

## Who are the Incentive Federation's members?

The Incentive Federation is the only organization whose membership and leadership includes all the industry's national trade associations, as well as individual industry companies. It is under The Incentive Federation umbrella that the collective interests of the Incentive Marketing Association (IMA), the Promotional Products Association International (PPAI), The Incentive Research Foundation (IRF), the Recognition Professionals International (RPI) and Society for Incentive Travel Excellence (SITE) are discussed, nurtured and advanced.

### Some Perspective

#### % of U.S. businesses using non-cash rewards

1996 – 26%

2015 – 84%

#### \$\$ in Incentive Marketplace

1996 - \$27 billion

2015 - \$90 billion

## Supreme Court Rules on Out-of-State Collection of Use and Sales Taxes

The U.S. Supreme Court held in *South Dakota v. Wayfair, Inc.*, 585 U.S. \_\_\_\_ (2018) on June 21, 2018 in a 5-4 decision that states have authority to collect sales tax on goods and services delivered from remote sellers that don't have a physical presence in their states.

In overturning previous and long-standing Court decisions requiring the physical presence of a seller in the state where goods are delivered, the Court determined that physical presence is no longer required before a state can require an out-of-state seller to collect its sales or use tax. George Delta, IFI's general counsel, stated, "For what it may be worth, even the four dissenters agreed that the two earlier cases were wrongly decided. Their preferred solution would have been to let Congress fix the problem."

"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," continued Delta. "Henceforth, remote sellers would find themselves treated the same way as brick and mortar retailers when it comes to collecting sales and use taxes. The effects of the holding in *Wayfair* on various remote sellers in the broad incentive industry are not as clear or obvious."

"In the incentive marketplace, the employer or other customer would like a "turn key" incentive program and would not want to be responsible for collecting, reporting, and remitting sales or use taxes. The onus on performing these functions is bound to end up falling on incentive firms. Therefore, incentive firms that have not begun doing so already need to start adding the cost of sales and use tax compliance into their programs. As with traditional retailers, the administrative compliance costs are bound to hurt smaller incentive firms more than larger ones."

For a more complete analysis of the Court's ruling and his interpretation of the effects on our industry, read Delta's July 2018 [Washington Update](#) prepared exclusively for the Incentive Federation.

## Questions Dealing with New Supreme Court Ruling on Use and Sales Taxes

The management of the collection of use and sales taxes in the incentive and promotional industry isn't as simple as that of remote re-sellers who are essentially retailers selling goods via the internet. The diverse set of companies providing services and handling products used for motivational and promotional purposes makes determining the responsibility for collecting and reporting such taxes more challenging.

For example:

1. Will manufacturers of brand merchandise that drop ship merchandise to end users on behalf of an incentive house be responsible for reporting and collecting taxes? Or, is the incentive house responsible?
2. What if the merchandise is shipped to award recipients in several different states, each with different sales or use tax laws?
3. Will a performance improvement company or their clients be held liable since the clients are eventually paying for the merchandise?
4. Will promotional products distributors, suppliers, end buyers or end users need to collect and remit sales and use tax to the states, and if so, in which states?
5. Will National Marketing Companies or Incentive Rep companies be responsible for tracking taxes for merchandise bought by clients who then distribute products to recipients scattered across the country?

### Send Us Your Case Studies To Share With Others

To help our Federation members better understand and manage the effects of the recent ruling on the collection of use and sales tax on their businesses, we invite members to relate how they are, have been or plan on dealing with the collection of such taxes. We'll publish your case studies anonymously, if you wish, for others to learn from. Just send a brief email outlining the process or procedures being used and we'll take it from there, giving attribution and credit if you wish.

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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](mailto:steves3309@gmail.com) or 864-710-6739.