

The logo for Streamlined Sales Tax Governing Board, Inc. features a stylized blue 'S' that curves under the text. The text 'Streamlined Sales Tax Governing Board, Inc.' is written in a white, sans-serif font against a black background.

**Streamlined Sales Tax  
Governing Board, Inc.**

**Written Testimony of  
Craig Johnson, Executive Director**

**On Behalf of the  
Streamlined Sales Tax Governing Board**

**Before  
The United States Senate Finance  
Committee**

**Hearing on  
“Examining the Impact of *South Dakota  
v. Wayfair* on Small Businesses and  
Remote Sales”**

**June 14, 2022**

Chairman Wyden, Ranking Member Crapo and Members of the Senate Finance Committee, thank you for the opportunity to testify today on behalf of the [Streamlined Sales Tax Governing Board](#) (SSTGB) regarding the impact of the *South Dakota v. Wayfair* decision on small businesses and remote sales. My testimony will focus on what the Streamlined Sales Tax (SST) member states have done to make sales tax collection simpler and more uniform and what we offer to make it easier for all businesses, regardless of size, to calculate, collect and remit the appropriate sales or use tax in our member states. As a result, over 18,000 sellers have voluntarily come forward and registered through the SST registration system to collect and remit the sales or use tax in one or more of the SST States.

### **Introduction**

My testimony is limited to the work done by the SST organization that I represent, which is comprised of 24 member states. Moreover, I want to share with you the following key observations:

- SST represents a long-term and successful collaboration between the states, local governments, and the business community.
- SST member states have simplified and modernized their sales tax systems through conformity with the Streamlined Sales and Use Tax Agreement (SSUTA) and supported the certified service provider (CSP) model to substantially reduce compliance burdens.
- This reality was recognized in the *Wayfair* decision, a U.S. Supreme Court case that leveled the playing field for all sellers by allowing states to require both remote sellers with substantial nexus in the state and physical presence sellers to collect and remit their sales or use tax.
- The SST member states have implemented the *Wayfair* decision in a fair and reasonable manner consistent with the U.S. Supreme Court's opinion.
- While the landscape continues to evolve with new technologies and products emerging, we believe the current system implemented in the SST States is working.

Beginning in 1999, the group of states that eventually became the Streamlined Sales Tax Governing Board (SSTGB), local government authorities and numerous members of the business community worked collaboratively and devoted countless hours in developing a program that addresses the concerns identified in the U.S. Supreme Court's *National Bellas Hess v. Department of Revenue of Illinois*, 386 U.S. 753 (1967) and *Quill v. North Dakota*, 504 U.S. 298 (1992) decisions. The *Quill* decision required a retailer to have a physical presence in a state to create "substantial nexus" before that state could require them to collect its sales or use tax.

The result of these efforts was the [Streamlined Sales and Use Tax Agreement](#) (SSUTA), which represents a blueprint for all states to follow to simplify and modernize the administration of their sales and use taxes and in the process to substantially reduce the burden of tax compliance. The SSTGB is the body that administers the SSUTA.

After the SSUTA became effective on October 1, 2005, the SST States and others pursued a dual strategy to obtain remote seller collection authority either through federal legislation requiring the adoption of certain minimum simplifications or the reversal of the physical presence requirement contained in the *Quill* decision through litigation. The SST States believed that the simplification and uniformity provisions each state had enacted to join the SSTGB had removed the undue burdens referenced in the *Quill* decision. Federal legislation was not enacted, but the states were successful in reversing the physical presence requirement contained in the *Quill* decision.

In 2016, South Dakota, an SST State, enacted legislation to require remote sellers (sellers without a physical presence in South Dakota) who engaged in 200 or more transactions or had \$100,000 or more in gross revenue in the state in a calendar year, to collect and remit the applicable sales or use taxes in South Dakota. State leaders in South Dakota recognized that this was contrary to the *Quill* decision, but also recognized the state had taken steps to address tax compliance burdens in a landscape significantly changed since the *Quill* decision. The matter quickly proceeded to litigation in the case of *South Dakota v. Wayfair, et. al.*

On June 21, 2018, the United States Supreme Court decided *South Dakota v. Wayfair, et. al.*, and in the process overruled the *Quill* decision and the physical presence standard established in that case. However, the Court did indicate that some other principle in the Commerce Clause might still invalidate the South Dakota law at issue. This “other principle” to which the Court was referring was whether South Dakota’s law discriminated against or imposed an undue burden on interstate commerce. The case was remanded to South Dakota to address that issue and eventually settled in South Dakota’s favor.

