EasyChair Preprint
№ 1184

The Barriers Created by Complexity: A State by State Analysis of Local Sales Tax Laws in Light of the Wayfair Ruling

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June 13, 2019

THE BARRIERS CREATED BY COMPLEXITY: A STATE-BY-STATE ANALYSIS OF LOCAL SALES TAX LAWS IN LIGHT OF THE *WAYFAIR* RULING

Whitney B. Afonso

In June 2018 the Supreme Court ruled in favor of South Dakota creating a pathway for states to enforce economic nexus laws. However, many states do not yet meet the presumed requirements regarding the necessary simplification of sales and use taxes. A major barrier to simplification is local sales tax complexity. Local sales taxes introduce complexity through high levels of rate discretion, overlapping jurisdictions, and differences in tax base. This analysis surveys states and categorizes the complexity of their local sales taxes and the potential impact they may have on economic nexus moving forward.

Keywords: Wayfair*, local sales taxes, tax complexity, e-commerce*

JEL Codes: H25, H71

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I. INTRODUCTION

In June 2018 the Supreme Court ruled in favor of South Dakota in the *South Dakota v. Wayfair, Inc*. case providing states a Constitutional pathway to create substantial or economic nexus laws for requiring remote vendors to collect sales taxes rather than the physical nexus requirements that had been reinforced in *Quill Corp v. North Dakota*. However, it is critical to note that in Justice Kennedy's opinion he highlighted many aspects of South Dakota's law that were central to the ruling. These aspects can be summarized as the simplicity of the state and local sales taxes. The research presented here examines each state's current laws and response to the *Wayfair* ruling. While it provides a brief discussion of the state-level policies, its focus is on the local sales and use taxes (hereinafter referred to as local sales taxes [LSTs]). It is reasonable to think of the complexity introduced by LSTs as the largest barrier impeding economic nexus in the past and that is why local policies are often referenced and seldom carefully examined. LSTs are examined state-by-state to understand the complexity they introduce, the potential burden placed on vendors, and how they may impact a state's ability to enforce economic nexus.

The inability of states to compel remote vendors to collect sales taxes has received a great deal of attention for decades. Early discussion regarding remote vendors largely revolved around catalog sales, telemarketers, and purchases made from infomercials; more recently the growth of the internet and e-commerce has exacerbated the issue and received the majority of the attention. The reason for the persistent attention is that purchases from remote vendors have been effectively untaxed because the firm has not been required to collect sales taxes and there is a high level of non-compliance or tax evasion with use taxes by the consumer (Agrawal, 2016). This tax haven created by e-commerce and other remote vendors is problematic for two primary reasons. First, it creates inequities and inefficiencies between retailers and consumers where

similar goods are taxed differently (McLure, 1997). Second, the loss in state and LSTs is substantial. A 2017 GAO report estimates that states are losing between $8 and $13 billion a year due to their inability to collect taxes from e-commerce vendors. This loss is likely smaller than in previous years due to retailers such as Amazon.com now collecting sales taxes in all states levying a state sales tax.[1] Despite these widespread concerns, the efforts to address the onerous burden through federal legislation like the Marketplace Fairness Act of 2011, 2013, and 2015, as well as state led efforts such as the Streamlined Sales and Use Tax Agreement (SSUTA) were unsuccessful for over two decades. *Wayfair* changed that, but not entirely.

Prior to the *Wayfair* ruling, given the above concerns, many states have been actively simplifying their laws and taking advantage of technological advances to remove the burdens that would have been placed on remote vendors since previous Supreme Court rulings, *Quill* and *National Bellas Hess, Inc v. Department of Revenue, Ill.*. These cases noted the complexity of state and local tax systems and ruled that the burden on remote vendors to navigate the thousands of distinct jurisdictions was onerous. However, now that the Supreme Court has created a pathway for enforceable economic nexus laws, there is the ability for additional states to implement and enforce economic nexus laws. Though it should not be viewed as automatic. While many states responded quickly by issuing notices or adopting new legislation, there are still numerous potential barriers in place for many states—largely created by LSTs. These barriers include whether there are differences in the tax base either between the state and local governments, complicated rate structures including the possibility for jurisdictions to have multiple tax rates within its borders, and even whether vendors remit taxes to a central tax office or to state and local tax offices. This analysis considers the state of affairs regarding LST

[1] Though this does not apply to third party vendors selling on Amazon's platform which accounts for approximately half of Amazon's sales.

complexity that may impact the applicability of using the *Wayfair* ruling to compel remote vendors to collect sales taxes.

Many of the existing concerns about undue burden are reinforced by *Wayfair*. In Justice Kennedy's opinion he highlights four facets of South Dakota's law that led to the *Wayfair* ruling; e.g., that South Dakota's law did not discriminate or create undue burdens on remote sellers which had been the primary concern of *Quill* and *Bellas Hess*. These four aspects of South Dakota's economic nexus law and the structure of its sales tax base need to be carefully considered by other states looking to create an economic nexus law that will stand up in court. First, the "safe harbor" created by having a threshold of sales in the state that needs to be met before sales taxes need to be collected. Second, the South Dakota law does not permit for sales taxes to be collected retroactively. Third, South Dakota is a member state of SSUTA, which reduces complexity and compliance costs. Lastly, South Dakota has provided access to sales tax administration software to vendors at no cost. The opinion also notes destination-based taxation rather than origin.

South Dakota has now become the standard for sales tax law due to the *Wayfair* ruling. While many gloss over the aspects of the law that pertain to LSTs, it is critical to acknowledge and carefully examine them as other states seek to create and enforce their own economic nexus laws. In an overview of LST laws, South Dakota was characterized as a state with low jurisdictional eligibility and discretionary authority (Afonso, 2017) which simply means that the LSTs are relatively uniform across the state and that local governments have little autonomy. While local governments may not prefer this, it does lead to more straightforward tax collection. In South Dakota only municipalities can adopt LSTs, so there are no overlapping rates, and the municipal tax base is largely the same as the state's. The difference in the tax base that would

possibly impact remote vendors is primarily that farm machinery, irrigation equipment, and amusement devices are only subject to the state tax.[2] This discrepancy between the state and local tax base does make it slightly more complex but is also offset by South Dakota's state provided sales tax software.

The previous literature regarding these questions have examined issues surrounding the revenue lost due to e-commerce (Bruce, Fox, and Luna, 2009), the feasibility of potential policy changes (Cornia et al., 2000; Cornia, et al., 2004), the locational decisions by remote vendors (Bruce, Fox, and Luna, 2015) and the optimal structure of such taxes (McLure, 1997; Mikesell, 2000; Belan and Gauthier, 2006; Fox and Luna, 2006; Zodrow, 2006). Additionally, there is research examining the impact of e-commerce on the behavior of citizens (Ballard and Lee, 2007; Einav et al., 2014; Agrawal, 2016) and how the collection of sales taxes from e-commerce purchases impacts revenue for local governments (Afonso, 2019). While the *Wayfair* ruling reinforces much of the earlier work about the potential pathways for states to create an economic nexus law rather than a physical presence, there has been an important change in the landscape because there is now a model tax law to reference and potentially emulate.

The article proceeds with a brief review of the legal landscape that led to *Wayfair* and the relevant literature. That is followed by an analysis of the state of the states. Then a discussion and analysis of how complexity may have impacted the timing of state's responses to the *Wayfair* ruling and the subsequent laws creating economic nexus. Lastly, the concluding section summarizes thoughts and results.

