



INDIANA DEPARTMENT OF REVENUE

Remote Seller Compliance

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OKLAHOMA TAX COMMISSION

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What Was Your State Doing Prior to *Wayfair*?

- **Sales and Use Tax Nexus Provisions**
 - **Sales and Use Tax Compliance**
 - Discovery Programs
 - VDA Programs
 - Amnesty Programs
 - **Significant Litigation**
- **Indiana**
 - Effective July 1, 2004, Ind. Code 6-2.5-3-1(c)(3) “may be required by the state to collect tax under this article to the extent allowed under the Constitution of the United States and federal law.”
 - Indiana previously passed an economic nexus provision in 1992 during the pendency of the *Quill* case. It was never enforced and repealed in 2007.
 - Indiana never enacted regulations enforcing an economic nexus standard under either the 1992 or 2004 provisions.
 - **Oklahoma**
 - Effective June 9, 2010, HB 2359 made several changes to sales tax statutes
 - Nexus changes
 - Substantial ownership interest
 - Component member of controlled group
 - Contractual relationship with in-state third-party
 - Notice requirement changes
 - Out of state internet, catalog and mail order



What Was Your State Doing During *Wayfair*?

- Indiana
 - During pendency of the *Wayfair* case, the Indiana General Assembly passed HEA 1129 in 2017 with provisions closely mirroring the South Dakota provisions.
 - HEA 1129 also required that the Department stay enforcement of the economic nexus provisions during the pendency of its litigation, which was being held in abeyance pending the *Wayfair* decision.
 - That litigation was settled by joint motion to dismiss by the Department and the litigants on August 28, 2018 requiring that the Department continue to stay its enforcement of the economic nexus provisions until October 1, 2018.
- Oklahoma
 - Oklahoma State Legislature passed HB 1019 in 2018 with provisions closely mirroring the Pennsylvania statute
 - HB 1019 election requirement
 - Effective date June 2018
 - Reporting or remitting requirements
 - Effective date of June 2019.



What Was Your State Doing After *Wayfair*?

- Indiana

- Hired Mike
- Agency website (www.in.gov/dor) – page devoted to HEA 1129 and *Wayfair* updates with FAQs
- Personnel allocated to implementation effort
- Data-driven dashboard created to monitor impact
- Standing committee (audit, legal, policy, IT, communications)
- Collaborate – best practices from around the country (FTA, MTC, Streamline, fellow revenue agencies)
- Department working with third-party vendor to help identify remote sellers based on credit card transactions.

- Oklahoma

- Agency website (www.ok.gov/tax) – Continued to update FAQ section devoted to HB 1019
- Personnel allocated to implementation effort
- Data-driven dashboard created to monitor impact
- Collaborate – best practices from around the country (FTA, MTC, Streamline, fellow revenue agencies)
- Department using retailer lists to help identify remote sellers into the state



What is Your State Doing Post Implementation?

- Indiana

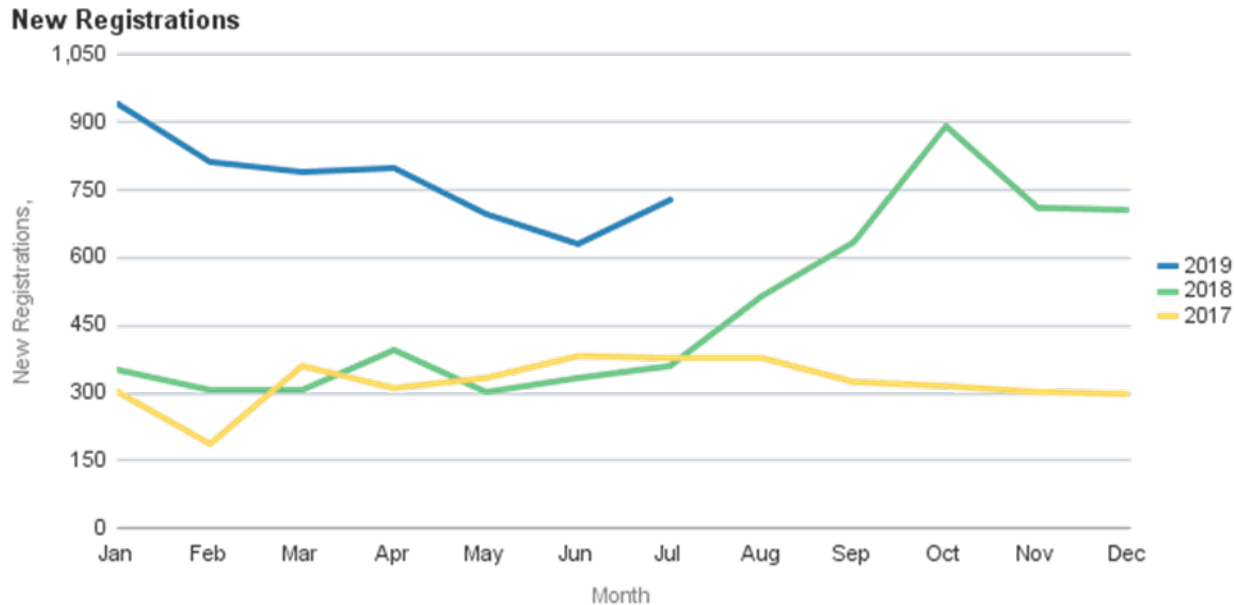
- Indiana began enforcement as of October 1, 2018
- Letters were sent to remote sellers potentially impacted inviting them to register. Response rate was fairly low. Approximately 2,500 letters sent.
- Indiana did not grant extensions to the October 1, 2018 date, but do have a program to allow requests for relief via the Commissioner's settlement authority from vendors that were unable to begin collecting on October 1, 2018 after they are in full compliance.
- Follow up letters with more assertive language were sent to those remote sellers that did not respond to the first letter. Response rate was much better than the first letter.
- Preparing notices for those remote sellers that were non responsive.
- As the great Patrick Swayze said in Roadhouse, "Be nice until it is time not to be nice."

