

Tax Notes Talk | Podcast

A weekly discussion of cutting-edge developments in tax, including up-to-the-minute changes in federal, state, and international tax law and regulations.

Interview Excerpt with Brad Scott

Finance Director
Halstead Bead, Inc.
Prescott, Ariz.
June 18, 2020

Jennifer McLoughlin: Of course. So let's just jump right into it. Here we are about two years later after the U.S. Supreme Court's landmark *Wayfair* ruling. But following that decision, states have swept in with varying legislative and regulatory responses over the last two years. So, the first question I'd like to ask relates to sellers' awareness, specifically, what is the level of awareness among sellers regarding both the *Wayfair* ruling and the state's various laws and regulations requiring sales and use tax collection from remote retailers? So Brad, let's start with your thoughts on this issue.

Bradley Scott: Well, mine is anecdotal. I know that Scott's business has done a recent survey on the issue. But from our own experience thus far, we've only received a single notification from one state that we may or may not have a sales tax collection obligation. In speaking with other companies around the country, few are really aware that it applies to them, primarily because in the media it's been discussed historically as an online sales tax issue. And a lot of businesses that are not involved online are just now waking up to the reality that if they're selling across state lines, it applies to them as well.

And then it's the retail issue as well. Our business is primarily wholesale. We have been in compliance since the very beginning, but that's because we weren't paying attention to the headlines, we were actually reading the articles and what was coming out of the Supreme Court, as well as the *amicus briefs*. And if you are not engaged in retail or online transactions, then the headlines thus far don't make it look like a decision applies to you.

Jennifer McLoughlin: Brad, from your perspective, what do you think? What would you hope that states would do to help improve sellers' awareness of the issue?

Bradley Scott: Well, I believe there's a mechanism that already exists for this. The streamlined sales tax governing board has 24 member states, and I think there could be some tweaks to the systems that they use that would allow for a more easily disseminated information. If the state of Arizona's Department of Revenue was to reach out to every

business inside the state of Arizona and say, "There may be an obligation for you to be collecting sales tax with all of these other states," then every business in Arizona would be made aware right away. The unfortunate issue is that since the Supreme Court made their decision two years ago, there's not been a single state that's joined the SST. I think legislatively, if states aren't willing to make that outreach, then the affected parties or the businesses involved should probably not have any compliance obligation until they are notified by the jurisdiction that wants their compliance.

Jennifer McLoughlin: You mentioned, Brad, the Streamlined Sales and Use Tax Agreement, and you noted that no state has joined that agreement since the U.S. Supreme Court's decision. I was curious what your thoughts are, and Scott, I'll also ask what your thoughts are on this, but why do you gentlemen believe that no state has joined the agreement since that decision? Specifically since Justice Kennedy's opinion highlights that agreement as one of the factors that suggested South Dakota's regime was probably permissible. Brad I'll start with you.

Bradley Scott: Well, I think you just hit the nail on the head. The Supreme Court issues opinions. They cannot issue laws. So if the states are not willing to jump on board independently, then there has to be some legislative initiative at the federal level to force them into it. And if that's not going to be the case, and again, that goes back to the notification and the affected parties, the Supreme Court said, these are good ideas, but did they say that the states have to do it? No. And there are a lot of states where the cities and the municipalities don't agree with the state agenda, and Arizona is a prime example of that. And there's a lot of infighting. I've dealt with our legislators within the state for the last year. And every time I have gotten into the conversation about why doesn't Arizona join the SST, they cannot get the cities on board. Until there is some, I hate to use the term, but some stick to go along with the carrot, then I don't think you're going to get mass adoption.

Jennifer McLoughlin: You mentioned automation and software and that's kind of triggers my next question. Moving on from the issue of just sellers' awareness of the issue, let's move on to something more specific in terms of just compliance challenges, and what tools can be used to help sellers with compliance such as software. So, Brad, I want to start with you first. From your perspective, what are some of the general compliance challenges and related costs that sellers are facing? And what is being done to address that or help them improve compliance?

Bradley Scott: There are a couple of issues. And you know, if you're talking about a retail-only business, I would imagine that the sales tax software that's out there operates pretty cleanly. I know with our retail transactions, we don't really have any problems with the software that we're using, but we run into a lot of issues when it comes to the exempt transactions-- the exemption certificates that we have to collect. And then you start getting into the nitty gritty. And when you're looking at threshold amounts for whether or not your

business has met threshold in the various states, there are dollar thresholds. There are transaction thresholds. The threshold measurement periods, they vary between locality. So you've got \$100,000, \$200,000. In Arizona's case, it's a \$150,000 threshold. You've got different thresholds all across the country. Some of the states have a transaction threshold, some don't, those transactional thresholds can vary.

And then when you start talking about the measurement period for whether or not you reach that threshold, you've got yourself, basically a reporting nightmare that every single month you have to go through state by state and determine if you have to look at the sales for that state each month. If not, then you have to look at it for the prior quarter. You've got to look at all these different variables. And so when you start talking about the automation factors of it, for a small business like ours, we don't have a SALT team, we have a SALT person and that's me. I have an assistant that helps me with some of the technical paperwork, but really I am the entire SALT team at our company. And so, when you're discussing the tools that are available to me, yes, the tools are available to me, but I am also the accounting department. I am the benefits administrator. I am the payroll department. I wear a lot of hats. And so the idea that I am capable of helping our company stay completely compliant with SALT all by myself. It shows a lack of understanding of what small businesses face.

