

United States Senate

WASHINGTON, DC 20510

November 28, 2018

The Honorable Mitch McConnell
Majority Leader
United States Senate
S-230, U.S. Capitol
Washington, D. C. 20510

The Honorable Charles Schumer
Minority Leader
United States Senate
S-221, U.S. Capitol
Washington, D. C. 20510

Dear Leader McConnell and Leader Schumer,

We write to urge you to enact legislation before the end of the year to protect small businesses from excessive burdens as a result of the U.S. Supreme Court's decision in *South Dakota v. Wayfair, Inc.* 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. 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.

In response to the Court's decision, states have enacted a variety of laws and regulations attempting to impose sales tax collection requirements on out-of-state businesses. These laws include an array of features that will be nearly impossible for small businesses to navigate without expensive software, including different implementation dates, *de minimis* safe harbor thresholds for small businesses and definitions of products and services subject to taxation. In addition, since some of these laws may run afoul of the checklist created by the Court in its *Wayfair* decision, it is not clear that these various laws will be upheld in court, adding a cloud of further uncertainty. It is also possible that states will attempt to seek retroactive tax collection, imposing additional burdens and creating additional constitutional challenges.

Some states have established implementation dates as soon as January 1, 2019. As the Government Accountability Office has noted, integrating sales tax collection will require significant time and "labor intensive" start-up costs for small businesses. 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. This is especially true in states where firms have no experience collecting sales taxes.

A moratorium would provide much-needed time for small businesses. Previous Congressional consideration of remote sales tax legislation shows that there is bipartisan support for a runway, or phase-in period, for small businesses to comply with any new collection requirements. For example, both the *Marketplace Fairness Act* and *Remote Transactions Parity Act* would have provided time for small businesses to adjust. We believe that enacting a one-year moratorium would comport with the intent of these bills.

We must also ensure that small businesses are not subject to retroactive sales tax collection requirements. While the Court's decision pointed to the South Dakota's lack of retroactivity, there is no guarantee that states will not take action against defenseless out-of-state small businesses. We believe a statutory ban on retroactive state sales tax collection is necessary to ensure that small businesses are not punished by cash-strapped states they have no relation to.

Thank you for your attention to this matter, and we look forward to working with you on this issue in the future.

Sincerely,



Jeanne Shaheen
United States Senator



Ron Wyden
United States Senator



Jeffrey A. Merkley
United States Senator



Maggie Hassan
Margaret Wood Hassan
United States Senator