II. CONTEXT OF THE *WAYFAIR* RULING

> The *Quill* majority expressed concern that without the physical presence rule 'a state tax might unduly burden interstate commerce' by subjecting retailers to tax-collection

[2] There are a few other differences in the tax base but they involve taxes on purchases of lodging, ticket sales, and in town transportation which is unlikely to affect remote vendors.

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> obligations in thousands of different taxing jurisdictions… But the administrative costs of compliance, especially in the modern economy with its Internet technology, are largely unrelated to whether a company happens to have a physical presence in a State (Kennedy, 2018, pp. 11-12).

E-commerce retailers, and other remote vendors, have historically not been required to collect sales taxes since the seller lacks a physical presence in the state. This stems from the Supreme Court's 1992 *Quill* decision which clarified the requirements set in *Bellas Hess.* In the *Quill* case, North Dakota contended that modern sales methods made the physical nexus requirement established in *Bellas Hess* obsolete, however, the Supreme Court maintained that the undue burdens that fall on remote vendors created by collecting interstate sales taxes outweighed laws that better reflect the current economic realities of interstate trade (McLure, 2002). These burdens created by complexity are typically exacerbated, if not driven, by LSTs. This section briefly highlights research surrounding the impact of remote vendors, primarily e-commerce retailers, not collecting state and LSTs on consumer behavior; how states may be able to respond to the complexity concerns; and how policymakers have responded to *Quill*.

The tax haven created by out-of-state retailers has been a concern for decades, however, as e-commerce has grown so has the amount of attention and the level of concern. Evidence of this growing concern and interest is demonstrated by the research that has been done to estimate the impact of the inability of states to compel remote vendors to collect and remit sales taxes. The first impact is lost state and local revenue. The estimated loss in state and LST revenue due to e-commerce in 2012 alone was $12.65 billion and was likely a conservative estimate (Bruce, Fox, and Luna 2009). A 2017 analysis estimated that states are losing between $8 and $13 billion a year and by mid-2017 Amazon was collecting sales taxes in all states (GAO, 2017).

In addition to the estimated impact on revenue, there is research examining its impact on consumer behavior. Robust evidence finds that the Internet is used as a tax haven to avoid paying

taxes and that this effect is greatest in high tax jurisdictions (Goolsbee, 2000; Ballard and Lee, 2007; Einav et al., 2014; Agrawal, 2016). Of course, nonpayment of sales and use taxes is not really tax avoidance, but tax evasion, because the purchaser is legally required to remit an identical use tax in most states (Gordon, 2010). There is additional evidence that consumers are intentionally purchasing from remote vendors. One study finds that when shoppers are faced with a negative tax surprise (i.e., a charge for sales tax they were not anticipating), they will likely cancel the transaction and purchase a similar item from a different seller and that online sales would be reduced by 12 percent if sales taxes were applied (Einav et al., 2014). Another study finds that once Amazon began collecting sales taxes, Amazon faced a 9.5 percent decrease in sales, and there was a corresponding 19.8 percent increase in sales by online retailers not collecting sales taxes, and a 2 percent increase in brick-and-mortar retail sales (Baugh, Ben-David, and Park, 2014). This shift back to brick-and-mortar may explain, in part, the finding that urban counties generate more revenue than rural counties when Amazon began collecting LSTs (Afonso, 2019).

Given the large estimated impacts of the internet as a tax haven, both the academic and policy communities have responded with policy recommendations. In discussions of how to best structure sub-national sales taxes two themes emerge in the literature. First, is the recommendation to "tax everything" but business-to-business transactions. This includes sales made by remote vendors and frequently includes services (McLure, 1997; Belan and Guathier, 2006; Fox and Luna, 2006). Second, that beyond simply changes in law, technological advances should/will ease the burden on remote vendors and that states can relieve burdens on remote vendors through tax software (Cornia et al., 2000; Zodrow, 2006).

However, in this same vein of literature a great deal of attention was given to the

difficulties that were (are) present for unraveling the undue burden created. The potential difficulties included: an acknowledgement that the reason that state and local laws and subsequent rates and tax bases are so complex is because there are different policy objectives across states (Fox and Luna, 2006) and varying level of dependence on, and thus investment in adapting, sales tax revenue (Mikesell, 2000). These differing preferences and levels of dependence create difficulty in states successfully collaborating to create a national effort to reduce complexity (like the SSUTA) and to agree upon what that standard policy should look like and would reduce the autonomy of state and local governments (Cornia et al., 2000; Mikesell, 2000; Cornia et al., 2004; Fox and Luna, 2006).

In addition to the attention from academics, policymakers have also been working to find a solution to the burden noted in *Quill*. States, sympathetic organizations, and elected officials did not merely sit back between the 1992 *Quill* decision and the 2018 *Wayfair* ruling there were many efforts during those 26 years to find a way to compel remote vendors to collect and remit sales taxes. The efforts to reduce compliance burden on remote vendors included: 1) reducing complexity by making tax bases (state and local) more uniform, using destination rather than origin sourcing,[3] and using more universal definitions of goods and 2) making sales tax calculation software available to vendors by the state (Zodrow, 2006; Swain, 2006). One of the largest efforts of state cooperation was SSUTA in which states elected to simplify their tax codes in cooperation with other states in hopes that remote vendors would voluntarily comply if the compliance burden was reduced (Cornia et al., 2004).[4] State efforts were not limited to SSUTA; for example, starting in 2008 states began to adopt click-through and/or affiliate nexus laws.

[3] At this point, 12 states continue to have origin sourcing but of those 12 only California, New Mexico, and Arizona have origin sourcing for remote purchases. California is destination sourced for state, county, and city sales taxes and has some district sales taxes that remain origin sourced.
[4] An earlier effort was the Streamlined Sales Tax Project (SSTP) that was replaced with SSUTA.

While states worked on adjusting and adapting their own laws and working collaboratively with other states, many stakeholders also recognized that Congress could pass legislation to address the perceived inequity.[5] In the *Quill* opinion it was noted that Congress had the power to legislate and require states to simplify laws to mitigate the undue burden. In the dissent written by Chief Justice Roberts regarding the *Wayfair* ruling it was noted that the issue of nexus should be addressed by Congress rather than the Supreme Court. In fact, there have been numerous efforts at the federal level to establish federal law to clarify the requirements of both states and retailers; for example, the Marketplace Fairness Acts of 2011, 2013, and 2015, the Remote Transactions Parity Act, and the Online Sales Simplification Act. These actions, if successful, with additional legislation would have created a pathway for states to move away from physical nexus towards a standard of economic nexus.

All of this work remains important in understanding the likely impacts of *Wayfair*, both on state and local behavior and on the economic impact of moving to a standard of economic nexus. However, *Wayfair* has changed the landscape and it is critical to carefully consider where states are in terms of being able to successfully implement new laws. In Justice Kennedy's opinion, the Justice noted "*Quill* is flawed on its own terms." He wrote, "First, the physical presence rule is not a necessary interpretation of Complete Auto's nexus requirement." He continued, "Second, *Quill* creates rather than resolves market distortions" and "Third, *Quill* imposes the sort of arbitrary, formalistic distinction that the Court's modern Commerce Clause precedents disavow in favor of 'a sensitive, case-by-case analysis of purposes and effects.'" This

[5] These inequities typically fell into one of two large sets of concerns. First, that state and local governments were being adversely affected by the growing use of e-commerce through receiving reduced sales tax revenue. Second, that brick-and-mortar retailers were being harmed because they could not compete with e-commerce retailers who were able to have lower final prices by their customers avoiding sales taxes. In addition, there is also evidence that prices are lower on-line even without the sales tax avoidance (Tabuchi and Russell 2016).