Although the Supreme Court was not compelled to say anything further about this undue burden in its opinion since that was not the question before the Court, the justices took the liberty to explain the features of South Dakota’s laws which it indicated “...appear designed to prevent discrimination against or undue burdens upon interstate commerce...” The features identified by the Court, were that (1) there was a safe harbor to protect businesses with only limited activity in South Dakota;

(2) the law could not be applied retroactively; and (3) South Dakota had adopted the SSUTA. The Court went on and indicated that the SSUTA:

- Standardizes taxes to reduce administrative and compliance costs;
- Requires a single, state level administration;
- Provides uniform definitions of products and services;
- Requires simplified tax rate structures; and
- Other uniform rules;
- Provides sellers access to sales tax administration software paid for by the state; and
- Sellers who choose to use such software are immune from audit liability.

After the *Wayfair* decision was issued, the other SST States subsequently followed South Dakota's lead and enacted similar legislation in their respective states to require remote sellers that exceed certain thresholds to collect and remit their sales or use tax.

Since the *Wayfair* decision in 2018, the SST States have been implementing their remote sales tax collection requirements in a fair and equitable manner. They recognize that the *Wayfair* decision brought about significant changes for remote sellers and have been working with remote sellers nationwide to get them compliant with the new collection and remittance obligations. The SST States have also developed various tools to assist remote sellers in complying with the new collection and reporting obligations.

### **Why Did States and Businesses Undertake this Project?**

In the late 1990s, the National Governor's Association and the National Conference of State Legislatures began meeting with the business community to identify the administrative burdens related to sales tax calculation, collection, and remittance and to find ways to reduce or eliminate those burdens in a manner that was acceptable to both the states and the business community. It was through this cooperative effort between the state legislators, state tax administrators, members of the business community, accountants and attorneys that the SSUTA was originally developed and continues to operate today.

There are four primary reasons the states and business community came together to develop the SSUTA.

- States recognized that unless something changed, based on the *Quill* decision, they would not be able to require sellers who did not have a physical presence in their state to collect and remit their state and local sales taxes.

- The business community recognized that compliance with the differing sales tax laws of the states was extremely complex and burdensome.
- Both the states and the business community recognized that local merchants (i.e., brick-and-mortar retailers) suffered from the lack of a level playing field. Local merchants were required to collect and remit sales tax, but their remote seller competitors operating in the same market were not – effectively giving remote sellers a 5 – 10% price advantage strictly due to sales tax collection requirements.
- States recognized the significant growth in remote commerce (mail order, telephone order, online ordering, etc.) and the loss of tax revenue due to the inability to efficiently and effectively administer the sales and use tax with consumers.

If this Project was going to be successful, state and local governments needed to be willing to make changes and the business community needed to trust the states to provide details on what made the existing system so burdensome and why.

Business, particularly multistate businesses, identified numerous burdens they encountered. Those burdens included the separate administration of the state and local taxes within a state, differing tax bases between the state and local jurisdictions both within and between the states, the multitude of rates and frequency of rate changes within each state and locality, differing definitions/interpretations of the same term among the states, separate registration requirements, unique returns that require varying amounts of detailed information amongst the states, and being held liable for tax when a purchaser lies or provides incorrect information when claiming an exemption. These items have been addressed in the SSUTA.

### **Who is Involved in SST?**

#### **1. State Membership**

Forty-four states, the District of Columbia and Puerto Rico have participated in the development of the SSUTA over the years.

The SSTGB is currently comprised of twenty-four states – which is over half the states in the United States that have a sales or use tax. Twenty-three of these states are full members of the SSTGB which means they are in substantial compliance with each of the simplification and uniformity provisions contained in the SSUTA. One state has achieved substantial compliance with significant parts of the SSUTA taken as a whole, but not necessarily each provision, and therefore is an associate member state. Collectively, these states are referred to as the SST States.

In addition, twenty other states, the District of Columbia, and Puerto Rico have participated in the SSTGB as non-voting advisor states over the years. Advisor states serve in an ex officio capacity and although they do not have a vote, they may speak to any issue presented to the SSTGB. Input from all states, whether members of the SSTGB or not, is encouraged as the SSTGB considers various issues.

## 2. Local Government Participation

Local governments participate with the SSTGB and provide input through the Local Government Advisory Council. The local government organizations represented include the U.S. Conference of Mayors, the National League of Cities, the National Association of Counties, and the Government Finance Officers Association. The input from local governmental organizations is important since successful implementation of the SSUTA requires cooperation between the state and local units of government.