Just to give you a point of reference, Wayfair, the company that was on the other end of this court case, they're 1,500 times larger than us. In 2018, they were 1,100 times larger than us. So they were a fairly non-sympathetic plaintiff. And they were an easy target to go after for South Dakota. But I think South Dakota, had they come after a company of our size, might've found a different reception from the Supreme Court. So is there software available? Yes. Does it handle every part of sales tax? No. And that's where the real problems creep up, is that there are a lot more details that have to be addressed than just the sales tax itself.

Jennifer McLoughlin: Brad, turn to you. What are your brief thoughts on that issue in terms of what states can do to help improve compliance or help relieve some of the compliance challenges for sellers?

Bradley Scott: Well, I think that there are a couple of things that they could do right off the bat. First of all, the threshold should be set at some sort of uniform rate, whether it's a \$100,000 a year or some other arbitrary number is really not something that I'm too concerned with. But if they were all the same, then at least at that point, you would recognize, yes, I meet it in this state. I meet it in this state. Maybe I don't meet it in this state. If they did away with the transactional thresholds, that would simplify things enormously. And if you start thinking about smaller dollar transactions, it's very easy for a small parts manufacturer to get into transactional trouble for selling \$2 pieces across the country. And then if they made the measurement cycles, the threshold measurement

cycles, uniform. So by that, I mean the calendar year, every December 30th, you need to look through your books.

You need to see where you've met threshold for that year. And then if you did, you collect sales tax for that state the following year, and it's an easy yes or no decision. There, isn't a monthly audit that you've got to do just to make sure that you're complying. So those are a couple of things. Moving over to what Scott said about the SST. I think SST membership has significantly improved some of the challenges that we have with the SST member states. So much so that there are times when I consider deregistering from all 24. And then there are other times when I realize it's not worth the trouble as to do so. And one of the benefits that the SST states themselves receive just because they are members, is that a company like ours, which probably doesn't meet threshold in them. Um, and to be, let's be specific. There are 16 SST states where we do not meet threshold that we are remitting sales tax to on an ongoing basis. And thus far we send about \$1,200 a month to those 16 states. Now, no, that's not a lot of money, but we don't meet threshold. So we're kind of a voluntary compliance, and they're benefiting just because they are SST member states. If the other 21 states and the District of Columbia would join, then I know that our monthly remittances to, for states or localities where we do not meet thresholds, would go up, it would benefit them. And if they were to make this simple again, by going through our state's Department of Revenue, as opposed to having businesses actually have to reach out themselves, then they would probably find that their compliance rates surged. When you look at the number of businesses that are filing in Arizona that are not physically present in Arizona, it is a much smaller number than I would expect. And I think that most states would probably say the same. And I think Scott probably has a better figure on that.

Jennifer McLoughlin: Brad, how has the pandemic affected your business?

Bradley Scott: Well, if I looked back at March 1st through May 31st of this year and compared it to last year, our sales are down by almost 19 percent. By the same token, our volume is down by 26 and a half percent. And you may wonder why that difference is there. Last year to compensate, or to make up for the cost of compliance, we had increased prices. So there has been some inflationary effect here because of sales tax. But I can tell you right now, a sales tax collection over that period, March 1st to May 31st, from us, has dropped by 57 and a half percent year on year. Now, going to what Scott was talking about earlier, we are a fashion industry and people aren't buying jewelry, people aren't buying clothing. People are, they're focusing on groceries. They're focusing on the necessities. Now going into one of your questions earlier about how this is going to affect tax overall, much of last year, I heard that the states were giving us a grace period to come into compliance. And I heard rumors throughout the year that they were going to begin enforcing sales tax collection for remote sellers, more forcefully in January or sometime early in this year. And while those rumors still have not come to pass, I do wonder if the desperation that the

departments of revenue are now facing because the brick and mortar remittances have declined so much, if those enforcement periods aren't going to start proliferating.

Jennifer McLoughlin: So I want to get your thoughts on one final question regarding Congress, and specifically the idea of Congress wading into this issue now. There was a House subcommittee hearing back in March, during which retailers press lawmakers for federal legislation to standardize states regimes. I want to ask should federal lawmakers intervene on the issue at this point? And what's the likelihood that Congress will intervene? So Brad let's start with you, as I know that you testified during that subcommittee hearing.

Bradley Scott: I am not sure that they really want to get involved primarily because it's a states' rights issue. However, I think based on the conversations I've had with small businesses across the country, that unless the states actually start to operate with the understanding that they are not a standalone tax regime, but they're part of a greater tapestry. If the states aren't willing to do that on their own, I don't know how the federal government is not going to be forced to act. I spoke with a company last week that just found out within the last two weeks that they have sales tax compliance obligations. They did an internal audit and realized that they've got 28 states that they need to collect in and remit to. And they're almost two years behind the eight ball. So what happens to their business? I don't know, but I do know that there are going to be a lot more businesses like theirs that pop up.

So I think that the federal government has going to have to do something, but I do think that their hand is going to get forced as opposed to them paying voluntarily. I know from the standpoint of a small businesses operating remotely, one of the things that they could do, which would very quickly alleviate a lot of challenges that small businesses are facing, is allow for remote sellers to have a single rate within a state, rather than forcing remote sellers to have to collect at the municipal level. And I know Scott will have a better understanding of the history behind that, but from a layman's perspective, I think that would simplify things dramatically. And I don't see how they can't act. I just don't think that they're going to do it willfully.

Jennifer McLoughlin: Well, I hate to end this conversation. Thank you both for joining us today and weighing in on this post-*Wayfair* landscape. I really appreciate your taking the time to give us your thoughts.

Bradley Scott: Yeah. Thank you very much. It's not going away, but I hope that we can work towards an easier solution for everybody.