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analysis takes up the third point, a state-by-state analysis of the complexity of sales taxes.

III. STATE-OF-THE-STATES SALES TAX LAWS

Since the *Wayfair* ruling there has been a great deal of discussion regarding which states are poised to require remote vendors to collect sales taxes. For example, the Tax Foundation issued a Fiscal Fact, "Post-*Wayfair* Options for States", that highlighted issues and clustered states given the current laws on what actions may be necessary to adhere to the *Wayfair* decision (Bishop-Henchman, Walker, and Garbe, 2018) and the Sales Tax Institute has created an Economic Nexus State Guide for remote vendors that goes state-by-state (2019). These overviews focus primarily on state-level policy with relatively little attention given to LSTs, often simply acknowledging issues such as differences in tax bases between levels of government. The analysis presented here examines a broader set of issues around the complexity LST laws may introduce such as multiple rates within a single jurisdiction, overlapping jurisdictions, and non-uniform exemptions at the local level.

First, it is important to be clear, the *Wayfair* ruling found in favor of South Dakota.[6] While that is considered a win for states, it does not mean that all states are currently able to enforce an economic nexus law. Therefore, it is critical to understand the sales tax structure in South Dakota. South Dakota's sales tax laws are some of the least complex in the United States. The South Dakota the tax base is broad, meaning the majority of goods and services are subject to the sales tax, it is a member of SSUTA, it does not require remote vendors to collect unless they have over $100,000 in sales or 200 sales in a year (either the previous or the current year), and the economic nexus law is not applied retroactively. While the *Wayfair* ruling found in favor

[6] The Court remanded the case to the South Dakota Supreme Court to evaluate if the provision meets the other tests for constitutionality under *Complete Auto Transit*. The four-prong test requires substantial nexus with the state, fair apportionment, non-discrimination against interstate commerce, and a fair relationship to the services provided by the state.

of South Dakota, South Dakota is also not the only state with economic nexus laws. Some states had their own economic nexus laws, or similar ones, in place before the *Wayfair* ruling and others responded quickly. For example, North Dakota's economic nexus law went into effect on June 21, 2018—the same day as the *Wayfair* ruling—and Hawaii and Kentucky had laws that went into effect on July 1, 2018 just a week and a half after the *Wayfair* ruling. It is important to not take for granted that these laws will not be challenged, and it is not completely clear what the standards are. Does a state have to be a member of SSUTA, have one or both of those economic thresholds, a uniform tax base? What is clear is that simplified tax codes are required. The application of that standard at the local level is the focus of this analysis.

Table 1 presents the key dates of state efforts to require remote vendors to collect sales taxes. First, it presents the date that states joined the SSUTA, if they have. Second, it presents the date that laws were enacted (not passed) for numerous types of possible alternatives to physical nexus. It includes laws regarding click-through nexus, affiliate nexus, reporting requirements, economic nexus, and marketplace nexus laws. These final two, economic nexus and marketplace nexus are the two that are most impacted by *Wayfair*. These economic nexus laws often have a sales threshold requirement, also presented in Table 1, much like the law examined in *Wayfair*.

<Table 1>

The information presented in Table 1 demonstrates that 1) SSUTA had initial momentum, but stalled with most states joining before 2010, and ultimately failed to get more than half of the states as members. This is likely due to the issues identified by Mikesell (2000). 2) The majority of nexus laws, such as affiliate, click-through, and others were passed after 2010. While this may be due, in part, to the growth of e-commerce it may also represent a shift in strategy by the states away from collaboration towards more independent efforts. 3) Table 1

shows that many states have similar sales thresholds as South Dakota, but not all of them do. 4) Lastly, it offers a glimpse into the diversity of states preferences and strategies. While most states do have a law in place intended to capture lost revenue from remote purchases, the timing, the types of laws, and the number of efforts vary considerably.

Table 1 presents state responses to the physical nexus requirement and in some cases *Wayfair*. The information presented in Table 2 focuses on the complexity in the states introduced by LSTs which is a key consideration when evaluating a state's ability to enforce economic nexus laws. The key elements of LST complexity that need to be evaluated are: 1) the discretion of local governments to set rates, 2) the issue of overlapping local jurisdictions, and 3) the difference in the state and local tax bases.

<Table 2>

A. Local Sales Tax Rate Discretion

The first challenge or burden that remote vendors may face with regard to LSTs is introduced by the variation of sales tax rates across the state. The third column of Table 2 presents a rate discretion variable which categorizes how much discretion local governments have to set LST rates. They are categorized into three groups. First, those with **low** discretion. These are the states where there is a fixed rate and it is relatively uniform in the state—the only discretion may be whether to have it in place. Wisconsin's LSTs are a good example of low discretion in rate setting. Counties can adopt a 0.5 percent LST and most have. They are also able to adopt a 0.1 percent stadium LST and, as of April 2019, only four counties have a stadium LST in place. Therefore, there is low discretion and variation in LST rates in Wisconsin.

Other states may come to mind, such as California which has the Bradley-Burns Uniform Local Sales and Use Tax which has a flat rate and is applied in every county. If that was the only

LST instrument available in California, then it would be categorized as low, however there are other instruments available and some discretion over those rates, so California is categorized as medium. A state is categorized as a **medium** discretion state if there are either fixed increments or rate caps on the LSTs available for adoption by local jurisdictions. Thus, local governments have more choice available to them, but operate in a relatively restricted environment.

Lastly, a state is categorized as **high** discretion if there are high or no rate caps and a great deal of rate setting discretion by local governments. Alabama is a good example of a high rate discretion state. The state sales tax rate in Alabama is 4 percent and the combined rates vary between 5 and 11 percent across the state. For example, in Wilcox County there is the municipality of Camden which has a combined rate of 11 percent. Also, in Wilcox County is Pine Apple with a combined rate of 8.5 percent. In contrast, Abanda in Chambers County, Alabama has a combined rate of 5 percent and the municipality of Valley, also in Chambers County, has a combined rate of 10 percent. Not only is there great variation of rates across the state in Alabama, there is great variation across counties.

As states consider simplifying LST complexity, low rate discretion states would be the most straightforward and least complex. Though low discretion, as defined here, is not necessary as shown by South Dakota, which has a rate limit, but discretion below the cap and is categorized as medium. The information used to create this measure comes from Afonso (2107) and research into states that have adopted subsequent reforms such as Arizona.[7] Typically higher discretion translates into greater rate diversity. Though a state like Virginia is a slight exception. Virginia has a non-optional flat one percent local rate statewide, so there is no discretion.

[7] Afonso (2017) examined the discretionary authority and jurisdictional authority. That analysis focused on the nuance of state laws and the comparability of states, while much of it may impact complexity, other factors such as limitations based on population will not impact complexity for remote vendors.

Additionally, there are planning districts in Northern Virginia with an additional 0.7 percent rate and a 1 percent rate in the historical triangle (Williamsburg area). So, there is rate variation in the state, but local governments do not choose to adopt a LST and have no discretion. Thus, Virginia is categorized as a low discretion state.

