



The New Sales Tax Nexus Landscape: It's Not Just About Wayfair

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Agenda

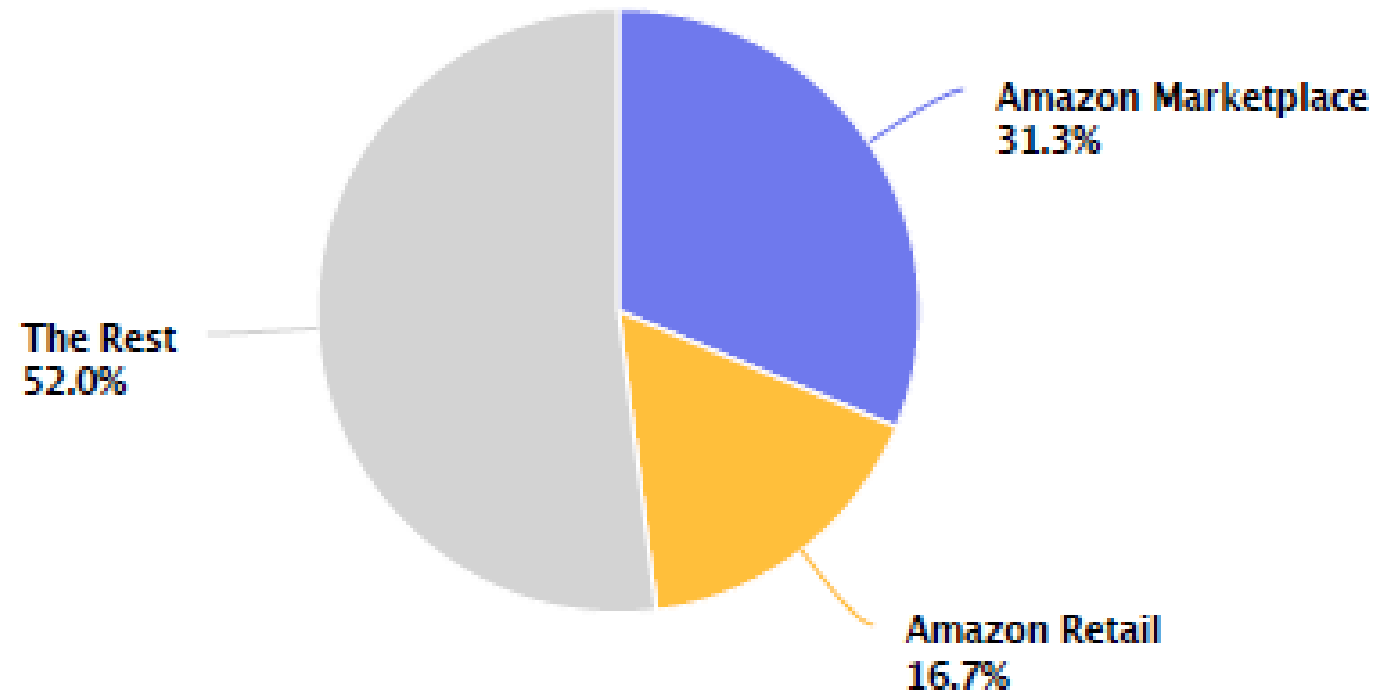
- Marketplace
- Wayfair
- What Remains?

Marketplace

Marketplace: Transforming Commerce in the US Online Market

- 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
- 39% of top sellers are based in China
- Walmart, others are working to catch up
- Source: Marketplacepulse.com

Amazon Marketplace Share of US Online Retail Sales



Source: Marketplacepulse.com

Marketplace: Keys to Marketplace Growth

- Trust, visibility and scale
- Access to world-class logistics
- Free 2-day (soon to be 1-day) shipping

