



SALES AND USE TAX AND MEALS AND ROOMS TAX OVERVIEW

Abby Shepard, Legislative Counsel
Friday, February 10, 2023

Outline

- ▶ Sales and Use Tax
- ▶ Meals and Rooms Tax

Sales and Use Tax

- ▶ Structure
- ▶ Remote sellers: *Quill* and *Wayfair*
- ▶ Marketplace facilitators

SUT Structure

- **Tax Base:** retail sales of tangible personal property and other enumerated charges or services
 - 32 V.S.A. § 9771
 - Many, many exemptions based on type of good, purchaser, seller, transaction, or use. 32 V.S.A. ch. 233, subch. 2.
- **Tax Rates:** flat 6% rate
 - 32 V.S.A. § 9771
- **Tax Liability**
 - Final purchaser

SUT Structure

- Tax is paid by the purchaser on retail, not wholesale, sales.
- Tax is collected by the seller at the point of sale on behalf of the State (held in **trust**) and remitted to the Department of Taxes.
- **Sales tax** is paid on retail sales in Vermont.
- **Use tax** is paid on retail sales of products whose destination for use is Vermont.
- Applies statewide.
- Some municipalities have a 1% **local option tax** on retail sales made within the municipality's jurisdiction when those sales are subject to the State tax. 24 V.S.A. § 138.

SUT and Remote Sellers

- A state's power to tax certain activities is constitutionally limited.
- The Commerce Clause reserves to Congress the power to regulate trade or "interstate commerce" among the states. U.S. Cons., Art.1, Sec. 8, Cl. 3.
- Under the Commerce Clause, a state cannot tax goods in interstate commerce in a way that:
 - Discriminates against interstate commerce, or
 - Imposes an undue burden on interstate commerce.

SUT: *Quill v. North Dakota*, 504 U.S. 298 (1992)

- An office supply company called Quill solicited and sold goods in North Dakota via U.S. mail, but had no physical presence in the state. North Dakota sued Quill to collect and remit use tax on goods purchased for use in the state.
- Under the Commerce Clause, the U.S. Supreme Court ruled that a state cannot force a seller to collect and remit sales tax unless the seller has a physical presence in the state.
- This meant that online retailers who lacked a physical presence in a state with a sales tax were not obligated to collect and remit sales tax.

SUT: Internet Era Problems

- As online sales increased as a proportion of all sales, sales and use tax revenues paid to states decreased.
- When online retailers did not collect and remit, they gained a competitive edge over “brick and mortar” retailers with a physical presence in a state that imposed sales tax.

SUT: *South Dakota v. Wayfair*, 138 S.Ct. 2080 (2018)

- South Dakota enacted a law that required any vendor, regardless of physical presence in the state, to collect and remit sales tax if vendor annually delivered goods or services into the state that:
 - exceeded \$100,000 of sales, or
 - made 200 or more individual transactions.
- Online retailers, including Wayfair, sued to invalidate the law.
- U.S. Supreme Court ruled that in light of subsequent developments, the physical presence requirement of *Quill* is “incorrect and unsound”.

SUT: *South Dakota v. Wayfair*, 138 S.Ct. 2080 (2018)

- U.S. Supreme Court concluded South Dakota's "economic presence" test did not create an undue burden.
 - South Dakota law excluded smaller vendors (\$100,000 or 200 transactions).
 - South Dakota was a member-state of the Streamlined Agreement, a multistate sales tax agreement, reducing the compliance burden on sellers to comply.
- Result: a sense of a clear "safe harbor," provided that a state law has a similar "economic presence" requirement.

SUT: Vermont Anticipated *Wayfair*

- Since 2007, Vermont has been a member-state of the Streamlined Agreement
- Act 134 of 2016:
 - Vermont enacted South Dakota-style “economic presence” requirements for sales tax collection:
 - \$100,000 of sales or 200 transactions in the prior 12-month period. 32 V.S.A. § 9701(9)(F).
 - Contingent effective date: on the first day of the first quarter after *Quill* was overturned.
 - Following *Wayfair*, these provisions became effective July 1, 2018.

