

# United States Senate

WASHINGTON, DC 20510

June 28, 2018

The Honorable Linda McMahon  
Administrator  
U.S. Small Business Administration  
409 Third Street, SW  
Washington, DC 20416

Dear Administrator McMahon,

Small businesses already face enough red tape that gets in the way of what they do best – growing their businesses and creating jobs. Unfortunately, there is no question that the Supreme Court’s decision in *South Dakota v. Wayfair* last week will unleash massive new regulatory burdens on small businesses, who will now be forced to become tax collectors for more than 12,000 taxing jurisdictions across the country. We write today to request that the Small Business Administration (SBA) develop a comprehensive plan in response to the Court’s decision to provide compliance assistance for small businesses to help them navigate these new complex requirements and comply with new tax burdens.

The internet has helped small businesses flourish by creating a more level playing field that allows them to reach new customers across the world. Until last week, these online small businesses were also protected from being forced to collect sales taxes in states where they have no physical presence. As a result of the *South Dakota v. Wayfair* decision, small businesses will now be forced to navigate a maze of red tape and tax regulations. As Chief Justice Roberts noted in his dissenting opinion, the burden of complying with new sales tax collection requirements will “fall disproportionately on small businesses,” who do not have the time or resources to understand the intricacies of how different states and localities treat various products.

In 2017, the Government Accountability Office (GAO) released an analysis of the effects of granting states new authorities to require out-of-state businesses to collect and remit sales taxes, which the Supreme Court did in last week’s decision. The report, which was based on interviews with state revenue agencies, subject matter specialists and a wide variety of businesses, described the significant compliance costs and challenges to businesses, such as:

- *New software costs.* GAO found that sales tax administration software would be necessary for businesses due to the “complexity created by unstandardized requirements across jurisdictions.” While South Dakota’s law provides free software for businesses operating in the 20 states that have adopted the Streamlined Sales and Use Tax Agreement, small businesses in non-participating states will need to purchase new software. GAO also found that businesses would face new costs even if free software is provided. For example, GAO described “labor intensive” start-up and administrative costs for businesses who will need to integrate the software into their systems, map their sales and devote resources to understanding how different states treat different products. GAO also noted that there would be costs associated with ongoing use and administration of the software.

- *Audit and assessment compliance costs.* GAO described how new sales tax collection authorities for states would put businesses at risk of additional auditing. GAO described its interviews with businesses, who “expect audit and assessment related costs to rise because of increased exposure to more tax jurisdictions.” In addition, GAO noted that “travel to, and securing counsel in, remote jurisdictions would create additional costs for audited businesses that would not occur in the current environment.” GAO found that businesses in states that do not collect a sales tax generally had little experience with a sales tax audit and that they may incur costs to alter business practices after initial exposure to sales tax audits. While the Court’s majority noted that businesses participating in the Streamlined Sales and Use Tax Agreement would be exempt from auditing, this would not protect small businesses in the remaining 30 states.
- *Costs associated with research and liability.* GAO also found costs for small businesses associated with conducting research on changing tax obligations. In particular, GAO found that “businesses will have to incur costs to understand their new compliance obligations, which can differ by state or tax jurisdiction.” In addition, GAO found that “[t]hese costs will likely increase the most for businesses that do not have established legal teams, software systems, or outside counsel to assist with compliance related questions.” This dynamic would be particularly problematic for businesses in states that do not have a sales tax, since they currently have no systems in place for sales tax collection.

While the GAO was unable to put a dollar figure on the total and average costs to small businesses, there is no question that these costs will pile up for small businesses. Given the ramifications of this decision on our nation’s small businesses, we urge you to develop a comprehensive plan to help small businesses comply with these new tax collection burdens, including ways the SBA’s resource partners can mitigate the many types of costs on small businesses described by the GAO. In addition, we urge you to work with the SBA’s Office of Advocacy and other federal agencies to determine the best way to provide financial support to small businesses affected by this decision.

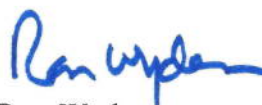
As the *Wall Street Journal* noted last week, “the businesses most hurt from the U.S. Supreme Court’s internet tax ruling aren’t the big online retailers—instead, the losers will likely be the millions of small-business owners who sell on marketplaces” like eBay. We must do everything in our power to protect these small businesses that create jobs and contribute to our economic growth.

Thank you for your attention to this matter.

Sincerely,



Jeanne Shaheen  
United States Senator



Ron Wyden  
United States Senator

CC: Mr. Major L. Clark III  
Acting Chief Counsel  
Office of Advocacy  
U.S. Small Business Administration  
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