## 3. Business Participation

The SSTGB is advised by members of the business community primarily through the Business Advisory Council (BAC), although individual businesses and associations also provide input. SSTGB meetings are open to the public and businesses are encouraged to participate. The business community was instrumental in identifying and helping the states better understand the complexities retailers faced related to sales tax collection obligations, particularly when operating in multiple states. They also assisted greatly in developing solutions to overcome these complexities. The business community continues to play an extremely important role in the organization by identifying new issues as they arise, educating the SSTGB about these issues and providing valuable input when the SSTGB considers adopting solutions to help ensure the solutions can be administered efficiently by the business community.

## **SST Goals and Key Features of the SSUTA**

The states participating in SST took to heart the concerns and burdens identified by the business community and moved forward in working with them to develop solutions to these issues, keeping four main goals in mind.

- Develop a simpler system to administer state and local taxes.
- If something cannot be made simpler, at least make it uniform. Uniformity in and of itself is a form of simplification.
- Balance state sovereignty with simplification and uniformity.

- Use technology to ease the retailer’s tax calculation and reporting responsibilities.

The discussions amongst the states and the business community took place over the course of several years and eventually led to the development of the Streamlined Sales and Use Tax Agreement (SSUTA).

The key simplification and uniformity features contained in the SSUTA are as follows:

1. State Level Administration of Local Sales and Use Taxes

Most states have local jurisdictions that also impose a sales or use tax. Under the SSUTA, a single entity, which is usually the state’s Department of Revenue, must be responsible for the overall administration of both the state and local sales and use taxes covered by the SSUTA in that state. This means a seller is only required to register, file returns with and remit the sales tax collected to the state level authority.

2. Uniform State and Local Tax Bases Within a State

The SSUTA requires, with limited exceptions, that the tax base upon which state and local taxes are imposed within a state be identical. Prior to SST, some local jurisdictions imposed a tax on products that were not subject to the state sales tax or exempted products that were subject to the state sales tax. Now, with limited exceptions, if a product is taxable at the state level it is also taxable at the local level and if it is exempt at the state level it is also exempt at the local level.

3. Uniform Destination-based Sourcing Rules for Goods and Services

Sourcing rules determine which state and/or local jurisdiction has the authority to impose its sales or use tax on a transaction – and are also a strong safeguard against multiple states and/or local jurisdictions imposing their tax on the same transaction.

Under the SSUTA, sellers calculate the sales tax due on a transaction, using the uniform destination-based sourcing rules. The “destination” is generally the location where the purchaser physically receives the product. The SSUTA contains a hierarchy for sellers to follow and which includes rules to follow for those transactions where the destination may not be known, such as in the case of products transferred electronically.

4. One-stop Online Central Registration System

All SST States are required to participate in the Streamlined Sales Tax Registration System (SSTRS). Using the SSTRS, a seller can register for sales tax collection purposes in one or more of the SST States by completing one simple online application

that requires very limited information and for which there is no fee to complete. If a state needs additional information, that state must contact the seller to specifically request the information. This eliminates the need for a seller to review every state's application and determine what information each state requires. Sellers can also update their registration information and, if necessary, unregister for any of the SST States using this same system.

#### 5. Uniform Definitions

One of the most fundamental components of simplifying sales tax collection requirements throughout the United States is the use of uniform definitions. Uniform definitions make it much easier for sellers to determine the taxability of individual products in the SST States. When developing the SSUTA, the business community stressed (and continues to stress), the need for the definitions to be uniform, clear and contain bright-line tests to eliminate any subjectivity where possible. The states and business community worked together to identify the terms in which uniform definitions were needed and would be the most helpful in removing difficulties. Additional uniform definitions continue to be developed as new products and technologies emerge.

Although the SST States must follow these uniform definitions, the Legislature in each state maintains its sovereignty and is responsible for determining if the state is going to tax or exempt the products contained within those definitions.

#### 6. Taxability Matrix – Library of Definitions

Transparency and providing free and reliable guidance to sellers is of utmost importance to the SSTGB. One of the requirements imposed on every SST State is that they complete (and keep current) the [Taxability Matrix: Library of Definitions](#) for their state. The Taxability Matrix is a document that contains a list of all the uniformly defined terms included in the SSUTA.