SUT: Vermont Changes Post-Wayfair

- *Wayfair* allowed Vermont to collect and remit on certain sales into the state by a vendor who is not physically located here.
- However, marketplace facilitators, such as Amazon, were not required to collect and remit for indirect or facilitated third party sales. These types of sales can represent the majority of online company's sales.
 - Marketplace facilitators contract with third-party sellers to promote sellers' sale of physical property, digital goods, and services through an online marketplace.

SUT: Vermont Changes Post-*Wayfair*

- Act 46 of 2019: Vermont enacted a marketplace facilitator law. 32 V.S.A. § 9701(9)(J).
 - Imposes the same collection requirements on marketplace facilitators as imposed on remote sellers after *Wayfair*:
 - \$100,000 of sales or 200 transactions in the prior 12-month period
 - Tax must be collected by facilitators on sellers' retail sales of tangible personal property, taxable services, or digital goods to collect Vermont sales tax.

Meals and Rooms Tax

- ▶ Structure
- ▶ Recent changes

Meals and Rooms Tax Structure

- **Tax Base**
 - “occupancy”, “rent”, “taxable meal”. 32 V.S.A. § 9202.
 - Exemptions based on type of meal, purchaser, seller, or use.
Id.
- **Tax Rates:** flat rate
 - 9%
- **Tax Liability**
 - Occupant or person consuming meal

Meals and Rooms Tax Structure

- Tax is paid by the occupant or purchaser.
- Tax is collected:
 - by the restaurant (meals tax) or operator (rooms tax)
 - at the point of sale
 - on behalf of the State (held in **trust**) and remitted to the Department of Taxes.
- Applies statewide.
- Some municipalities have a 1% **local option tax** on meals and rooms charges made within the municipality's jurisdiction when those charges are subject to the State tax. 24 V.S.A. § 138.

Meals and Rooms Tax Structure

What is a taxable meal?

- Any food or beverage sold by a restaurant for consumption on or off premises.
- Food or beverage not sold by a restaurant and not prepackaged, for consumption on or off premises.
- Regardless where sold and whether or not prepackaged:
 - sandwiches of any kind except frozen;
 - food or beverage furnished from a salad bar;
 - heated food or beverage; and
 - food or beverage sold through a vending machine.
- Many, many exclusions

32 V.S.A. § 9202(10)

Meals and Rooms Tax Structure

- What is a taxable occupancy?
 - Rooms tax is due on the rent charged for the use or possession of sleeping accommodations offered to the public for a consideration.
 - Does not include:
 - occupancy by a "permanent resident" (for at least 30 consecutive days)
 - by an employee of an operator when occupancy is remuneration for employment, or
 - any occupancy provided in a summer camp for children.

32 V.S.A. §§ 9202(3)-(9) and 9241(a).

Meals and Rooms Tax: Recent changes

- An “**operator**” may be a traditional lodging establishment like a hotel or bed and breakfast, or an operator may be a property owner offering a bedroom in their home for short-term rent.
- A “**hotel**” includes inns, motels, tourist homes and cabins, ski dormitories, ski lodges, lodging homes, rooming houses, furnished-room houses, boarding houses, private clubs, and short-term rentals.
 - Proliferation of short-term rentals led to increased scrutiny

Meals and Rooms Tax: Recent changes

- Facing numerous lawsuits in multiple states over tax collection requirements, Airbnb entered into a collection agreement with Vermont Dept. of Taxes in 2016 to collect on behalf of all hosts using its platform, under one rooms tax license number.
- By 2018, a definition of “short-term rental” had been codified and was referenced in the rooms tax definition of “hotel” to make it clear that short-term rentals are taxable. 18 V.S.A. § 4301(14); 32 V.S.A. § 9202(3).
 - Additionally, requirement imposed on all operators to post rooms tax license number on all online and physical ads for rentals. 32 V.S.A. § 9282.

Meals and Rooms Tax: Recent changes

Changes to definition of “**operator**”

- Online travel (“booking”) agents in Act 71 of 2019
 - Applied rooms tax to online travel agent charges for booking rooms. 32 V.S.A. § 9202(4), (8), (20).
- Online taxable meal facilitators in Act 73 of 2021
 - Applied meals tax to meal delivery and other meal facilitator charges for online ordering. 32 V.S.A. § 9202(4), (10), (21).