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Chairman Wyden, Ranking Member Crapo, Senator Hassan, my home state Senator, and members of the Committee, thank you for the opportunity to speak with you about a matter of great importance to small businesses in the United States, the impact of the U.S. Supreme Court case South Dakota v. Wayfair.

I'm John Hennessey, President & CEO of Littleton Coin Company. We're a small business of 275 employees located in Littleton, NH, which is our only physical business location. We've been in operation since 1945 when our founder, Maynard Sundman, returned from serving our country during WWII to start this business with his wife Fannie. Most recently, for the benefit of our employees, the Sundman Family sold 100% of the business to our employees in 2017 through an employee stock ownership plan.

Our mission is to bring the joy of coin collecting to as many people as possible throughout the United States. We serve coin collectors in all 50 states by delivering collectible coins and currency by mail order directly to their homes. As a New Hampshire company, prior the Supreme Court's Wayfair ruling, we had never previously been subject to collecting state and local sales taxes, nor did we have a need to implement any administrative processes, software, computer systems, or in-house expertise to do so.

The 2018 US Supreme Court Wayfair decision immediately required us to become the tax collector for up to 12,000 different state and local jurisdictions, all with different laws, tax rates, filing processes, websites, registrations, product classifications, and exemptions. This decision created an immediate and significant risk to our business. With no implementation period for us to become compliant, we immediately became exposed to over \$100,000 of sales tax liability per month with no way to calculate and collect the taxes from our customers, leaving us liable to pay the bills ourselves.

### **Cost of Implementation and Ongoing Compliance**

With the clock ticking, we made the decision to rush to become compliant as soon as possible, which we determined best case scenario to be January 1, 2019. Meeting this timeline meant incurring significant cost to purchase software, hire outside tax and legal experts, hire outside software developers, devote our internal IT developers to changing our computer systems, and focus our employees to redesign our administrative processes to understand, calculate, explain to customers, and collect sales tax in nearly every state and up to 12,000 total jurisdictions.

We spent \$225,000 in 2018 alone to comply with this new requirement. Based on this effort, we became compliant to the best of our interpretation of each state's laws by January 1, 2019.

Unfortunately, these start-up costs were not the only significant costs. We incur ongoing third-party costs of approximately \$50,000 per year for annual software licensing, registration fees, tax filing fees, accounting fees, and legal advice. On top of that, we incur significant unquantified internal costs for finance, information technology, and customer service on an annual basis.

Further, the Wayfair ruling also now imposes the economic nexus standard on us for gross receipts taxes. We've received demands from many states requiring us to pay these non-sales taxes including franchise, business, commercial activity, and business and occupation taxes. These taxes we pay out of our own pocket as they are not taxes collected and remitted from customers. We currently pay \$40,000 per year in these taxes.

In total, we have paid over \$500,000 in company funds since 2018 to comply with the taxation requirements imposed on us as a result of the Wayfair ruling.

### **Needed Simplification**

As a remote seller with no physical presence or previous knowledge of state and local tax regulations across these states, these requirements are onerous and detrimental to our business. We have registered, regularly file, and pay tax to 45 states and owe tax to over 1,500 jurisdictions with individual tax rates. Many states have their own rules and procedures for registration and filing including websites, log-ins, passwords, and specific forms, and all are subject to change and update based on each state's desires. Further, we have over 10,000 different products we sell to customers. Each state has its own laws for product classification and exemptions, requiring us to create and regularly update a massive classification and rule table to ensure we comply with all state laws and tax our customers correctly to the best of our ability.

While we have purchased and customized a commercial software package to meet our needs to the best of our ability, the sheer complexity and changing requirements of the varied state and local jurisdictions remains extremely cumbersome and risky to our business. For example, just last month a routine vendor software update inadvertently impacted our customized tax tables. This issue was despite all parties' best intentions. Nonetheless, it caused us to temporarily classify some taxable products as exempt and not include a tax charge on outgoing invoices. Not only did this cause our IT, Finance, and Customer Service teams a total of 100 hours to resolve, we ate the cost of these taxes totaling over \$5,000, as we had no feasible way to go back and collect as little as a dollar from each individual customer due to the time and cost of generating printed letters, e-mails, phone calls, postage, and answering the hundreds of anticipated questions from customers.

As another example, many state laws require us to maintain a physical contact address in their state simply to receive tax-related notices. With no physical presence within the states, we spend \$5,000 per year to hire third party contractors for the sole purpose of receiving notices physically within the states, which could easily be mailed or sent electronically to our office in New Hampshire.

As another example, a state recently changed its remote seller taxation requirement to a local jurisdiction-based model. This change required us to manually update our software with a unique code for every single local jurisdiction, at least 500. After spending three full business days inputting these codes, our finance team member was only a third of the way complete and is attempting to determine an efficient and effective path forward.

A final example illustrates the need for simplification of product classification and exemptions. This is an example of the tax law in just one state, for just one product we sell to customers. Our company has over 10,000 unique products for sale. I have a coin that sells for \$400. If it is "legal tender" it is not taxable. If it is

not “legal tender”, if its value is determined by fluctuations in the bullion market it is not taxable. If its value is determined by its rarity, it is taxable. The value of this coin is determined by both, and I must choose one or the other with no further guidance. Further, if this coin is determined to be taxable and a customer purchases three of these coins in separate transactions they are taxable. If a customer purchases those same three coins in a single transaction they are not taxable. However, if that customer returns one of those coins a month later, the remaining two coins are now taxable again even though no tax was collected. Our company sells thousands of products, and I must attempt to correctly apply the laws of 45 taxing states to each one.

