

## Senate Democrats Push for Moratorium On Remote Sales Tax Collection

by Paige Jones

Several Senate Democrats have urged chamber leadership to pass legislation before 2019 to enact a moratorium on state remote sales tax collection obligations and ban retroactive collection.

In a November 28 letter to Senate Majority Leader Mitch McConnell, R-Ky., and Minority Leader Charles E. Schumer, D-N.Y., several senators — Finance Committee ranking minority member Ron Wyden, D-Ore., Jeanne Shaheen, D-N.H., Jeff Merkley, D-Ore., and Maggie Hassan, D-N.H. — said Congress must protect small businesses from an “excessive burden” in the wake of the U.S. Supreme Court’s decision in *South Dakota v. Wayfair Inc.*, 138 S. Ct. 2080 (2018).

“While we disagree with the decision and believe it should be overturned, we hope to work with you to, at a minimum, enact robust protections for small businesses,” the letter says. “In particular, since more time is necessary for Congress to work with the states to protect small businesses, we believe that Congress should act immediately in the lame duck session to enact a moratorium on collection requirements and a prohibition on retroactive authority.”

A one-year moratorium would allow small businesses “much-needed time” to prepare and comply with state requirements, some of which will be effective as of January 1, 2019, the letter says. “We do not believe it is realistic to ask small businesses to have these new systems set up shortly after the holiday season, which is the busiest time of year for retailers.” According to the letter, “this is especially true in states where firms have no experience collecting sales taxes.”

The senators’ letter also calls for a “statutory ban on retroactive state sales tax collection . . . to ensure that small businesses are not punished by cash-strapped states they have no relation to.” Although the Court’s decision acknowledged the prospective nature of South Dakota’s law, “there is no guarantee that states will not take action against defenseless out-of-state small businesses” by imposing retroactive sales tax collection requirements, the letter says.

## Legislative Options

Three federal remote sales tax bills have been introduced in Congress since the *Wayfair* decision.

The Stop Taxing Our Potential (STOP) Act of 2018 (S. 3180) was introduced June 28 by Sens. Jon Tester, D-Mont., Shaheen, Merkley, and Hassan, to prevent states from requiring businesses without a physical presence in the state to collect sales taxes. The bill remains in the Finance Committee.

In the House, Rep. F. James Sensenbrenner Jr., R-Wis., introduced the Online Sales Simplicity and Small Business Relief Act of 2018 (H.R. 6824), which would bar states from retroactively imposing sales tax collection duties on remote sellers. The bill was introduced on September 13 and referred to the House Judiciary Committee.

On September 6, Rep. Bob Gibbs, R-Ohio, introduced the Protecting Businesses From Burdensome Compliance Cost Act of 2018 (H.R. 6724), which would limit state authority to require remote sellers to collect taxes owed by purchasers of goods and services. It remains in the House Judiciary Committee.

**‘Four senators is about how many votes that would get on the Senate floor,’ Bishop-Henchman said.**

Gibbs spokesman Dallas Gerber told *Tax Notes* that the senators’ letter “shows the bipartisan concerns for this issue,” adding, “We think it would be best for this group to introduce Rep. Gibbs’s bill in the Senate.” However, some sources were skeptical that Congress could — or would — pass such legislation, especially before the end of 2018.

“Four senators is about how many votes that would get on the Senate floor,” said Joseph Bishop-Henchman, executive vice president of the Tax Foundation. “It’d be one thing if it preempted states who are moving ahead without the hard work of simplification and uniformity. But it also punishes good actors like Georgia, Indiana, Iowa, and Utah, who are collecting because they’ve done everything right,” he told *Tax Notes* in a November 28 email.

Hamilton Davison, president of the American Catalog Mailers Association (ACMA), which led

the fight against online sales taxation, told *Tax Notes* he is hopeful Congress will enact such legislation during the lame-duck session, but he recognizes it would be a challenge. "Right now, if we don't get this relief in the lame-duck [session], it'll be too late," Davison said, adding that some states have already begun collecting. "This is what we need right this very moment."

In October the ACMA sent a letter to Congress urging it to support and advance legislation to delay state collection obligations on remote sellers until April 1, 2019, and to institute a ban on seeking remote sales taxes for sales conducted before *Wayfair* was decided.

Davison said the ACMA would prefer a one-year phase-in, similar to what the Democratic senators advocate in their letter. However, after congressional staff told the organization that picking an earlier start date would increase their chances of securing a delay, the ACMA chose April 1, the start of the second quarter, Davison said.

When asked for comment on the senators' letter, National Conference of State Legislatures spokesman Mick Bullock pointed to a letter NCSL leaders sent to congressional leaders in September, voicing opposition "to federal legislation that seeks to limit and delay state implementation" of the *Wayfair* decision.

In that letter, NCSL President and Illinois state senator Toi Hutchinson (D) and president-elect Robin Vos (R), speaker of the Wisconsin Assembly, argued that "states have proven that they are working diligently and thoughtfully to create a fair and simplified collection system that will minimize compliance burdens and create sales tax parity for all sellers." ■