



Ways Arizona May Be Able to Improve its Response to the Wayfair Decision *(Part Five)*

In this month's state and local tax (SALT) column, Busby identifies ways that Arizona may be able to improve its response to the Wayfair decision. This is the fifth in a series of five articles addressing Arizona's response to the Wayfair decision.

As was the case in many other states, rather than take time to study what they should do to best position the state to implement — and overcome any challenges to — economic nexus provisions following *Wayfair*, Arizona lawmakers acted quickly in hopes of collecting additional revenues from remote vendors as soon as possible.

Because none of the economic nexus statutes enacted in other states have been adjudicated by a court, nobody knows whether a state that has not adopted the Streamlined Sales and Use Tax Agreement (SSUTA) or otherwise simplified its tax system in all six of the ways *Wayfair* emphasized will be able to successfully defend its economic nexus statute. However, states that replicate, or virtually replicate, South Dakota's sales tax structure in all material respects will be best positioned should a challenge arise. Accordingly, Arizona lawmakers should consider either revising the state's sourcing rules so sales by remote sellers are sourced to the same jurisdiction as sales by in-state vendors, or requiring all counties, cities and towns to impose taxes at the same rate. In addition, lawmakers should consider the best way to eliminate, or at least minimize, the other burdens described in prior articles that the state imposes on remote sellers.

To that end, if Arizona is not going to adapt the SSUTA in order to eliminate, or at least minimize, the burdens it imposes on remote sellers, it should consider offering free software to retailers to help them navigate the state's unique sales tax system and providing immunity from audit liabilities to retailers that rely on such software to make taxability and tax rate decisions.

Finally, as I pointed out in a previous column, lawmakers created a trap for the unwary by including all of the options for municipalities to tax items not taxed by the state in a separate statute that makes no references to these option in the state's retail tax statute, A.R.S. section 42-5061. They easily could resolve this trap for the unwary during their next legislative session by simply adding a provision in the state's retail tax statute that cross-references the statute they added this session that includes all of the options for municipalities to tax items not taxed by the state, or by simply moving those provisions into the state's retail tax statute, A.R.S. section 42-5061. ●



by James G. Busby, Jr., CPA

James G. Busby, Jr., CPA, is a state and local tax attorney at The Cavanagh Law Firm. Busby previously worked in the SALT departments at Arthur Andersen and Deloitte & Touche. Before entering private practice, Busby was in charge of all transaction privilege (sales) tax audits at the Arizona Department of Revenue. If you have any questions, please contact the author. He can be reached at (602) 322-4146 or JBusby@CavanaghLaw.com.