

# ONLINE SALES AND BED 'N BREAKFAST TAXES IN TENNESSEE

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ONLINE SALES TAX<sup>7</sup>

# Online Sales Tax

- Tennessee currently has the highest combined sales tax rate in the country at 9.469%:
  - 7% is set by the state
    - Some products have a lower rate, such as the 4% sales tax on groceries.
    - The state's estimated sales tax revenue is \$9,463,900,000, with 5% or \$502,900,000 to cities and counties.
  - Local governments can add up to 2.75%.

# Online Sales Tax

- On July 1, 2017, the Tennessee Department of Revenue's Rule 129 was supposed to go into effect.
  - All out-of-state retailers with sales greater than \$500,000 in revenue within the state would be subject to paying sales tax.
  - The American Catalog Mailers Association sued the Department of Revenue in order to prevent the rule from taking effect.
  - Before the Supreme Court's ruling in *South Dakota v. Wayfair* and still has not taken full effect.
  - The Tennessee General Assembly suspended Rule 129 until approval by the General Assembly even if the *American Catalog* case ended in favor of the Department of Revenue.

# Online Sales Tax

- Gained traction with 2018 Supreme Court's Ruling in *South Dakota v. Wayfair*.
  - Overturned *Quill Corp v. North Dakota*
    - A business must have a physical presence within a state in order for the state to collect taxes.
    - A physical presence requirement was no longer in line with the Commerce Clause due to changes in culture and online shopping.
  - South Dakota's law requiring out-of-state business with sales greater than \$100,000 to pay sales tax was constitutional
    - Complied with the four prong test of *Complete Auto Transit Inc. v. Brady*.

# Online Sales Tax

- Critics focused on small businesses.
  - Chief Justice Roberts
    - Authored the dissent
    - Compliance with the thousands of different local sales taxes will be a business burden.
    - The question should be left to Congress, not the courts.
  - Many questions unanswered. For instance, would a threshold lower than South Dakota's \$100,000 still be constitutional?
  - Lack of actual standards and regulation - confused and concerned.

# Online Sales Tax

- Back to Tennessee - In the wake of the *Wayfair* decision, the General Assembly asked that the Tennessee Advisory Committee on Intergovernmental Relations (TACIR) look into Rule 129.
  - Rule 129 is estimated to bring in an additional \$160 million dollars in additional revenue for the state, with \$59 million of that going to local governments.
  - TACIR did have some recommendations on changes to Rule 129.
    - Reduce the threshold from \$500,000 to match Tennessee's bordering states, ranging from \$100,000 (North Carolina, Arkansas, and Kentucky) to \$250,000 (Alabama, Mississippi, and Georgia).
    - Make Rule 129 more like South Dakota's law and ensure that Rule 129 cannot be applied retroactively.

# Online Sales Tax

- After these comments, Department of Revenue Notice #19-04 declared that Rule 129 would take full effect on October 1, 2019.
- Rule 129 would still be implemented using the \$500,000 threshold, and not retroactive.
- After companies exceed the \$500,000 threshold, they must register and begin collecting sales tax within 3 months of hitting the threshold.
- Eliminated ability to pay a flat sales tax. Under the old rules, out-of-state companies who chose to pay a sales tax could do so at a flat 9.25% rate (split).
- Companies have to determine the actual local sales tax rate when calculating the tax for an area.
- Municipalities get actual revenues.



# ONLINE BED 'N BREAKFAST

## TAXES

# Online Bed 'n Breakfast

- No distinct rules or separate sales tax rate that they pay.
  - Some online bed and breakfast companies have entered into negotiations with various local governments and agreed to pay the local hotel/motel tax.
  - Agreement is between the company and the local government.
- Notice #17-24 details the current rules regarding when rental lodging is subject to sales tax.
- Short-term rentals less than 90 days are subject to sales tax, based on the jurisdiction the property is located in rather than where the owner/management is located.
- Internet platforms may agree to collect taxes on behalf of the property owner/management company;
- If the internet company chooses not to collect the tax, it is up to the property owner/manager to ensure taxes on internet bookings are properly collected.

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# References

- Sher, Andy (July 27, 2019). “Yet Again, Tennessee Combined State, Local Sales Tax Rates Nation’s Highest” *Chattanooga Times Free Press* Retrieved from: <https://www.timesfreepress.com/news/breakingnews/story/2019/jul/27/yet-again-tennessee-combined-state-local-sale/499940/>
- Siniard, Tim. (March 20, 2019). “Rule 129 Could Bring Revenue to Communities” *Cleveland Daily Banner* <http://clevelandbanner.com/stories/rule-129-could-bring-revenue-to-communities,96169>
- Thornton, G., & Crooks, M. (2018). Online Sales Tax: What “South Dakota v. Wayfair” Means for Tennessee. *Tennessee Bar Journal*, 54(10), 12–15. Retrieved from <http://search.ebscohost.com/login.aspx?direct=true&db=a9h&AN=133229242&scope=site>
- Tennessee 2019-2020 Budget, Vol. 1  
<https://comptroller.tn.gov/content/dam/cot/slf/documents/investor-updates/2019/budget-documents/2020BudgetDocumentVol1.pdf>

# References

- Department of Revenue Notices:
- #19-04 Post-*Wayfair* Collection of Out-of-State Dealers  
<https://www.tn.gov/content/dam/tn/revenue/documents/notices/sales/sales19-04.pdf>
- #18-11 Sales Tax Collection by Out-of-State Dealers  
<https://www.tn.gov/content/dam/tn/revenue/documents/notices/sales/sales18-11.pdf>
- #17-24 Short-Term Rental of Vacation Lodging  
<https://tn.gov/content/dam/tn/revenue/documents/notices/sales/sales17-24.pdf>

# THANK YOU

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Questions?

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