- Oklahoma

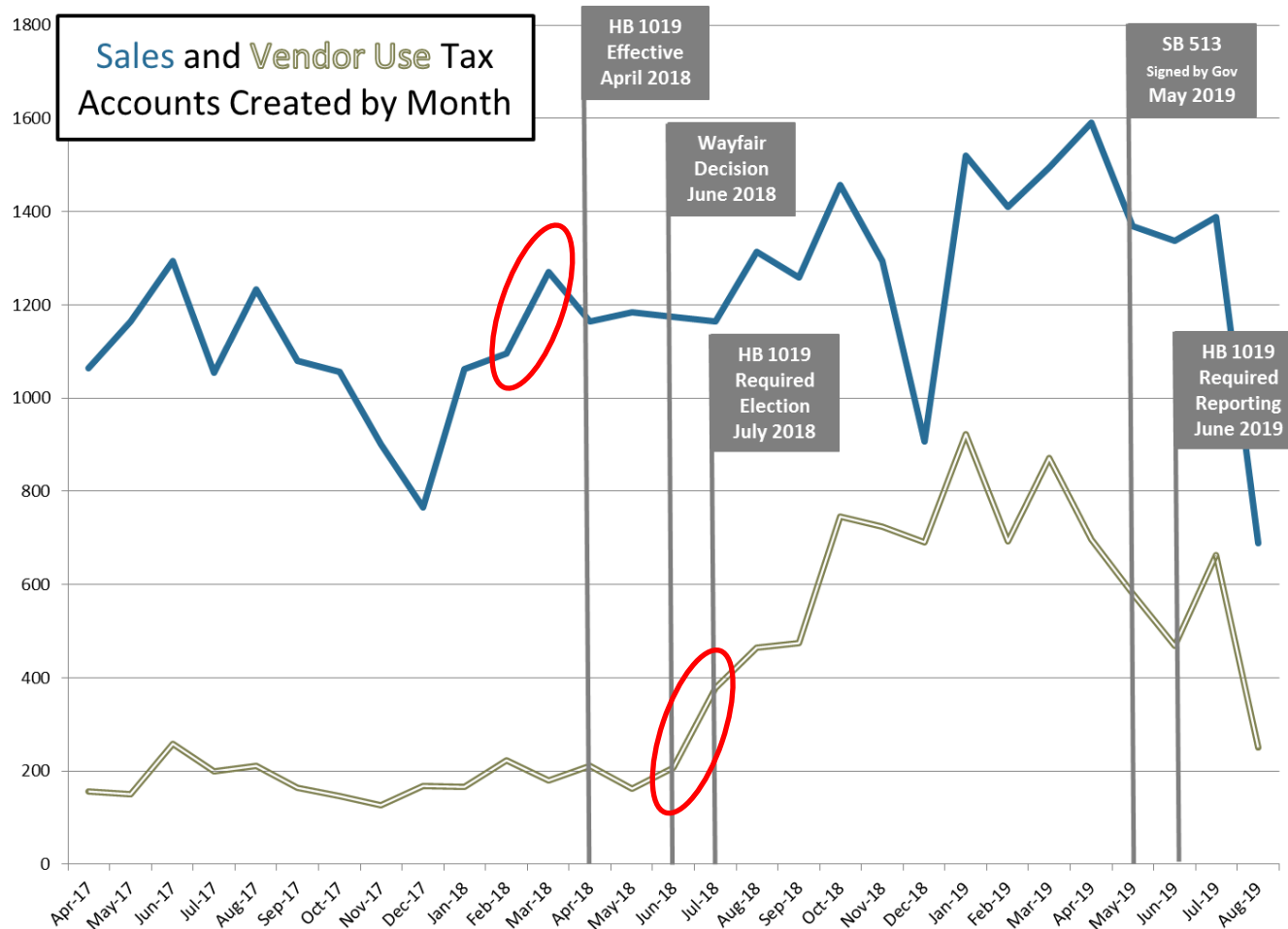
- Oklahoma began enforcement as of July 1, 2018.
- Letters were sent to remote sellers potentially impacted inviting them to register. Approximately 2,500 letter sent.
- Blanket extensions were not granted, but requests for relief via the Commissioner's settlement authority from vendors were considered.
- A work process was put in place to follow up with non responsive vendors. This process includes registration and validation of jurisdictional tax rates.
- Demand letters go out after two requests without response.
- If no response to demand letter along with reason to believe the business is a taxpayer, a field audit will follow.