Marketplace: This business strategy creates physical presence in most states

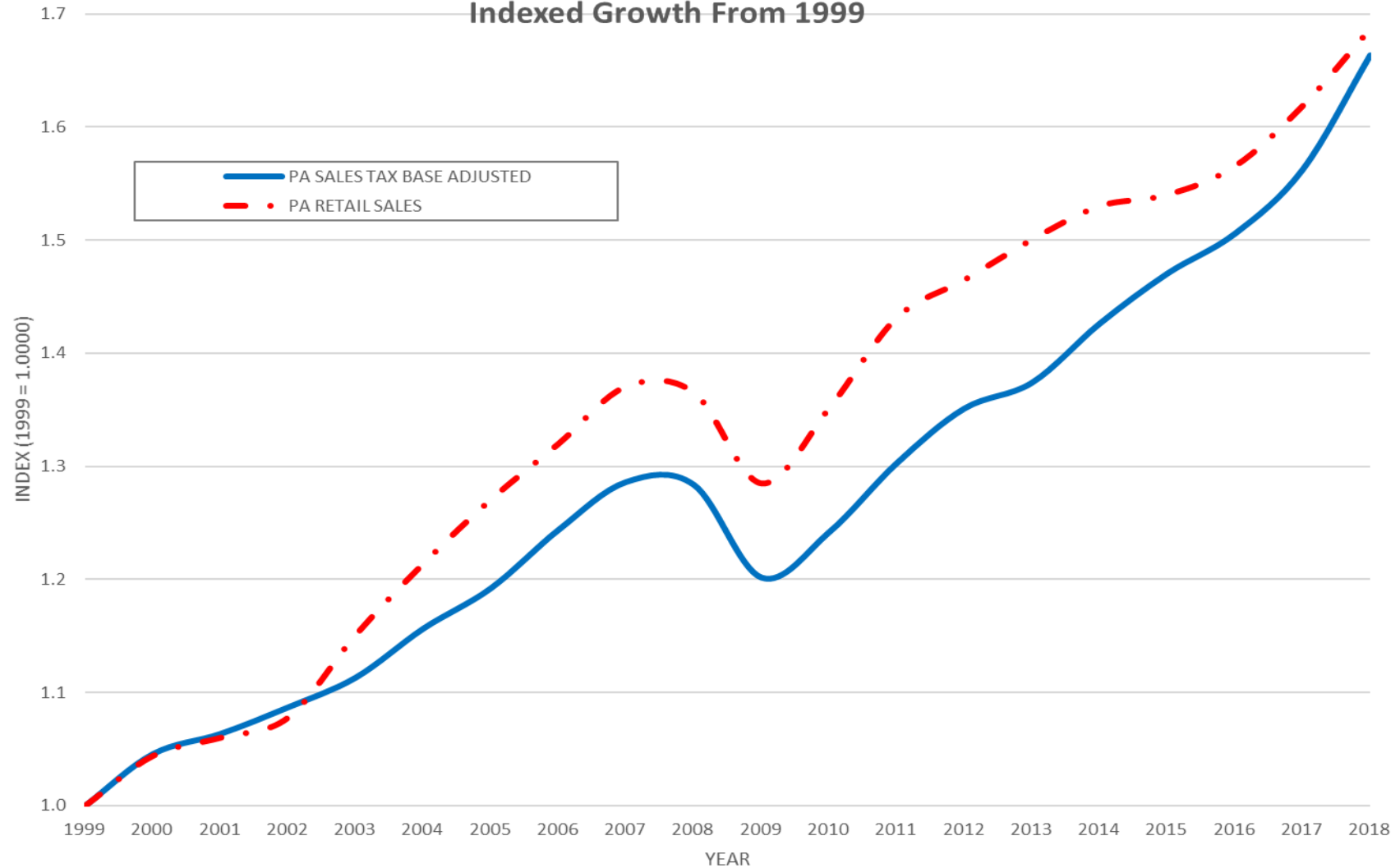
- Fast shipping is more important than sales tax
- Inventory has to be staged close to customers for fast delivery
- Suggests there are inherent limitations of the pure internet business model

Marketplace: This is a very good thing for states Because ...

- Competition, in addition to tax law, is pushing vendors to step over the nexus threshold and collect tax
- Marketplace platforms are winning market share because they offer substantial benefits to small sellers
- Many foreign-based sellers are using a marketplace to enter the U.S. market
- Marketplace platforms can be required to collect tax from all sales into a state, not just those over a sales threshold
- They should have the resources to reliably achieve good compliance

PA SALES TAX v. RETAIL SALES

Indexed Growth From 1999



Wayfair

Wayfair: What Do States Have to Do?

- The Court did not fully resolve the issue of what states must do to require sales tax collection from remote sellers
- *“These issues have not yet been litigated or briefed, and so the Court need not resolve them here.”*

Wayfair: What Do States Need to Do?

- The Court took favorable note of “*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 SSUTA, designed to “*reduce administrative and compliance costs*”
 - Seems to approve of SSUTA, but does not make it mandatory

Wayfair: SSUTA “Features” are:

- A single, state-level tax administration
- Uniform definitions of products and services
- Simplified tax rate structures
- Other uniform rules
- Access to sales tax administration software paid for by the State
- Audit immunity for sellers using state-certified software or services.

Wayfair: Difficult Aspects of SSUTA

- Uniform definitions of the tax base
 - Loss of control over state policy choices
 - Loss of revenue
- Local jurisdictions imposing sales tax
 - Tax Foundation counts more than 10,000 sales tax jurisdictions
 - 23 states have more than 100 sales tax jurisdictions
 - Several states are creating a single statewide tax rate system for local jurisdictions
- Uniform registration, exemptions and other processes
 - Business registration may also trigger UC, excise tax, business taxes, permitting, licensing, etc.

Wayfair: Is there a path forward for non-members of SSUTA?

- Can we “*reduce administrative and compliance costs*” for smaller vendors without the uniform definitions and procedures?
- Answer: **Yes**, if we can:
 - Make compliance much simpler,
 - Provide active assistance through the CSPs, and
 - Subsidize it

Wayfair: The Pennsylvania Approach

- PA has centralized state-level tax administration
- Leveraging the certification of SSTGB, procure services of CSPs
 - Invitation to Bid (ITB) instead of RFP to simplify procurement
 - Contingent fee at a percentage of revenue remitted. PA has this statutory authority.
 - Provide a taxability matrix and audit immunity for sellers using CSPs
 - Sellers required to make an annual attestation of no physical presence
 - Each CSP will file a single composite return and payment per month

Wayfair: The PA Composite Return

- Structure is analogous to marketplace platforms filing one return for all marketplace sellers
- Removes sellers from state processes of registration and account maintenance
- Sellers with compliance problems will be pulled out of the composite return and registered separately for tracking and enforcement

Wayfair: The PA Composite Return (2)

- Sellers over the threshold for accelerated sales tax payments must be registered separately
- 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
- Provides significant simplification for small remote sellers

What Remains?

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

What Remains?: Beyond B2C

- There may be supply chain relationships and forums with sales tax exposure

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