



## Streamlined Sales Tax and The *Wayfair* Decision

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Senate Tax Committee

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# Streamlined Sales Tax - Agenda

- Why are we doing this?
- Who's involved?
- Streamlined goals
- How is Streamlined governed?
- Key Features
- Certified Service Providers
- The *Wayfair* Decision
- Streamlined and Minnesota Successes to Date
- Goals for 2021

- *Quill v. North Dakota* (1992)
- Compliance with sales tax laws by multi-state corporations is too complex
- Local merchants suffer from lack of level playing field
- Significant losses of tax revenue due to growth in electronic commerce and inability of states to administer use tax with consumers

# Why We Do It – Identifying What Makes the System Burdensome

- Separate state and local tax administration
- Unclear rules on who has the right to tax a transaction
- Too many tax rates within each state and locality
- Different state and local tax bases
- Separate state definitions
- Retailers held liable for tax when a buyer lies or fails to provide proof of an exempt sale
- Returns different in every state
- Separate registration required in every state

# Who's Involved?

- Non-profit corporation controlled 100% by member states
  - Voluntary Participation
  - 23 full member states
  - 1 associate member state
- Local governments
- Tax practitioners
- Business community

# Streamlined Goals

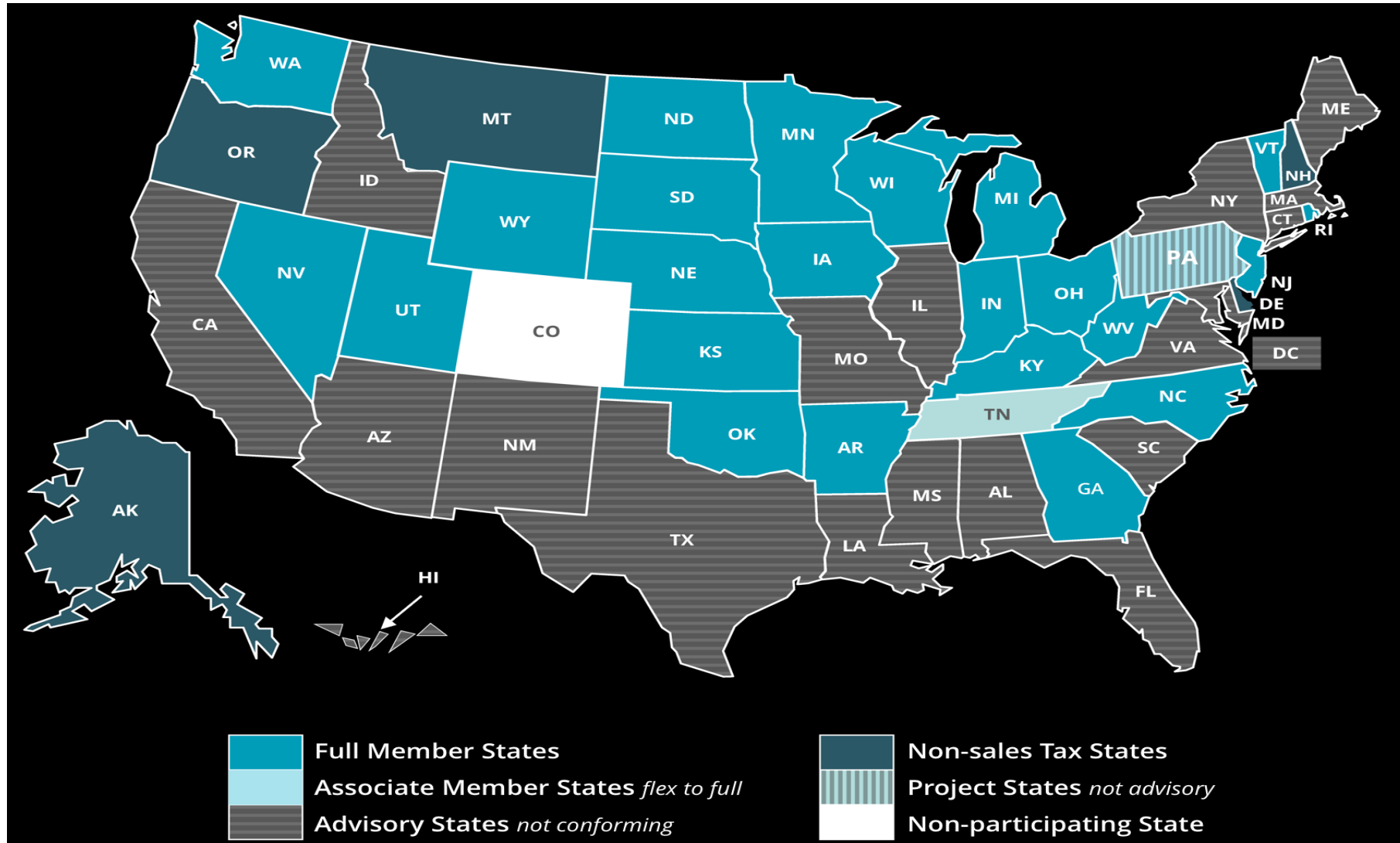
- Create a simpler system for administering the various state and local sales taxes
- Make processes uniform if it cannot be made simple
- Balance the interests of state sovereignty with the interests of simplicity and uniformity
- Leverage the use of technology to ease the retailer's tax collection and reporting

