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ARIZONA TAX RESEARCH ASSOCIATION

ATRA OPPOSES HB2702

"Without first simplifying Arizona's tax system, HB 2702's economic nexus provisions probably would not survive a Constitutional challenge."

When the Supreme Court eliminated the physical presence test in *Wayfair v. South Dakota*, allowing states to apply an economic nexus standard and thus impose their sales taxes on remote sellers, ATRA [welcomed the decision](#). We called on policymakers to immediately begin the necessary work to address this complex issue. With nothing accomplished during 2018, ATRA recommended a study committee to address the many issues involved from policy to implementation.

HB2702

A late introduced bill to create economic nexus fails to address all the necessary simplification and implementation issues. Clearly, the Department of Revenue has not been involved until the last few days. This alone should worry lawmakers.

Thus far, a limited stakeholder process resulted in **proponents conceding the bill needs to be completely rewritten.**

Litigation Threat

HB2702 proponents provided a legal opinion arguing sales tax simplification is unnecessary and the state should ignore threats of litigation. They suggest the substantial effort states like South Dakota have undergone to simplify their systems, which the Court argued were reasonable efforts to ease burdens on remote sellers, were actually unnecessary and can be ignored.

In [ATRA's legal opinion, formed by several of the top state and local tax attorneys in the state](#), Arizona must simplify its sales tax system considerably in order to not run afoul of the commerce clause and undue burden concerns in *Complete Auto*.

Several national organizations have written on the topic: the [Tax Foundation](#) wrote that Arizona must not proceed without addressing simplification, the [Council on State Taxation](#) graded Arizona a D on sales tax administration, [NetChoice](#) and the [American Legislative Council](#) argue HB2702 creates undue burdens on remote sellers in violation of the Commerce Clause.

What about all the other states?

Pointing out that 35+ states have moved on the *Wayfair* decision provides no context to the broader issue. 23 states are members of the Streamlined Sales and Use Tax Agreement (SSUTA) like South Dakota and have already accomplished years of reforms to prepare for this moment. Most other states already had laws on the books related to remote nexus, meaning the issue had been debated and discussed prior to the decision. Arizona did not have a remote seller nexus law on the books and starts from scratch.

States with similarly complex sales tax laws as Arizona have undergone year's long efforts to address their challenges. These state led task forces and commissions should serve as both a warning and a guidepost.

ALABAMA

After years of study, Alabama created Simplified Sellers Use Program (SSUP)

- SSUP provides single registration, online pay portal, single base
- One tax rate for all remote sales (8%) shared between state & localities
- Provided remote sellers 3 months to comply AFTER DOR was ready

LOUISIANA

Louisiana created "Sales and Use Tax Commission for Remote Sellers"

- Will create a uniform base for remote sellers, single point registration
- Has delayed mandatory collection until work is complete (targeting 2019)
- Single rate of 8.45% shared between state & localities

COLORADO

After years of study & implementation, created a 2-yr grace period (through May '19)

- CDOR is "making a concerted effort to bring consistency and fairness to sales tax laws for both in-state and out-of-state retailers."
- Certified 5 databases for rate lookup, created hold harmless provisions
- Approved CSPs allow online payment through a portal

ATRA's Position:

Arizona's TPT system should be simplified in a manner that meets the demands of the *Wayfair* decision and makes it both simple and fair for remote sellers to comply. In addition to keeping Arizona out of unnecessary litigation, it is good public policy. In a rush to enact this policy and reap windfall from the new tax revenue, HB2702 proponents are trying to convince you good tax policy is irrelevant.

Uniformity: The tax classifications Arizona intends to apply to remote sellers need to be uniform between state and municipalities. HB2702 fails on this front. Proponents offer a half measure which insists by reference to the model city tax code that imagines remote sellers complying with a uniform base at the state level as it relates to city taxes, effectively creating yet another base of taxation specific only to remote sellers.

Implementation: DOR must be ready to implement and administer a remote seller law before it becomes the law of the land. There needs to be software available for taxpayers to use, a reliable taxability matrix, and enough lead time for remote sellers to apply for licenses and "code/map" their products to Arizona's laws.

Tax Increase: Taxpayers should get reform in recognition for the [GAO estimated \\$190 million to \\$293 million](#) tax increase this imposes, and not simply be a windfall for state and local governments. The [JLBC Fiscal Note](#) only addresses state revenues and does not estimate county and municipal tax increases associated with going from Use Tax to TPT, which will be as high as [5% on transactions](#) in some areas. This [chart](#) shows the difference in rates in each city between Use Tax and TPT.

A deliberative process would provide policymakers the opportunity to settle on a reasonable estimate of the increased taxes paid by individuals and businesses.

Opportunities for reform are difficult to find and new revenue provides a window for that opportunity. Lawmakers should not hastily pass a bill that closes that window.