

# Reviewing *Wayfair* Policies

## Federation of Tax Administrators Annual Meeting June 24, 2019

Nancy Prosser

General Counsel

Texas Comptroller of Public Accounts

[Nancy.Prosser@cpa.texas.gov](mailto:Nancy.Prosser@cpa.texas.gov)

512-463-3723

Fred Nicely

Senior Tax Counsel

Council On State Taxation

[FNicely@cost.org](mailto:FNicely@cost.org)

202-484-5213

# Disclaimers and Thank Yous

- The statements made in these slides and during our presentation represent only our own views and not those of our respective employers, colleagues, or members
- This presentation is for discussion purposes only, and is not intended to provide a comprehensive survey of recent developments or to offer legal advice
- We acknowledge all the other *Wayfair* programs we have attended or participated in and, in the spirit of the FTA, all the material we have stolen from them to create this presentation

# **3 *Wayfair* Topics & Trends**

**(in 30-ish minutes)**

1. Legislation & State Guidance
2. Legal Issues & Litigation Risk
3. Implementation Issues & Best Practices

# Legislation and State Guidance

- Nexus Thresholds for Remote Sellers
  - Dollars
  - Transactions
  - Effective dates
  - Application to other taxes
- Marketplace Laws
  - Definitions
  - Exceptions & waivers
  - Liability protections
  - Nexus thresholds
  - Class action protection
  - Refunds & exemptions

# Legal Issues & Litigation Risk

- Retroactive application
- Physical presence & *de minimis* contacts
- Definition of undue burden
- Sourcing rules
- Local taxes
- Foreign sellers
- SSUTA and the role of uniformity
- Congressional action

# Implementation Issues & Best Practices

- Taxpayer and industry perspectives
- State perspectives
- Organization projects:
  - NCSL
  - MTC
  - SSUTA