# Results: Streamlined Sales and Use Tax Agreement (SSUTA)

- SSUTA effective October 1, 2005
- Current membership (as of 1/1/2020)
  - 23 full members
    - Arkansas, Georgia, Kansas, Kentucky, Indiana, Iowa, Michigan, Minnesota, Nebraska, New Jersey, Nevada, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota, Utah, Vermont, Washington, West Virginia, Wisconsin, Wyoming
  - 1 associate member
    - Tennessee

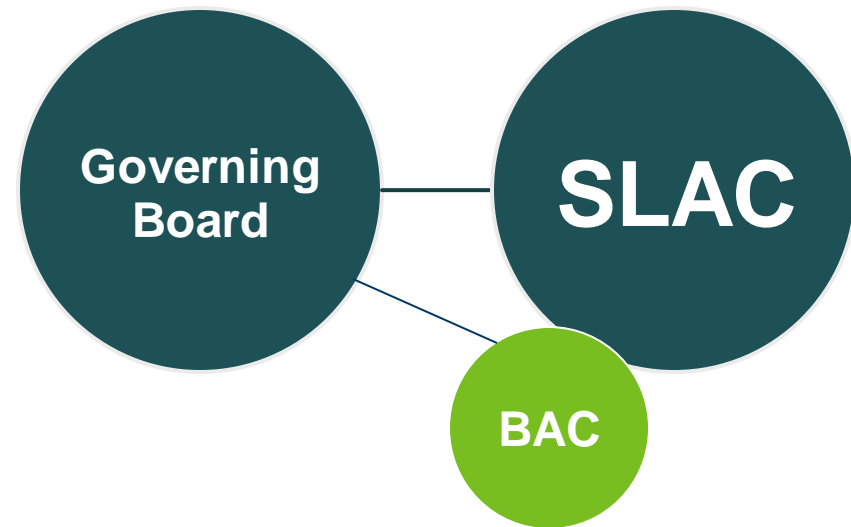
- The Agreement does not override state laws.
  - However, a member state may be found out of compliance if tax laws do not comply with the agreement.
- States found out of compliance may receive the following sanctions:
  - Suspension on right to vote
  - Suspension of delegates on the Governing Board
  - Alteration of membership status

