Sales, Use Tax Voluntary Disclosure Agreements Increased After *Wayfair*

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There's been an uptick in voluntary disclosure agreements (VDAs) because of the Supreme Court's 2018 *Wayfair* decision and the changing economic nexus landscape in states, according to a tax practitioner.

Marilyn Wethekam, partner at Horwood Marcus & Berk Chtd., said she has done about 150 VDAs since the beginning of the year — more than she did in all of 2019. “They are primarily sales tax,” she said. "And it is pretty much driven by *Wayfair*.”

Speaking during a November 12 panel at the Northeastern States Tax Officials Association’s 2020 conference, Wethekam said she thinks more taxpayers are now realizing that they met the threshold for collecting and are deciding to come forward.

Alan Levine, chief counsel in the District of Columbia Office of Tax and Revenue, said the District’s total revenue from VDAs in fiscal 2020 was $11.8 million, with 160 taxpayers brought into compliance — an increase from $9.5 million and 147 taxpayers in fiscal 2019. According to Levine, the majority of the VDAs were for sales and use tax.

Levine said VDAs primarily target nonfilers and are typically aimed at clearing up compliance issues related to income and sales and use taxes. VDAs can usually be submitted anonymously up until the taxpayer signs an agreement with the tax department, according to the panelists.

To qualify for a VDA, generally a taxpayer can’t be under audit or contacted by the department, according to Wethekam. And the lookback period in VDAs is generally much shorter than the lookback period in amnesty programs, she said.

Wethekam also said that there are taxpayers that might not be able to pay, and the question with a VDA program is whether a taxpayer can work out a payment plan and how they should file returns thereafter. She encouraged tax administrators to be flexible with taxpayers "in the current day and age with respect to VDAs."