE DETAIL

NAED spent years trying to protect members from online sellers who received up to a 10% price advantage from misleading claims relating to purchases being tax free. To help address this, NAED joined an amicus brief in South Dakota v. Wayfair, where the Supreme Court agreed to support leveling the playing field with respect to e-commerce by allowing states to require retailers to collect sales taxes, even if the retailer doesn't have a physical presence in the state. Now the nexus rule will focus on "whether the tax applies to an activity with a substantial nexus with the taxing state". The opinion of the Court discusses how the economic and virtual contacts of this case are clearly sufficient to form such a nexus. Without more guidance, it isn't clear which state laws are enforceable, but the opinion of the court strongly suggested that South Dakota's law will pass constitutional muster. This is due to a number of factors including that: (i) the law applies only to sellers that deliver more than \$100,000 of goods or services into the state or engage in 200 or more separate transactions for the delivery of goods or services into the state on an annual bases; (ii) it ensures that there is no obligation to remit the sales tax retroactively; (iii) South Dakota is a state that has adopted the Streamlines Sales and Use Tax Agreement; and (iv) the law provides sellers access to sales tax administration software paid for by the state, and sellers who choose to use such software are immune from audit liability.