IFI Bulletin

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More Details Emerge as States Apply Sales and Use Tax Policies for Remote Sellers of Products

In 2018, the Supreme Court addressed the problem of use tax collection by ruling in *South Dakota v. Wayfair* that a state could require any remote seller who has an economic connection with it to collect and remit its use tax for sales to purchasers within that state. In doing so, the Supreme Court struck down its physical presence requirement that had been in effect since its 1967 decision in *National Bellas Hess* (reaffirmed in its 1992 *Quill* decision), upon which remote sellers had relied to avoid collecting use tax on sales to customers in states in many instances.

An important question that is lurking in the background is the impact on the incentive and overall marketplace now that the Supreme Court has modernized its state sales and use tax jurisprudence and eliminated the outmoded and illogical physical presence requirement. Remote sellers now find themselves treated the same way as brick and mortar retailers when it comes to collecting sales and use taxes.

Even more complex than for many online sellers of goods is the nature of the incentive and promotional merchandise industry. Consider that a manufacturer or supplier may sell products to a third party (distributor) with a client or buyer in a different state that are then drop shipped to multiple locations in multiple states to a clients' customers or employees. Where does the collection of use tax begin and end?

At least 38 states so far have imposed an obligation on remote sellers, and it seems likely that the other seven states that impose sales and use taxes will do so soon. The starting date for collecting and remitting use taxes varies by state.

For example, California did not require remote sellers to collect and remit its sales and use tax until April 1, 2019. Moreover, the collection and payment obligation applies only if total retail sales to California residents exceed $500,000 annually. Illinois required remote sellers to collect and remit its sales and use tax on October 1, 2018. Illinois has the same *de minimis* thresholds as South Dakota, *i.e.*, it applies to those with retail sales of at least $100,000 <u>or</u> with at least 200 transactions annually with Illinois residents. Although New York's law requiring collection and payment went into effect on the date of the Supreme Court's decision in *Wayfair*, June 21, 2018, New York does not appear to have enforced its law until 2019. New York's *de minimis* thresholds are retail sales of at least $300,000 <u>and</u> with at least 100 transactions annually with New York residents.

Suffice it to say, remote sellers should be collecting and remitting sales/use taxes now, even if some states will not require it until October 1, 2019. (Texas is one such state, and its *de minimis* threshold is the same as California's, annual retail sales to Texas residents over $500,000.)

For the complete text of the Summer Washington Update prepared exclusively for the IFI by George Delta, Esq., the IFI's Legal Counsel, visit **here.**

The IFI Submits Application for Accreditation as Standards Developer for Industry

The Incentive Federation submitted its application to the American National Standards Institute in early June to be approved as an Accredited Standards Developer for Workforce Incentives, Rewards and Recognition Standards. Additionally, the IFI submitted its Proposal for a New Field of Technical Activity to International Organization for Standards. Both submissions are the first steps in the IFI's efforts to develop operating standards for various programs implemented by companies in the broad incentive industry for the benefit of their clients.

A committee on Standards Development appointed in March assisted in reviewing the applications and proposal. Once these proposals are approved by ANSI and ISO, the IFI will begin recruiting US and global experts to participate on standard development projects and assist in forming, crafting and developing standards for approval.

Committee members are:

Donna Chrobak - Representing the Incentive Marketing Association
VP Sales & Marketing
Summit Recognition Solutions

Patrick M. Delaney - Representing the Society for Incentive Travel Excellence
Managing Partner at SoolNua

Mike Donnelly, CPIM - Representing Hinda Incentives
President
Hinda Incentives

Paul A. Kiewiet, MAS - Representing the Promotional Products Association International
Executive Director
Michigan Promotional Products Association

Melissa Van Dyke - Representing the Incentive Research Foundation
President
The Incentive Research Foundation

The standards initiative includes the leadership of standards consultant, Lee Webster, who has extensive experience in human resource management standards development.

Previous **Bulletins** have covered the reasons for the IFI to pursue standards development and the IFI Board believes the industry has a lot to benefit from the implementation of standards in the coming years. In summary:

Standards are:

- Documents that provide a collection of best practices, guidelines, customs, experiences, and practical solutions to guide organizations on a topic
- Collaboratively and voluntarily developed through consensus
- Regularly revisited and revised

Standards are not:

- Regulations
- Laws
- Necessarily "how to implement" documents
- Certifications
- Individual organizational policies and practices

The benefits of creating standards for incentives, rewards and recognition are:

1. Improves implementation of programs within organizations
2. Permits “apples to apples” performance comparisons between programs and providers
3. Reduces the cost of program start up, operations, and guides use of resources
4. Further confirms incentives and recognition as a profession
5. Establishes common terminology and metrics for industry
6. US federal law requires federal regulators to defer to existing industry standards. An executive order also encourages federal agencies to use industry standards rather than make its own rules.

A very practical example that most industry practitioners are familiar with is the development and implementation of safety incentive programs. In years past the Occupational Safety and Health Administration posed some very negative views about many safety incentive programs, and it’s taken years of dedicated advocacy to persuade OSHA that properly designed safety incentive programs can reduce job injuries and deaths, improve worker health and productivity and contribute positively to a company’s bottom line.

If industry standards had been in place in the early 2000s, it’s likely that OSHA would have looked to our industry as a model and would have accepted the principles for the design and use of safety incentive programs. The same can be said for health and wellness programs and even for the guidelines that govern employee achievement awards and the tax preferences that the industry has long lobbied for.

Stay tuned for future developments as we continue the industry standards initiative.

Incentive Research Foundation Releases Top Performer Study: Financial Sector

This report summarizes findings from data collected across 400 firms including multiple financial services firms. Of the 123 financial firm respondents, 64 were classified as average performing financial firms and 59 were classified as top performing financial firms. The report first presents key overall findings, then drills down to results for sales reward programs, channel partner reward programs, and employee reward programs at financial services firms.

Top performers also were required to demonstrate *both* of the following:

Strong performance with customers

• 90% or higher in customer satisfaction or loyalty, or
- Customer acquisition rates higher than 5%

Strong performance with employees

- 90% or higher in employee satisfaction or
- Loss rate of less than 5% per year among high-performing employees

Executives at top performing financial services firms are significantly more likely than those at average performing firms to:

- Regard their reward and recognition programs as a *competitive advantage* (52% more likely).

- Believe that rewards and recognition are a critical tool in managing the performance of the company (27% more likely).
- Strongly agree that their reward and recognition programs are effective retention tools (36% more likely).

Top performing financial services firms were also more likely than average performing firms to:

- **Consolidate:** Although almost 60% of top performing financial firms maintain multiple programs designed under a common theme, they are significantly more likely than average firms to have a single program across the company (59% more likely).
- **Collaborate:** Top performing financial firms are more likely to design and manage programs with strong collaboration among multiple departments (20% more likely).
- **Control:** Top performing financial firms are nearly twice as likely as average performers to centralize all non-cash rewards activity and manage it top-down.
- **Reach:** Top performing financial firms are more likely to structure their programs with the goal of reaching each participant versus only recognizing the top performing individuals in the organization (29% more likely).

For the whitepaper and full study please go **here.**

2019 IFI Board of Directors

If you have questions, advice for the Board, or want to raise issues for the Board to think about, please contact Steve Slagle at steves3309@gmail.com or 864-710-6739.