# Streamlined State Status 01/01/2020

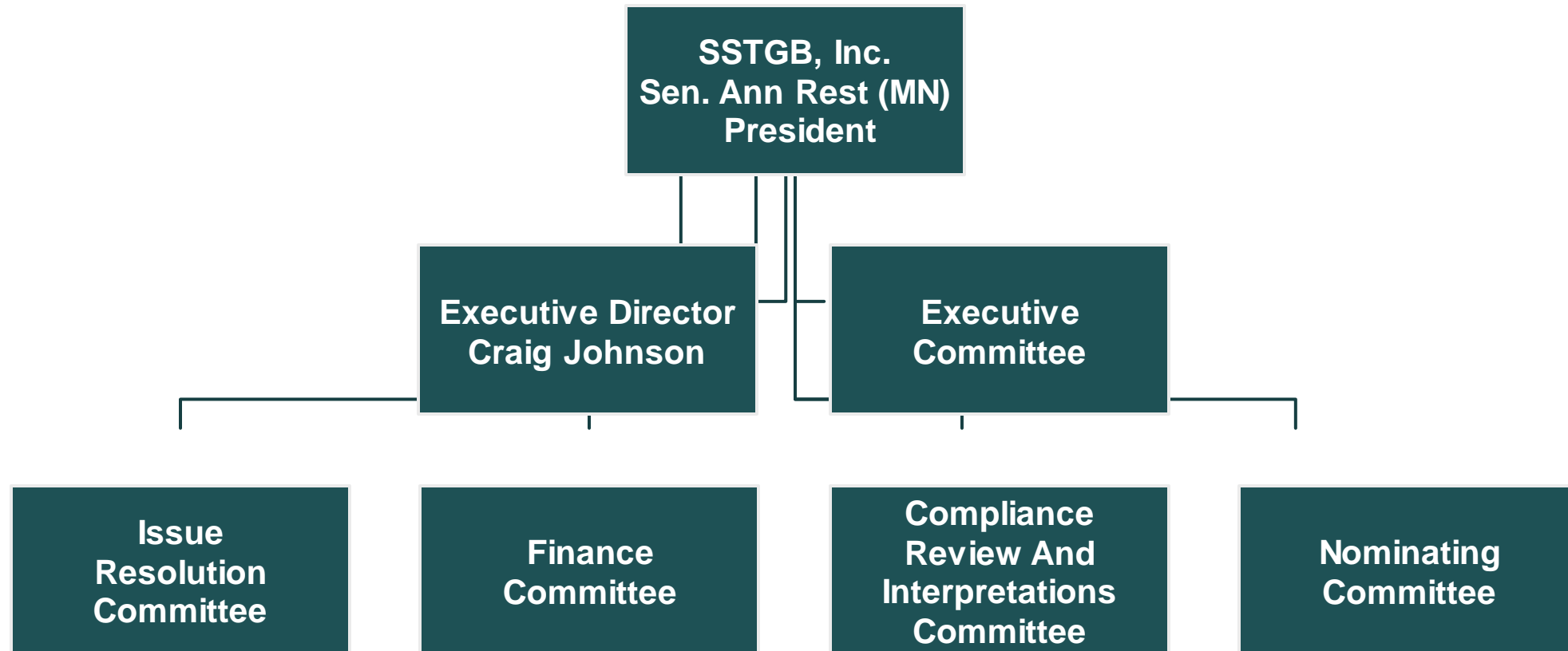


# How Are We Governed?

- All member states have seat on the Governing Board
- Governing Board formed non-profit entity
  - Streamlined Sales Tax Governing Board, Inc
- Governing Board advised by
  - State and Local Advisory Council
  - Business Advisory Council



# How Are We Governed?



- Interpretations of and Amendments to SSUTA
  - $\frac{3}{4}$  vote requirement
- Certifies tax technology systems and service providers
- Reviews state compliance with SSUTA
- Implements administrative mechanisms
  - Vendor compensation
  - Multi-state audit procedures
- Handles dispute resolution