B. Overlapping Local Sales Tax Jurisdictions

A second complexity that LSTs may introduce is overlapping jurisdictions. Overlapping jurisdictions was not highlighted by the Supreme Court, but South Dakota only has municipal LSTs, so it was not a consideration in the *Wayfair* ruling. This means that vendors in South Dakota do not have to contend with the possibility of multiple rates within one city or town like they would in many other states. This is a potentially important complication that should be considered. The fourth column of Table 2 presents whether counties, municipalities, and/or special districts can levy LSTs. This does not mean that all counties, special districts, and municipalities can or choose to adopt one though. For example, Pennsylvania has county and municipal LSTs, but only one county and municipality are legally able to levy a LST.[8]

Overlapping jurisdictions may be especially problematic since many municipalities span multiple counties, so even in a state without municipal LSTs residents of the same municipality may have different rates. For example, in Dunnellon, Florida some residents reside in Citrus County, some in Marion County, and still others in Levy County. Thus, using a municipality from a shipping or billing address will not be sufficient. To further complicate the issue, zip codes may also span county and municipal boundaries (103 cross state lines) and cannot be used to calculate accurate tax rates (UCF Libraries, 2019).

Oklahoma is a good example of the issue of overlapping jurisdictions and tax rate

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[8] For more information please see Afonso (2017).

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diversity. In Texas County, Oklahoma the municipality of Adams has a 5.5 percent rate and Adams' neighbor, Hardesty (also within Texas County), has a 9.5 percent rate. In Oklahoma the state rate is 4.5 percent and the combined rates range from 4.5 to 11.5 percent—so there are areas that have no LSTs and others in the state that have a total LST rate of 7 percent. The difficulty of navigating these overlapping jurisdictions is not just in rural counties either. Residents of Oklahoma City are spread out in four different counties: Canadian County with a county rate of 0.35 percent, Pottawatomie County with a county rate of 1.495 percent, Cleveland County with a county rate of 0.25 percent, and Oklahoma County with no county LST. This is in addition to the Oklahoma City municipal rate of 4.125 percent. To further illuminate the difficulty of overlapping jurisdictions, 73170 is a zip code in Oklahoma City that spans two municipalities and two counties with different rates.

C. Local Sales Tax Base Diversity

Finally, the largest potential source of complexity introduced by LSTs is the diversity in the tax base. While it may be difficult to identify the correct tax rate, as established previously, that tax rate may not be applied uniformly to purchases made in the state. These differences in tax base can be between the state and local governments, between certain LST instruments and others, or between different local governments. The potential differences are categorized in a typology presented in the fifth column of Table 2. **Type one** states have the same base for local governments and the state.[9] A state is categorized as **type two** if there is a difference between the state and local governments tax base, but it is uniform across all local governments and all LST instruments available. For example, one of the most common exemptions from the state

[9] However, there are states where the state has an excise tax where there is no local counterpart, for example on the purchases of vehicles. These excise taxes are typically expected to be collected by remote vendors. None the less, the choice was made in these cases to categorize these states as type one if that is the only difference in the tax base since it is not the retail sales tax.

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sales tax is food. However, some states that exempt food from the state level sales tax base include it in the local sales tax base. An example of this is the state of Georgia, where food is taxed by all LSTs and not the state. Georgia is also an example of the overlapping jurisdictions issue presented previously. For example, in DeKalb County, Georgia residents living in Atlanta will pay a 4.9 percent sales tax on food items, and those outside of Atlanta will pay a 4 percent rate. Other purchases made in DeKalb County that are not located in Atlanta will be taxed at 8 percent and those within Atlanta will be tax at 8.9 percent. This is because different LST instruments are present in different parts of DeKalb County and because food is taxed differently at the state and local level in Georgia.[10]

A state is categorized as **type three** if the LST base differs depending on which LST instrument is in place. In North Carolina, three of the five LST instruments tax food, unlike the state rate. The first one of those instruments, with a 1 percent rate follows state exemptions otherwise. The other two instruments with rates of 0.5 percent each follow state exemptions, except building materials and food are taxable. The remaining two LST instruments with a possible combined rate of 0.75 percent, follow the state level exemptions and therefore do not tax food. Returning to the state of Oklahoma, high population counties may impose a 1 percent tax for the development of infrastructure to lease or convey space to the federal government. This revenue instrument has the same tax base as the state except it exempts the sale of natural or artificial gas and electricity sold for residential use.

Another complex type three state is Illinois. LSTs in Illinois vary on what is taxed and what is exempted from the tax base by the instrument. For example, the "Special County

[10] For purchases made in DeKalb County and Atlanta they are subject to the 4 percent state sales tax, the 1 percent MARTA tax, the 0.4 percent Atlanta TSPLOST, the 1 percent EHOST, the 1 percent ESPLOST, the Atlanta MARTA at 0.5 percent, and the 1 percent MOST. The rest of DeKalb County is subject to the 4 percent state sales tax, the 1 percent EHOST, the 1 percent ESPLOST, the 1 percent MARTA, and the 1 percent SPLOST.

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Retailers' Occupation Tax For Public Safety, Public Facilities, Mental Health, Substance Abuse, or Transportation" exempts food, unlike the state (though the state taxes it at a lower rate). The "Metro-East Mass Transit District Retailers' Occupation Tax" can be adopted by municipalities and counties and it is subject to same exemptions as state tax and is collected by the Department of Revenue. Illinois also has another type of local complexity that few states have currently, decentralized collection of some LST instruments such as the "Regional Transportation Authority Retailers' Occupation Tax". The highway authority may oversee enforcement or contract with the local government. Tax may be imposed on upon all persons engaged in the business of selling tangible personal property at retail in the metropolitan region. Additionally, certain counties tax food and prescription medicines at a reduced rate, e.g., Cook County taxes gross receipts from food sales and prescription and non-prescription medicines at 1.25 percent. In a type three state, remote vendors would need to not only know the state and local tax rate to know what was subject to the sales tax (which is the case in type two states), but also which instruments were levied in order to calculate the correct rate on different items, in many cases on items like food.

Lastly, a state is categorized as **type four** if local governments may choose their tax bases. This is the most complex of the categories. In these states, when jurisdictions are adopting LSTs they can determine what will be included in the tax base. In some states like Louisiana, that means that jurisdictions are able to choose whether they want to exempt what is exempted at the state level—so they may choose to have the same tax base as the state or not.

Arizona is also a type four state and is often held up as one of the most complex states regarding sales taxes (or transaction privilege taxes [TPT]). While they remain more complex than most, Arizona has made many strides towards improving and simplifying their tax

administration. For example, until 2017 the state would collect the county and the "program" cities TPT but would not collect "non-program" cities which are many of the largest in the state—so vendors would have to register and remit taxes to both cities and the department of revenue in these non-program cities. Currently the state has a centralized administration system, however, there remain many choices that local governments can make regarding their TPT. Examples of these choices are: whether they want to exempt income producing capital equipment, transactions occurring on military bases, wholesale feed, and "big-ticket" items and they can define what big-ticket means. Another example are home rule municipalities in Colorado that have local ordinances that govern the exemptions that apply to the LSTs such as grocery foods and low-emitting vehicles.[11] In the states of Alaska, Idaho, and Louisiana jurisdictions are able to set their own exemptions and it would be extremely complicated for remote vendors to appropriately and accurately collect LSTs.