Despite tools like software and advice of accountants and legal advisors, the sheer complexity and volume of requirements, changes, legal updates, and notices is overwhelming.

### **Needed Protection from State Reach Beyond Sales Tax**

Since Wayfair, we’re using our best efforts to collect and remit sales tax wherever required. We’re also paying franchise, commercial activity, business and occupation, business and other required gross receipts taxes despite no physical presence. These alone have been burdensome, but we are complying.

However, just last month we’ve experienced what we believe is the start, and just the tip of the iceberg, of states reaching beyond these taxes into what could become an unlimited number of new areas. I will describe the two examples we have encountered in the past six weeks.

The State of California sent us notice demanding we pay income tax for the tax year 2019 based on “doing business” in California. We have no physical presence in the state and federal law (P.L. 86-272) specifically protects us from that liability. Nonetheless, California’s position is that we are required to pay simply based on remote sales activity to California customers.

Simply because we received this notice, we have been forced to incur time and legal fees to attempt to understand the State’s position and determine any potential obligation. Despite our strong belief we have no legal obligation, we must now begin the process of responding and defending ourselves from the demand, not knowing how far California intends to take this matter. If we were forced to defend ourselves in court, legal fees alone to defend against this one tax obligation in one state would easily be in the tens of thousands of dollars, before ever stepping foot in a courtroom. Further, we pay 100% of our income tax to our home state of New Hampshire. If we were subject to this California income tax, we would have to amend our 2019 NH state income tax return, apportion tax to California, request a refund from NH, and calculate, file, and pay income tax to California. We would theoretically have to repeat this exercise again for California for 2020 and 2021. Further, we’ve heard up to 10 states have already adopted a similar position, and if other states were to follow suit, each time a state sent us a demand we would have to go through the same amendment, apportionment, refund, and filing process every single time for every year in question. Finally, if a state were to demand income tax for a period beyond the NH statute of limitation for a refund, we would be subject to double taxation.

As a second example, just a few weeks ago, one state announced a new law requiring remote sellers to collect and remit a 27 cent “retail delivery fee” on any remote retail sale delivered to an address within that state. Further, this fee must be presented as a separate item on the customer invoice, and the effective date is July 1, 2022. This presents several undue burdens to our business. First, we must rewrite our computer systems to address this totally new fee type, including logic to ensure it is only charged to residents of this one state and it’s presented separately on every invoice. We estimate this IT work will take us 100 hours. Second, we have no way to implement the correct process in a matter of weeks by July 1, 2022. We must develop, test, and implement software, ensure proper communication with our third-party software vendors, and prepare

communications to our customers in this state to ensure they understand and pay this fee. Third, the state admitted it will not have the tax forms available until the end of 2022 to allow remote sellers to properly remit the tax, despite the tax liability taking effect next month. Until we can divert our resources and complete the necessary work, or if customers refuse or accidentally fail to pay this new fee, our company will bear the burden of this new tax liability ourselves, which we estimate to be over \$5,000 per year. If this state is permitted to impose this “retail delivery fee”, what other new fees and taxes will be coming from other states in the future?

Small businesses need reasonable, clear, and definitive protection from this overreach.

### **Retroactive Taxation**

The Wayfair ruling instantly changed the tax landscape for small businesses in the United States. With no safeguard allowing an implementation period for businesses to comply, to this day we remain exposed to an undue and unquantified historical tax burden. Few, if any, remote sellers had any possible way to begin collecting and remitting sales taxes in June 2018 or even in the months thereafter. January 1, 2019 was the first possible date our particular business could become compliant, even with devoting maximum resources to the issue.

States have taken a variety of views on the matter of retroactive taxation. To date, we’ve received notice from three states demanding retroactive payment for periods as far back as 2018. Since we had no way to, and did not, collect tax from customers for these periods, we are forced to pay these retroactive taxes ourselves.

Further, we find we’re stuck between a rock and a hard place in these situations, because whether we agree or not that the retroactive taxes are owed, the legal cost to defend against these demands exceeds the tax liability. The end result is that we’ve settled with three states for a total of \$140,000 in back taxes, interest, and penalties.

Small businesses need protection from retroactive taxation and a minimum one year implementation period for any new taxes or fees imposed as a result of the Wayfair ruling and in the future.

### **State and Local Audits**

Going forward, we are now potentially subject to 45 separate annual state audits and countless county and local audits. Each one will take time to prepare source documents and records to prove our compliance. If there’s a question as to whether we’ve interpreted a law correctly, we will have to pay significant legal costs to support our position. If we are unable to successfully support our position, we will be forced to foot the bill ourselves since we would not have collected those amounts from customers, despite our best efforts at understanding and complying with the laws.

### **Conclusion**

Four years after the Wayfair ruling, the state and local tax landscape for remote sellers in the United States continues to be overly complex, expensive, and burdensome. The future outlook of state and local tax obligations for small businesses is even more troubling.

The Supreme Court left the door open for Congress to act, and we need Congress to level the playing field and help small businesses to collect these taxes while continuing to operate and grow our businesses. While potential remedies are broad, the solutions that our business needs in order to comply are simplification including a single national registration, one sales tax rate per state, and uniform product classifications;

limiting reach beyond sales tax; limiting retroactive taxation including a phase-in period of one year for any tax or fee; and a single audit no more than once per year.

We need your help and I urge you to find a bipartisan solution to this issue as quickly as possible.

Thank you for the opportunity to testify today. I look forward to responding to any questions you may have.