

INDIANA

**Court Dismisses ACMA,
NetChoice Suit After Settlement****by Jad Chamseddine**

A suit brought by the American Catalog Mailers Association (ACMA) and NetChoice over Indiana's remote seller law was dismissed after the parties agreed to a settlement following *Wayfair*.

The Marion Superior Court's order granting voluntary dismissal in *American Catalog Mailers Association and NetChoice v. Indiana Department of Revenue* was entered August 27, the same day the parties filed a joint motion to voluntarily dismiss the complaint brought by the plaintiffs more than a year ago.

Indiana in 2017 enacted H.B. 1129, which was modeled after South Dakota's remote seller legislation (S.B. 106) and was immediately challenged by the ACMA and NetChoice over its legality in light of *Quill* precedent. *Wayfair Inc.* and *Overstock.com Inc.* joined the suit on August 29, 2017, but the case remained in trial court as the parties awaited an outcome in *South Dakota v. Wayfair Inc.*

Wayfair and *Overstock* were first to settle with Indiana, on August 16, agreeing to register and start collecting gross retail tax on sales into the state no later than October 1. The retailers also agreed to waive any right to appeal the dismissal of the case.

The joint motion entered into by the ACMA and NetChoice was largely similar to the one agreed to by *Wayfair* and *Overstock*, although the state made more concessions. In both motions, Indiana agreed to not enforce its remote seller statute before October 1. The ACMA and NetChoice also waived their rights to appeal the dismissal and agreed to bear their own costs.

But unlike its agreement with *Overstock* and *Wayfair*, the state's settlement with the ACMA and NetChoice committed to abiding by the provisions of Indiana Code sections 6-2.5-2-1 and 6-2.5-9-9, as laid out in H.B. 1129, until at least February 1, 2019.

Indiana agreed to maintain its good standing and compliance as a full member of the Streamlined Sales and Use Tax Agreement and

also to provide access to sales tax administration software for remote vendors free of charge. The Hoosier state will also provide relief for errors attributable to the use of the sales tax administration software.

Revenue Commissioner Adam Krupp told *Tax Notes* he was pleased with the outcome of the case and confirmed that its dismissal would allow Indiana to start its collection process without any complications. "The order allows Indiana to begin implementing the U.S. Supreme Court's decision in *South Dakota v. Wayfair Inc.* on October 1, 2018 as planned," he said in a statement.

Indiana had been in a predicament like the one now faced by South Dakota and Wyoming, which can't enforce their remote seller statutes because of pending litigation. South Dakota Gov. Dennis Daugaard (R) has scheduled a September 12 special session of the Legislature to deal with an injunction preventing the state from requiring remote sellers to collect sales taxes. And Wyoming has yet to let remote sellers know when it will start enforcing its remote seller law, recently announcing in a bulletin that it will update its notice "once the collection enforcement date is identified."

Whether the deal reached with Indiana will serve as a blueprint for other states with pending litigation remains to be seen. ACMA President Hamilton Davison told *Tax Notes* that he could not comment on ongoing litigation and that "what happens next in each case depends upon a number of different considerations particular to that litigation."

"In general, the ACMA continues to urge states to dramatically simplify their tax laws and to adopt a reasonable approach to sales tax compliance that recognizes the excessive burdens of the current system," Davison said in a statement. "At the same time, the ACMA remains committed to protecting its members against unduly burdensome state tax requirements through advocacy, negotiation and, when circumstances require it, the courts." ■