Table 2 also presents examples of exemptions from the sales tax base where the state and local exemptions differ. Ultimately, it is the differences in the tax base, as outlined above, that add complexity. The exemptions noted in Table 2 are for the most common exemptions; food, clothing, and vehicles. However, there are other relatively common exemptions. For example, fuel. Most states have fuel excise taxes and some states even have local fuel taxes such as Florida.[12] Regarding the complexity of fuel taxes, Georgia is a good example. The tax levied on motor fuels is almost universal, however, the "Special District Transportation Tax" exempts the sale of fuel, including aviation fuel, and motor fuel for public mass transit.

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[11] There are examples of these optional exemptions that are unlikely to impact remote vendors. For example, Florida has exemptions that for local discretionary taxes that are locally administered for food and drinks in restaurants and hotels that are earmarked. These taxes are currently only in Miami-Dade and will not impact remote vendors.
[12] The states that tax fuel under the sales tax are: California, Connecticut, Georgia, Hawaii, Illinois, Indiana, Michigan, and New York.

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Another common exemption is for aircraft. Alabama applies a state rate of 2 percent and local governments can apply a rate up to 3 percent. Connecticut has an exemption for any airplane that has a takeoff weight of under $6,000 and numerous states have fly-away exemptions. Most states, however, have either the same exemptions for the state and the LST or the state has a slightly lower tax rate that its sales tax rate. Important exceptions are states like South Carolina where there is a state tax of up to $300 and aircraft are exempt from local taxes and South Dakota where there is a state excise tax and no applicable local tax. The last common exemption is for prescription drugs and they are exempt in almost all states and the only states worth noting for complexity purposes are Illinois where they are taxed depending on the LST instrument and in the states where the local government determines the tax base.[13]

D. State Local Sales Tax Complexity

Table 3 presents a matrix of the states that permit LSTs, the states are categorized by rate and tax base complexity.[14] Table 3 shows that the majority of states are classified as high rate complexity but approximately two thirds of states are categorized as low tax base complexity. The states in bold are members of SSUTA, and while most member states have high rate complexity, only two have high tax base complexity. Of the states categorized as having both high rate and base complexity only a third of them are currently enforcing economic nexus laws for state and LSTs and for those with high tax base complexity, 69 percent of them are not requiring remote vendors to collect all/any LSTs. Whereas, those with low base complexity and high rate complexity, 66 percent are requiring remote vendors to collect all state and LSTs. Not surprisingly, the information in this table suggests a correlation between LST complexity and

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[13] In some states over-the-counter drugs are included in the exemption but that is true at the state and local level in those cases.

[14] In states like Arkansas and Virginia where food is taxed at the state and local level, but where the state has a lower rate for food that was classified at low base complexity.

economic nexus laws. While these tables identify the major components of LST complexity across the states, they still omit some of the nuance of state laws. For example, in Iowa the LST is only applied in the portions of the jurisdiction where it passed, so if the unincorporated residents and those living in one of the municipalities pass a LST but the residents of another municipality within the county did not, it will only apply in the unincorporated areas and the municipality that passed it. While this impacts remote vendors much like overlapping jurisdictions does, it is a distinct source of complexity. Similarly, special district excise taxes in West Virginia may not apply to the entire jurisdiction.

<Table 3>

IV. MOVING TOWARDS ECONOMIC NEXUS

States have, as Table 1 demonstrates, been working towards the goal of requiring remote vendors to collect sales taxes for over a decade. While many strategies have been tried, South Dakota's successful defense of its economic nexus law suggests that states have the ability to create and/or successfully enforce their own economic nexus laws. However, Justice Kennedy's opinion regarding the *Wayfair* ruling was clear, the Court ruled in favor of South Dakota because of its a simple sales tax structure which did not create undue burden for the collection of sales taxes by remote vendors. However, it is not entirely clear what aspects of South Dakota's law are required for other states to successfully enact economic nexus laws and what other complexities, not present in South Dakota may be additional barriers.

Figure 1 presents the status, as of April 2019, of whether there are laws requiring remote vendors to collect state and/or local sales and use taxes. What it shows is that this is not a simple question. There are many different laws and strategies currently being employed. On the two ends of the spectrum are states like Arizona that has not yet moved forward with economic nexus

legislation and states like Washington where remote vendors are required to collect and remit all state and LSTs. However, there are states within those extremes; states like Colorado where remote vendors are only required to collect the state taxes and the LSTs that are currently collected by the state, but not the ones that are administered by localities—so a partial enforcement. There are also states that have laws in place that are not currently being enforced like Texas which will require remote vendors to remit state and LSTs on October 1, 2019. In light of overly complex LSTs, Alabama and Louisiana have chosen to institute a flat combined rate across the state for remote vendors to collect. Texas also has pending legislation that would institute a flat rate.[15]

The statewide flat rate is likely an attractive option for states like Colorado, Arizona, and Illinois where local complexity is high and to successfully enforce an economic nexus law that applies to all state and local taxes would require, in some cases, a major overhaul of the current structure and would likely diminish local autonomy. Alabama's flat rate economic nexus law, the Simplified Seller Use Tax Remittance Act, collects a flat 8 percent rate whereas the actual rates vary between 5 and 11 percent and revenue is distributed to local governments based on population regardless of rate. An issue with the flat rate is that it creates inequities between remote and brick-and-mortar retailers that are applying different tax rates to the same consumers. Which is applying the higher rate will depend on the jurisdiction. In the extreme, there are local jurisdictions without LSTs and now citizens will be subject to one for their online purchases, though in the case of Alabama consumers, they can apply for a refund of the LSTs they paid.

A. Streamlined Sales and Use Tax Agreement

[15] Tennessee does not have a law in effect currently but does have the option for remote vendors to collect a flat 9.25 percent sales tax rate statewide.

The states that have joined SSUTA are better positioned to enforce economic nexus under *Wayfair*. First, the fact that South Dakota was a participating state was highlighted in Justice Kennedy's opinion, suggesting it was a part of the decision to rule in favor of South Dakota. Second, to become a SSUTA member some simplification of sales tax structures had to be made or be in place. Though that does not mean that there are no issues of complexity in these states, for example see the earlier discussion of SSUTA member-state North Carolina. In terms of tax base, it is categorized as a type three, which means that the state and local tax base are different, and the local tax base varies depending on the instrument.

Third, SSUTA provides a centralized registration system for remote vendors selling in member states. The tax is reported and paid directly to each state using the state's online filing system. Member states also have listings of tax rates and some have online tax calculators that can be used. Furthermore, remote vendors have access to certified service providers (CSPs) that have been reviewed and certified by the Streamlined Sales Tax Governing Board. The CSP will interface with the seller's system to determine the taxability of products, the proper tax rates, and will compile and file the return and remit the sales tax due to each of the SSUTA states. These services were highlighted in the *Wayfair* case as a reason why the burden on remote vendors was sufficiently low. Therefore, states that are not members of SSUTA are exploring ways to work with CSPs and their own systems. Pennsylvania was the first non-SSUTA state to certify a CSP and Louisiana is currently considering emulating the SSUTA system and is considering revisiting the flat rate currently in place.

