ONLINE SALES AND BED ‘N BREAKFAST TAXES IN TENNESSEE

Steve Thompson
Assistant Vice President, UT Institute for Public Service

October 21, 2019
ONLINE SALES TAX
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.
ONLINE SALES AND BED ‘N BREAKFAST TAXES
References


References

• Department of Revenue Notices:

  • #19-04 Post-Wayfair Collection of Out-of-State Dealers

  • #18-11 Sales Tax Collection by Out-of-State Dealers

  • #17-24 Short-Term Rental of Vacation Lodging
THANK YOU

Questions?