INDIANA OUT OF STATE REGISTRATIONS



OKLAHOMA OUT OF STATE REGISTRATIONS



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Marketplace Facilitators

- Indiana

- Effective, July 1, 2019 marketplace facilitators are collect Indiana sales, county innkeeper's, and food and beverage taxes effective July 1, 2019 and auto rental excise tax a new "vehicle sharing excise tax"
- A "marketplace" is defined as a forum that a marketplace facilitator uses to connect sellers to purchasers for the purpose of making retail transactions involving a seller's products by means of services such as listing, making available, or advertising products, providing fulfillment or storage services, setting prices or providing customer service or branding sales as those of the marketplace facilitator.
- A retail transaction is "facilitated" by a marketplace facilitator for sellers on its marketplace when it does any of the following on behalf of the seller: collects the sales price or purchase price of the seller's products, provides access to payment processing services, either directly or indirectly, or charges, collects, or otherwise receives fees or other consideration for transactions made on its electronic marketplace.

- Oklahoma

- Included in HB 1019, effective April 2018, requiring election for notify and report or collect and remit by July 2018, to the commence elected activity July 2019.
- A "forum" is defined as a place where sales at retail occur, whether physical or electronic. The term includes a store, a booth, a publicly accessible Internet website, a catalog or similar place.
- A retail transaction is "facilitated" by a marketplace facilitator for sellers on its marketplace when it or an affiliated person does any of the following: lists or advertises tangible personal property for sale at retail in any forum, and either directly or indirectly through agreements or arrangements with third parties, collects the payment from the purchaser and transmits the payment to the person selling the property.
- Effective November 2019, SB 513 eliminated the notify and report option and changed the remote seller threshold.



Marketplace Facilitators - Indiana

- Marketplace Facilitator Implementation and Compliance Challenges
 - Challenges
 - The legislation was passed at the end of April 2019 and the effective date was July 1, 2019.
 - There was a short lead time for implementation, which was further complicated by the inclusion of taxes other than sales tax.
 - The Department created online resources such as those for remote sellers.
 - Letters were sent to major marketplace facilitators, but information on marketplace facilitators has not been as readily available as that for remote sellers.
 - Many of the major marketplaces and industry groups were heavily involved in the drafting of the legislation.
 - Many marketplace facilitators are outside of U.S.



Marketplace Facilitators - Oklahoma

- Marketplace Facilitator Implementation and Compliance Challenges
 - Challenges
 - The legislation was passed at the end of April 2018 and the effective date was July 1, 2018.
 - There was a short lead time for implementation for election.
 - Major marketplace facilitators reached out to the agency for waivers and in lieu of that wanted to wait for the SCOTUS decision on Wayfair.



Marketplace Facilitators

- Will lack of uniformity of marketplace facilitator provisions as compared to remote seller provisions slow compliance?
- Will special industries with specialized taxes and fees, e.g. telecoms, cause unique compliance problems?
- What about market referrers?
- What about physical marketplaces? Remote seller provisions do not generally impact in-state businesses, but marketplace facilitator provisions affect both in-state and out of state businesses.



Questions?



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Thank you!

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