Every SST State is required to indicate whether each item listed on the matrix is included or excluded from the sales price of a product or if the product itself is taxable or exempt. Sellers are relieved of liability if they charge and collect the incorrect amount of sales tax if they relied on erroneous data provided by an SST State on a state's Taxability Matrix. The SSTGB publishes all the SST State's Taxability Matrices on its website making it easy to find answers for any of the SST States.

#### 7. Simplified Rate Structure and Rate and Boundary Databases

The large number of local taxing jurisdictions and varying tax rates on different types of products were identified as concerns of the business community early on in the



development of the SSUTA. It was recognized that technology could likely address these issues if certain safeguards were put in place. The SSUTA contains various requirements SST States must follow related to state and local tax rates to make it easier for sellers to comply with their calculation and collection responsibilities. Those requirements include limiting each state to a single rate (exception allowed for food and drugs), limiting the frequency of local rate and boundary changes, requiring adequate notice of those changes, requiring states to provide and maintain rate and jurisdiction databases in a uniform downloadable format and providing liability relief to sellers who rely on the information contained in the databases.

Many states have also developed free online sales tax look-up applications for sellers to use to determine the proper sales tax rate(s) and jurisdiction(s) to charge their customers in their respective states.

#### 8. Simplified Exemption Administration

Under the SSUTA, if a remote seller obtains a fully completed exemption certificate (or the required data elements in an electronic format) at the time of the sale (or within 90 days after the date of the sale), a remote seller will not be held liable for the tax, unless the seller fraudulently failed to collect the tax or solicited the purchaser to claim an unlawful exemption. As a result, sellers are not put in the challenging position of having to determine whether purchaser's claims of exemption are valid.

The SST States developed a [uniform multistate exemption certificate](#) that is accepted in any of the SST States. This prevents sellers from having to obtain state-specific exemption certificates. Sellers also have the option of just gathering the required data elements electronically in lieu of maintaining the paper exemption certificates.

#### 9. Uniform Simplified Electronic Return

Under the SSUTA, SST States can only require a single return for each reporting period and the return must cover all the local taxing jurisdictions within that state that are covered by the SSUTA.

The SST States developed a uniform Simplified Electronic Return (SER) that states are required to allow any seller, whether registered through the SSTRS or not, to file.

#### 10. Certified Service Provider (CSP) Program

The certified service provider (CSP) program provides every seller the opportunity to outsource nearly all their sales tax compliance responsibilities through a package of

software and services. Under the [contracts](#) the SSTGB has with the CSPs, each CSP agrees to provide the software and services necessary to:

- Set-up and integrate the CSP's certified automated system (CAS) with the seller's system;
- Calculate the amount of state (and local, if applicable) tax due on a transaction at the time of the sale;
- Generate and file the required sales and use tax returns and make the necessary remittances for each of the SST States;
- Respond to and provide supporting documentation with respect to any notices from or audits by the SST States; and,
- Protect the privacy of the tax information it obtains.

The CSP's systems are tested at least quarterly by the SST States to ensure their systems are operating properly.

Sellers receive several benefits by utilizing a CSP. For those SST States in which the seller qualifies as a "CSP-compensated seller" (i.e., generally no physical presence in the state), the states will compensate the CSP to provide these CSP services. CSP-compensated sellers include any remote seller that is required to collect and remit sales tax in an SST State solely because they exceed that state's economic nexus thresholds (i.e., those sellers required to collect a state's tax solely due to the *Wayfair* decision).

Sellers utilizing a CSP can be confident that if they provide complete and accurate information to their CSP, the tax treatment of the transactions processed by the CSPs will be correct in the SST States – or be relieved of liability if it is not correct. Sellers utilizing a CSP are only required to make a single automated payment to the CSP that covers all the sales taxes owed in the SST States for each reporting period. The CSP is responsible for filing the corresponding returns and distributing from the single payment the necessary remittances to each of the individual states. Finally, the CSP assumes responsibility for any audits conducted by the SST States. If the CSP's system fails to calculate the proper tax due on a transaction, presuming the seller provided complete and accurate information to the CSP, the CSP is the one held liable for the tax on that transaction – not the remote seller.

The CSP program has been successfully operating for over 15 years and is one of the key programs developed and implemented by the SSTGB and our CSP partners to assist sellers and remove the "undue burdens" with which the SCOTUS was concerned in the *Quill* decision and referred to in the *Wayfair* decision. In 2021, the CSPs successfully processed hundreds of millions of transactions and filed hundreds

of thousands of returns on behalf of CSP-compensated sellers in the SST States. The SST States, not the sellers, compensated the CSPs for processing these transactions and remitting the taxes due by allowing the CSPs to retain a percentage of the tax collected and remitted on behalf of these sellers. Sellers only paid the CSPs for those additional services they wanted that were beyond the scope of the contract the SSTGB has with the CSP.

