

June 13, 2022

Chairman Ron Wyden
Committee on Finance
United States Senate
219 DSOB
Washington, DC 20510

Ranking Member Mike Crapo
Committee on Finance
United States Senate
219 DSOB
Washington, DC 20510

Re: Hearing on “Examining the Impact of *South Dakota v. Wayfair* on Small Business and Remote Sales”

Chairman Wyden and Ranking Member Crapo:

I am writing on behalf of the members of the National Retail Federation (NRF), and particularly the members of our Small Business Retail Council, to provide our views on the important topic of the “Impact of *South Dakota v. Wayfair* on Small Business and Remote Sales.” Prior to the Supreme Court’s decision in *Wayfair* and subsequent enactment of state tax laws codifying the parameters of the decision, our small business retail members considered the lack of a level playing field with respect to collection of sales taxes to be their biggest competitive disadvantage and the cause of a loss of many sales. They believe that concern has now been fairly addressed.

By way of background, NRF is the world’s largest retail trade association, and passionately advocates for the people, brands, policies and ideas that help retail thrive. From its headquarters in Washington, D.C., NRF empowers the industry that powers the economy. Retail is the nation’s largest private-sector employer, contributing \$3.9 trillion to annual GDP and supporting one in four U.S. jobs — 52 million working Americans. For over a century, NRF has been a voice for every retailer and every retail job, educating, inspiring and communicating the powerful impact retail has on local communities and global economies. NRF’s Small Business Retail Council brings together the voices of our smallest members, representing all areas of the country. These retailers generally own one or two brick and mortar stores in their community, although even our smallest members are likely to have a website and may have a number of sales out of state. A few members of this group do not have stores and make all of their sales over the internet.

In anticipation of this hearing in the Senate Finance Committee, we reached out to the members of our Small Business Retail Council to ask about their experience with navigating the state tax laws for collection of sales tax on remote sales now that those laws have been in effect for several years. We learned that for the most part, these small brick and mortar retailers do not have a sufficient level of sales into any individual state to be required to collect sales taxes on the sales that they make to out of state customers. This result is entirely consistent with the states’ expectation when guided by the South Dakota legislation placing a requirement of \$100,000 in sales or more than 200 transactions into the state before tax collection would be required. It is very rare for these small sellers to exceed this threshold. One retailer commented that the only state they were concerned about

exceeding the threshold in was California when they had a threshold of 200 transactions, but California removed the 200 transactions threshold and now requires sales over \$500,000 into the state to invoke the collection requirement. This seems to have alleviated the potential problem for these small sellers. Most of these small sellers report that they also make sales through market places, but this does not present a compliance concern since the marketplaces do the work.

We asked our small retailers whether they purchased software to assist them with tax collection on remote sales. Most said they would consider software if the level of their sales increased, but for the most part they are monitoring that activity themselves before making the software investment. One retailer told us they made the investment in software in anticipation of growing their remote sales, the software cost \$99 per month, and the experience was seamless. One of our respondents, who sells only over the internet, said he exceeds the threshold for collection in eight states. This seller says that he does use software and upon occasion gets assistance from a CPA. He reports that the experience has been smooth, and he also believes that the Wayfair requirements are fair, reflecting appropriate policy given the future direction of the retail industry.

In conclusion, our small business members are pleased with the *Wayfair* decision and subsequent state tax laws implementing that decision because it removes the competitive disadvantage they suffered with respect to collecting taxes on in-store sales when internet sellers did not collect tax and does not impose an undue burden on small sellers.

Sincerely,



David French
Senior Vice President
Government Relations

cc: Members of the Senate Committee on Finance