B. Relevance of Local Sales Tax Complexity

While the level and scope of LST complexity has important implications for states regarding successful enaction and enforcement of economic nexus laws there are other factors

that impact the level of impediment that LST complexity may be for economic nexus. First, it is important to note that this analysis has discussed multiple types of consumption taxes, not just retail sales taxes. For example, South Carolina has local hospitality taxes which would infrequently impact remote vendors. Similarly, Montana's local taxes are unlikely to impact remote vendors.[16] Second, sales and use taxes have been discussed jointly however they are distinct; for example, in the state of Mississippi remote vendors are only responsible for collecting use taxes and local governments do not levy use taxes. Thus, LSTs do not create complexity in Mississippi under the current laws. Third, excise taxes on products like fuel are also unlikely to impact remote vendors. So, in the states like Missouri where there is a state-level excise tax on fuel and no local counterpart, that difference in tax base is unlikely to impact remote vendors and is not included in the base complexity measure.

Fourth, there are differences in the tax base of the sales tax between state and local governments that add to the complexity introduced by LSTs but may not add a great deal of complexity to remote vendors. In New York, school districts can impose sales taxes on utilities and utility services, while this adds another layer of complexity it is unlikely to impact remote vendors. For example, vehicle and aircraft exemptions are unlikely to impact remote vendors. Of the common exemptions (defined here as vehicles, fuel, food, aircraft, clothing, and prescription drugs) the exemptions most likely to affect remote vendors are those on clothing and food. Applying that standard to the information presented in Table 3 the states of Arizona and Idaho are no longer classified as having high tax base complexity.

C. Laws to Address Local Sales Tax Complexity

[16] As John Mikesell put it in personal correspondence "That is so different from what you would find for any actual local sales tax that a rat is not only smelled but also dancing to the HokeyPokey!"

States have bypassed many of the barriers created by LST complexity through CSPs, flat rates, not collecting LSTs, and only collecting select LSTs. These policy choices will likely sufficiently reduce the burden on remote vendors to allow the economic nexus laws to stand. However, it is worth considering the consequences of such policies and possible outcomes if laws and policies were to change.

First, of the current states with economic nexus laws New York[17] and South Carolina are the two most likely to have their laws successfully challenged because both have comprehensive laws in place, meaning that all state and LSTs must be collected and remitted and they have more complex LST laws. The level of support that is offered to remote vendors in calculating appropriate taxes, perhaps in the form of contacting with CSPs, may be the deciding factor. Though until laws are challenged and the Courts offer more clarity on what the key components of South Dakota's laws are, this is speculative.

Second, of the states without economic nexus laws in place there are four states particularly poorly situated to enact economic nexus: Arizona, Florida, Alaska, and Montana. Arizona and Florida have state-level sales taxes, but highly complex local rate and tax bases. To implement a comprehensive economic nexus law that applies to all LSTs, would be challenging given the current structure. Florida has even larger barriers in place than the notoriously complex Arizona currently because it still has some decentralized collection of LSTs. Alaska, and to a lesser extent Montana, have no state sales tax which will make centralized collection a large barrier without some state intervention and cooperation.

Third, there are states that are either only collecting a portion of LSTs or are collecting a flat LST rate. These solutions likely satisfy the minimization of undue burden on remote

[17] New York where there are local consumption taxes (occupancy, telecommunications, and energy) that are self-administered.

vendors but may not be sustainable. The dependence on LSTs and the growth of the e-commerce sector make it challenging for local governments to accept that these sales taxes will not be collected. Thus, it is likely that Alabama, Colorado, Illinois, Louisiana, West Virginia, Ohio, and Oklahoma will consider expansions of their current policies to be more inclusive. These expansions will be most challenging for states like Alabama, Louisiana, Colorado, and Illinois where some LSTs are self-administered and in states like Colorado, Idaho, Louisiana, and Mississippi where there are high levels of tax base discretion. Moving forward, many states will need to consider centralizing all LST collections to the state and possibly partnering with CSPs or offering their own software to calculate tax rates and taxability of items.

An example of the evolution of policy is the state of Louisiana. In Louisiana, which has a completely decentralized LST system, there is legislation being considered to create a constitutional amendment to move the system to a more typical centralized one. However, many local governments and their advocacy groups oppose this effort. "Local government officials say their system allows a better understanding of idiosyncratic sales tax collection districts and the local market conditions that a bureaucracy centered in Baton Rouge never could do" (Mitchell, 2019). Thus, it is clear that these policies are still in flux in some states and that it is important to carefully monitor the changing landscape.

Fourth, there are states that have economic nexus laws for state sales taxes and not LSTs: Idaho, Mississippi, and New Mexico. These states are not all facing the same barriers with regard to LSTs though. Mississippi is having remote vendors collect use taxes and local governments are not authorized to levy use taxes. Whereas, local governments administer and set their own LSTs. New Mexico LSTs are still origin based and are expected to be collected in 2021 once a presumed policy solution has been implemented.

V. CONCLUSION

The importance of e-commerce and other remote retailers has grown exponentially over the past few decades resulting in a great deal of lost revenue to subnational governments and harm to brick-and-mortar retailers. In response, states have employed numerous strategies to require remote vendors to collect and remit sales and use taxes including interstate collaborations like SSUTA and click-through nexus laws, with more recent efforts like economic nexus laws. The recent Supreme Court ruling has changed the landscape and has created a pathway for states to enforce economic nexus if the undue burden on remote vendors is sufficiently low.

The undue burden which had been cited in cases like *Quill*, is created by overly complex state and LST structures and laws. The research presented here examines a primary source of complexity, LSTs. This analysis examines three key aspects of the complexity LSTs may introduce: rate discretion, overlapping jurisdictions, and differences in tax base. Given this complexity, states have responded in various ways to minimize the burden on remote vendors. From states like Arizona that has overhauled its tax system, which remains complex, and does not have an economic nexus law to Louisiana which is collecting a flat rate rather than reducing local autonomy and changing its LST laws to New Mexico which is simply not requiring remote vendors to collect LSTs. While many impacted states have passed economic nexus laws, 10 do not have an economic nexus law in effect and 4 of these do not have pending legislation. Additionally, others may still have their laws challenged given the complexity still in place.

Understanding the current environment is key for policymakers as they continue to update laws and potentially face litigation challenging current laws and for the academic community as it seeks to better understand the economic and fiscal implications of *Wayfair* and economic nexus laws. While it is likely that all states with sales taxes will have economic nexus

laws in place in the coming years, it does not mean that those laws will apply to LSTs fully. Furthermore, if states begin to reform and simplify LST laws by removing autonomy with regard to tax base and rate discretion, those changes will have substantial impacts for the financial management of those local governments and their revenue portfolios. Thus, the information presented here is important as it will aide in understanding the impact the laws, policies, revenues, and changes to financial management of state and local governments moving forward.

The previous literature has examined issues surrounding the *Quill* ruling on lost revenue, the behavior of citizens, and potential policies that states could pursue to remove the undue burden. Many of those concerns remain and many of the prescriptions are still reasonable. However, given the *Wayfair* ruling, the conversation and research agendas are likely to change considerably. For example, in the future, research questions around how LST rates change in states with flat rates for remote vendors, how state-level policies will continue to evolve, how this additional revenue will be used (i.e., whether it is used to reduce rates on sales taxes or other instruments or to grow the size of the budget), and how states with limited LSTs evolve, are all likely to be important areas of research. This last question, regarding states with low LST autonomy, like Pennsylvania, will be particularly intriguing. Since the 1970's LSTs have become widespread and heavily relied upon in many states, however there remain states where are not permitted or are very restrictive. If the trends continue, many states are likely to expand the availability and reliance on LSTs. Virginia is a state with no local autonomy over LSTs, but there has been an expansion of policies and instruments with the introduction of regional LSTs and Virginia considering its first local *option* sales tax. These types of changes and how they will interact with the *Wayfair* ruling and economic nexus laws will be important to analyze moving forward. The research presented here provides a baseline of the level and types of LST

complexity and many critical considerations for policies and research agendas that are evolving to examine a post-*Wayfair* environment.