#### 11. Other Simplification and Uniformity Provisions

There are numerous other simplification and uniformity provisions contained in the SSUTA related to sales tax holidays, uniform rounding rules, caps and thresholds, direct pay permits, digital goods, customer refund procedures and uniform rules for recovery of bad debts. The SST States continue to encourage businesses with specific concerns to share that information with the SSTGB along with their ideas or suggestions on how the concern may be addressed uniformly by the SST States – as we are always looking for ways to improve as time moves forward.

#### 12. Option for Nonmember State Participation in the SST

Working with the business community, the SSTGB identified some of the key simplification and uniformity provisions that help remove burdens on remote sellers and developed an option for nonmember states to participate in the SSTGB if they are willing to enact certain limited requirements. The requirements include participating in the central registration system; developing and posting the rate and jurisdiction databases; completing the taxability matrices and noting any differences between their laws and the SSUTA definitions; participating in the certification of the CSP's systems and the contract the SSTGB has with the CSPs; and, providing liability relief to sellers and CSPs for relying on erroneous information that may be contained in the taxability matrices or rate and jurisdictions databases provided by the state.

#### **Success of the Streamlined Sales Tax Governing Board**

When SST began, the participating states believed that if they made the calculation, collection and reporting of the sales tax in their state simple and uniform, sellers would voluntarily come forward and register to begin collecting and remitting their taxes – even though they may have no legal requirement to do so. Sellers first began registering with SST in 2005 and by June 1, 2018 (just prior to the *Wayfair* decision), over 3,800 retailers had voluntarily come forward and were collecting and remitting the applicable state and local taxes in every one of the SST member states, regardless of any physical presence. Since the *Wayfair* decision was issued in 2018, nearly

15,000 additional retailers (over 18,300 retailers in total) have come forward to collect and remit the tax in one or more of the SST States. These retailers have successfully collected and remitted billions of dollars in sales tax in the SST States.

But SST's success is about more than just the tax dollars being collected. It is about making the overall sales tax system simpler and more uniform throughout the country, so it is easier to administer from both the state and business perspectives. It is also about providing adequate guidance to remote sellers so they can more easily comply with each state's laws. Since the *Wayfair* decision, the SST States and SSTGB have put together several pieces of information to make sellers aware of possible sales tax collection and reporting requirements in those states in which they are making remote sales. This includes FAQs related to the *Wayfair* decision and a chart outlining all the states' (not just the SST States) remote seller compliance dates, thresholds and links to guidance each of the states has issued. SST also developed charts that outline the various collection and reporting requirements for Marketplace Sellers and Marketplace Facilitators. More information can be found on the SSTGB website at: [streamlinedsalestax.org](http://streamlinedsalestax.org).

The SST States and the business community worked together very closely to develop numerous disclosed practices ([Tax Administration Practices](#)) that each SST State must respond to which makes it easy for sellers to find answers to questions they may have related to a state's remote seller collection requirements.

### **Conclusion**

The SST States want sellers to be successful and are committed to making their sales tax systems simpler and more uniform so that it is easier for businesses to comply with the collection and remittance obligations. There is no question that the simplification and uniformity provisions enacted by the SST States make this process easier for sellers.

Based on a survey conducted in 2021 of all sellers registered through the SSTRS, numerous comments were received from these sellers indicating the simplification and uniformity provisions enacted in the SST States makes complying with their sales tax collection and reporting obligations easier.

Since the *Wayfair* decision, I have received numerous calls and spoken to various businesses regarding their collection and remittance obligations. These sellers generally had no problem being required to collect the tax and they want to be compliant. However, to accomplish this, the one common message was that they need it to be easier and as uniform as possible. SST does this and we continue to work with

the business community to identify additional areas where simplification and uniformity may be considered.

The SST States have shown that they can and will continue to implement the remote seller collection authority they received in the *Wayfair* decision in a fair and reasonable manner. SST will continue to work with remote sellers to help them get compliant and with the entire business community to develop additional simplification and uniformity provisions as new issues arise and technology continues to evolve.

I thank you again for the opportunity to testify and explain what the Streamlined Sales Tax Governing Board has developed and accomplished over the last 20 plus years in partnership with the business community. We are proud of the program we have put in place and know that it is helping thousands of businesses comply with the sales tax collection obligations in our 24 member states.

I am happy to answer any questions you may have.