

Lowering Costs for Small Business Act – Discussion Framework

Senator Maggie Hassan

The problem: In 2018, the Supreme Court’s [decision](#) in *South Dakota vs. Wayfair* required small businesses to start acting for the first time as sales tax collectors for out-of-state governments. As a result, when a small business sells products into another state, that state and all its local governments can require the small business to collect and transmit their sales taxes.

The Court’s decision has imposed significant burdens on small businesses. Sales tax experts [estimate](#) that there are between 10,000 to 12,000 state and local tax jurisdictions within the United States. There are so many complexly overlapping tax jurisdictions that tax experts cannot even agree on how many tax jurisdictions there are across the country.

These thousands of state and local tax jurisdictions can have [widely varying rules](#) regarding sales tax rates, what products are subject to sales tax, when and how to register with tax authorities, what tax paperwork must be filed, and tax paperwork deadlines. Further, small businesses run the risk of audits from any of these thousands of state and local governments for making mistakes in their good-faith attempts to adhere to these widely differing sales tax rules.

In 2022, small business owners [testified](#) to the Senate Finance Committee regarding the immense costs of collecting and sending sales taxes to thousands of out-of-state governments. A business owner from New Hampshire [testified](#) that his business spends \$50,000 a year to collect sales taxes for 1,500 out-of-state governments.

In order to function as sales tax collectors for out-of-state governments, small businesses are having to incur costs relating to maintaining sales tax compliance software, monitoring changes to state and local sales tax law, registering with state and local tax authorities, filing tax paperwork with state and local governments, and receiving accounting and legal advice.

The solution: This Discussion Framework would provide general protections for small remote sellers from overreach by out-of-state sales tax authorities. Further, in order for state and local governments to require small businesses to act as their sales tax collectors, the Discussion Framework would require these out-of-state governments to adopt specific simplification measures that would greatly reduce the burdens they’ve imposed on small businesses.

General protections for small businesses: The Discussion Framework would prohibit a state or local government from imposing sales tax collection obligations on a remote seller unless the out-of-state government protects small businesses by:

- Exempting remote sellers with less than \$10,000,000 in annual sales from having to collect sales taxes
- Banning retroactive tax collection from before the 2018 *Wayfair* decision
- Offering free compliance services, such as free software
- Exempting remote sellers from penalties for mistakes made by third parties, such as software

Simplification measures: The Discussion Framework would also prohibit a state or local government from imposing sales tax collection obligations on a remote seller unless the out-of-state government adopts certain simplification measures for small businesses.

- *Streamlined Sales Tax states:* Currently, 24 states are members of the Streamlined Sales Tax Agreement, which contains simplification measures that significantly reduce the burdens of sales tax collection for remote sellers. The Discussion Framework would require states within this Agreement to adopt several additional simplification measures, such as a centralized filing portal and measures to reduce audit burdens.
- *Non-Streamlined Sales Tax states:* The Discussion Framework would require states that are not members of the Streamlined Sales Tax Agreement to take several steps, including:
 - Better protect small businesses by exempting remote sellers from collecting sales taxes if they sell less than \$1,000,000 a year into the state
 - Adopt one sales tax rate across the state and all its localities for purposes of collecting taxes on remote sales
 - Fully compensate small remote sellers for the compliance costs they incur in collecting and sending sales taxes