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Table 1
State-Level Sales Tax Laws Regarding Remote Vendors

State	Streamlined Sales and Use Tax Agreement	Click-Through Nexus	Affiliate Nexus	Reporting Requirements	Economic Nexus	Marketplace Nexus	Sales Threshold: Dollar Amount	Sales Threshold: Transactions	Local Sales Taxes
Alabama			8/24/2012	7/1/2017	10/1/2018	1/1/2019	$250,000		Yes
Alaska									Yes
Arizona†						9/20/2016			Yes
Arkansas	1/1/2008	10/27/2011	10/27/2011		7/1/2019	7/1/2019	$100,000	200	Yes
California†		9/15/2012	9/15/2012		4/1/2019		$100,000	200	Yes
Colorado		7/1/2014	7/1/2014	7/1/2017	6/1/2019		$100,000		Yes
Connecticut		5/4/2011	5/4/2011	12/1/2018	12/1/2018	12/1/2018	$250,000	200****	No
Florida†									Yes
Georgia	1/1/2011	7/18/2012	10/1/2012	1/1/2019	1/1/2019		$250,000	200	Yes
Hawaii					7/1/2018		$100,000	200	Yes
Idaho		7/1/2018	7/1/2008		6/1/2019	6/1/2019	$100,000		Yes
Illinois		1/1/2015	7/1/2011		10/1/2018		$100,000	200	Yes
Indiana	10/1/2005				10/1/2018		$100,000	200	No
Iowa	10/1/2005	1/1/2019	6/11/2013 1/1/2019	1/1/2019	1/1/2019	1/1/2019	$100,000	200	Yes
Kansas†	10/1/2005	10/1/2013	7/1/2013						Yes
Kentucky	10/1/2005			7/1/2013	10/1/2018		$100,000	200	No
Louisiana†		4/1/2016	4/1/2016	7/1/2017			$100,000	200	Yes
Maine		10/9/2013	10/9/2013		7/1/2018		$100,000	200	No
Maryland					10/1/2018		$100,000	200	No
Massachusetts					10/1/2017		$500,000	100****	No
Michigan	10/1/2005	10/1/2015	10/1/2015		10/1/2018		$100,000	200	No
Minnesota	10/1/2005	7/1/2013	10/1/2018		10/1/2018	10/1/2018	$100,000**	100	Yes
Mississippi					9/1/2018		$250,000		Yes
Missouri†		8/28/2013	8/28/2013						Yes
Nebraska	10/1/2005				1/1/2019		$100,000	200	Yes
Nevada	4/1/2008	10/1/2015	7/1/2015		11/1/2018		$100,000	200	Yes
New Jersey	10/1/2005	7/1/2014			11/1/2018	11/1/2018	$100,000	200	Yes
New Mexico					7/1/2019		$100,000		Yes
New York		5/8/2008	6/1/2009		1/15/2019††		$300,000	100****	Yes
North Carolina	10/1/2005	8/7/2009			11/1/2018		$100,000	200	Yes
North Dakota	10/1/2005				10/1/2018		$100,000		Yes
Ohio	1/1/2014	7/1/2015	7/1/2015		1/1/2018		$500,000		Yes
Oklahoma	1/1/2005		11/1/2016 6/9/2010	4/10/2018 11/1/2016 6/9/2010	7/1/2018	7/1/2018	$10,000		Yes
Pennsylvania		12/1/2011	12/1/2011	4/1/2019 4/1/2018	4/1/2018	4/1/2018	$10,000		Yes
Rhode Island	1/1/2007	8/17/2017 7/1/2009	8/17/2017	8/17/2017	8/17/2017		$100,000	200	No
South Carolina†					11/1/2018	11/1/2018	$100,000		Yes
South Dakota	1/1/2005		7/1/2011	7/1/2011	11/1/2018	3/1/2019	$100,000	200	Yes

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Tennessee†	1/1/2005*	7/1/2015	1/1/2014	3/26/2012	7/1/2017†††		$500,000		Yes
Texas†,††			1/1/2012		1/1/2019††††		$500,000		Yes
Utah	1/1/2012			7/1/2012	1/1/2019		$100,000	200	Yes
Vermont	1/1/2007	12/1/2015		7/1/2017	7/1/2018		$100,000	200	Yes
Virginia			9/1/2013	5/24/2011	7/1/2019	7/1/2019	$100,000	200	Yes
Washington	7/1/2008	9/1/2015		1/1/2018	7/1/2017	1/1/2018	$100,000		Yes
West Virginia	10/1/2005		1/1/2014		1/1/2019		$100,000	200	Yes
Wisconsin	10/1/2009				10/1/2018		$100,000	200	Yes
Wyoming	1/1/2008				2/1/2019	7/1/2019	$100,000	200	Yes

† Relevant legislation pending, †† No legislation passed but guidance offered by the state requiring collection of sales taxes, †††Not enforceable until analysis of *Wayfair* ruling, and ††††Not enforceable until 10/1/2019.
*Associate Member, ** In at least 10 separate transactions, ***Includes states, counties, municipalities, and special districts where applicable, ***Pennsylvania's threshold will change to $100,000 in 7/1/2019, and ****Must meet both thresholds (dollar and transactions).
Data collected from: author's analysis of state laws, state notices, and news articles; Sales Tax Institute (2019); and Afonso (2017).

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Table 2

State-Level Local Sales Tax Complexity

State	Total Jurisdictions	Rate Discretion	Local Sales Tax Jurisdictions	Tax Base Typology	Example of Differences in State and Local Tax Base	States Sales Tax Software
Alabama	801	High	C, M	Two	Vehicles are taxed at a lower rate at the state level.	No
Alaska	107*	High	C, M	Four	Only local taxes and jurisdictions select their own exemptions.	No
Arizona	131	Medium	C, M, S	Four	Many options regarding choice of exemptions including agricultural machinery.	No
Arkansas	392	Medium	C, M	Two	Food is taxed at a lower rate at the state level.	Yes
California	323	Medium	C, M, S	One		No
Colorado	328	High***	C, M, S	Four	Local jurisdictions choose whether to adopt state exemptions.	No
Florida	69	Medium	C, S	Four	Local governments tax the first $5,000 of vehicle purchases and choose whether to exempt food.	No
Georgia	162	Medium	C, M, S	Three	Most LSTs do not exempt food.	Yes
Hawaii	2	Low	C	One		No
Idaho	15	High	M	Four	Local jurisdictions set and administer their own taxes.	No
Illinois	563	High***	C, M, S	Three	Different LST instruments have different tax bases.	No
Iowa	1,002	Medium	C	One		Yes
Kansas	521	Medium	C, M	One		Yes
Louisiana	370	Medium†	C, M, S	Four	Local jurisdictions choose whether to adopt state exemptions.	No
Minnesota	70	Medium	C, M	One		Yes
Mississippi	3	Medium	C, M, S	Four	Local jurisdictions have the option to exempt clothing.	No
Missouri	1,393	High	C, M, S	Two	Food is taxed at a lower rate at the state level.	No

Montana††	7*	Medium	C, M	Four	Only local taxes and jurisdictions select their own exemptions.	No
Nebraska	230	Medium	C, M	One		Yes
Nevada	18	Medium	C, S	One		Yes
New Mexico	144	High	C, M	One	State level excise tax on vehicles with no local counterpart.	No
New York	82	Medium	C, M, S	Four	Local jurisdictions have the option to exempt clothing with some revenue instruments.	No
North Carolina	106	Medium	C, S	Three	Some LSTs do not exempt food, others share the same tax base.	Yes
North Dakota	150	High	C, M, S	One	State level excise tax on vehicles with no local counterpart.	Yes
Ohio	98	Medium	C, S	Two	Vehicles are not included in the local tax base.	Yes
Oklahoma	593	High	C, M, S	One	State level excise tax on vehicles with no local counterpart.	Yes
Pennsylvania	3	Low	C, M	One		No
South Carolina	45	Medium	C, M, S	Four	Vehicles are not included in the local tax base and local jurisdictions may choose whether to exempt food.	No
South Dakota	258	Medium	M	One	State level excise tax on vehicles with no local counterpart.	Yes
Tennessee	299	Medium	C, M	Two	Food is taxed at a lower rate at the state level.	Yes
Texas	1,594	Medium	C, M, S	One		No
Utah	318	Medium	C, M	Two	Food is taxed at a lower rate at the state level.	Yes
Vermont	15	Low	M	One	State level special tax on vehicles with no local counterpart.	Yes
Virginia	174	Low	C, M, S	Two	Food is taxed at a lower rate at the state level.	No
Washington	371	Medium	C, M, S	Two	Vehicles are taxed at a different rate at the state level.	Yes
West Virginia	43	Medium	M, S	One		Yes
Wisconsin	74	Low	C, S	One		Yes

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Wyoming	25	Medium	C, M, S	Two	Vehicles are not included in the local tax base.	Yes

* Does not include a state sales tax, **Remote vendors collect a flat rate for local sales taxes, and ***Jurisdictions with home-rule have much more discretion about the structure of local sales taxes than those without it.
†There is a state cap on local sales tax rates, but it is common practice to have the legislature to authorize higher rates, and ††Montana has a resort tax that is only levied on tourism related industries and should not be impacted by *Wayfair*.
Data collected from: author's analysis of state laws, state notices, and news articles; Afonso (2017); and Loughead (2018).

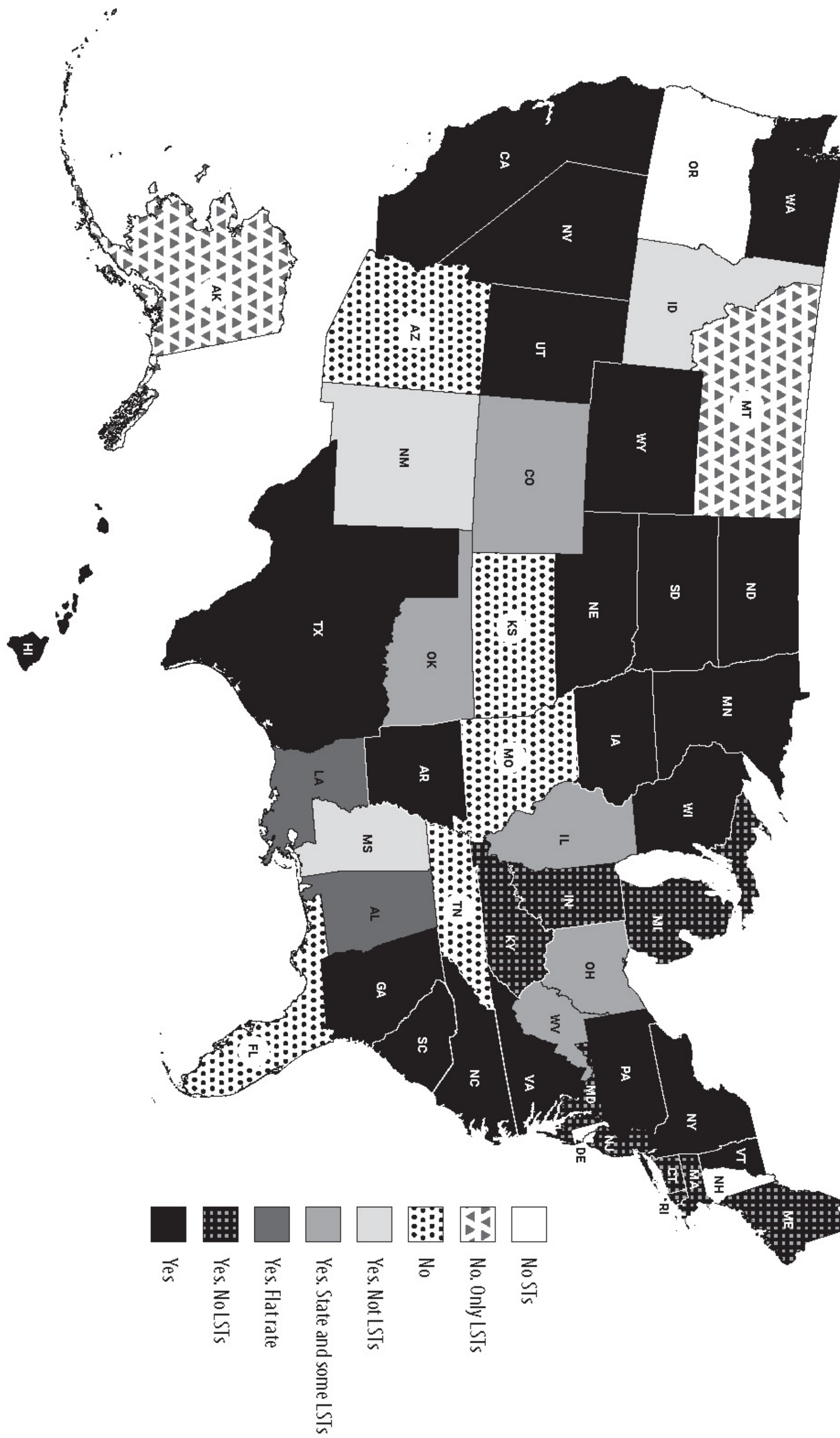
Table 3

Local Sales Tax Rate Complexity and Tax Base Complexity

Rate Complexity	Low Base Complexity	High Base Complexity
High	Alabama **Arkansas** California **Kansas** **Minnesota** Missouri **Nebraska** **Nevada** New Mexico **North Dakota** **Ohio** **Oklahoma** **Tennessee** Texas **Utah** **Washington** **West Virginia** **Wyoming**	Alaska Arizona Colorado Florida **Georgia** Idaho Illinois Louisiana Montana New York **North Carolina** South Carolina
Low	Hawaii **Iowa** Pennsylvania **South Dakota** **Vermont** Virginia **Wisconsin**	Mississippi

States in bold are members of the SSUTA and provide state sales tax software for remote vendors.

Figure 1
State Economic Nexus Laws and Local Sales Tax Applicability



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