# State and Local Advisory Council

- Voice for states and local governments not on the Governing Board
- Ex officio membership on Governing Board
  - Chair – Alison Jares (SD)
  - Vice Chair – Dave Matelski (MI)
- Develops new definitions and analyzes proposed amendments
- Develops rules and advises on requests for interpretations
- Works with Business Advisory Council (“BAC”)

# Business Advisory Council

- Voice of business community members
- Provides input to Governing Board and State and Local Advisory Committee related to administration, interpretation, compliance with and amendments to the agreement
- Members include businesses, associations, and practitioners
- Ex officio seat on Governing Board
  - Carolynn Kranz – Kranz & Associates

# Key Features of SSUTA

- State level administration of local sales and use taxes
- Common state and local tax bases within a state
- Uniform destination-based sourcing rule for goods and services
- One-stop central registration system
- Uniform definitions

# Key Features of SSUTA

- Uniform simplified electronic return
- Rate and boundary databases
- Taxability matrix
- Simplified exemption administration
- Liability relief provisions
- Certified Service Providers (CSPs)

# The “Certified Service Provider” (CSP)

- Who or what is a CSP?
  - A third party that allows sellers to outsource its sales tax compliance responsibilities
- Uses a Certified Automated System (CAS)
- Determines:
  - Taxability of transaction
  - State and local tax rates
  - Tax due to each jurisdiction
- Generates and files returns
- Makes required remittances
- Meets other requirements set by SSTGB

# The “Certified Service Provider” (CSP)

## • Benefits To Sellers

- Sellers who have to collect tax in a Streamlined state solely because they exceed the state’s economic nexus requirements may use CSP’s at no cost in those states
- Seller makes a single automated payment for all remittances
- CSP distributes the money to appropriate jurisdictions
- CSP assumes responsibility for audit(s)

## • Benefits to States

- Upfront review of tax rules
- Confidence that proper rates are being charged
- Timely and electronic filing of returns
- Ongoing testing of system for accuracy
- No cost unless “volunteer” tax is collected and remitted

# Minnesota Participation

- Governing Board leadership
- Tax Matrix
- Local tax rates and boundary databases
- Participate in committees
- Compliance review of Certified Service Providers
- Collaborate with other member states on tax administration
  - Includes systems configuration strategies

# The Wayfair Decision

# *South Dakota v. Wayfair* – What the Court Held

- U.S. Supreme Court (June 21, 2018)
  - Overturned a physical presence requirement for sales/use tax (*Bellas Hess* (1967) and *Quill* (1992))
  - “Economic and virtual presence” test
  - South Dakota’s \$100,000 in sales or 200 transactions held by the Court to be sufficient because “the seller availed itself of the substantial privilege of carrying on a business in South Dakota”

# *South Dakota v. Wayfair* – What the Court Did Not Hold

- The Court **did not rule on the constitutionality of South Dakota’s law;**
  - The Court remanded the case back to South Dakota to address “whether some other principle in the Court’s Commerce Clause doctrine might invalidate [South Dakota’s law]”
  - The Court noted these issues were not litigated or briefed; the Court did not resolve them
  - Settled with South Dakota

# *South Dakota v. Wayfair* - Guidance

- The Court noted three features about South Dakota's law that appeared to be **designed to prevent discrimination against or undue burdens upon interstate commerce**:
  - Transactional Safe Harbor;
  - No retroactive application; and
  - **Membership in the Streamlined Sales and Use Tax Agreement (SSUTA)**

# *South Dakota v. Wayfair* - Guidance

- Specific Items Noted in *Wayfair* Decision Related to Streamlined Sales Tax:
  - Standardizes taxes to reduce administrative and compliance costs
  - Single state level administration
  - Uniform definitions of products and services
  - Simplified tax rate structures
  - **Other uniform rules**
    - Access to sales tax administration software paid for by the state
    - Sellers who choose to use such software are immune from audit liability

# Streamlined and Minnesota's Success

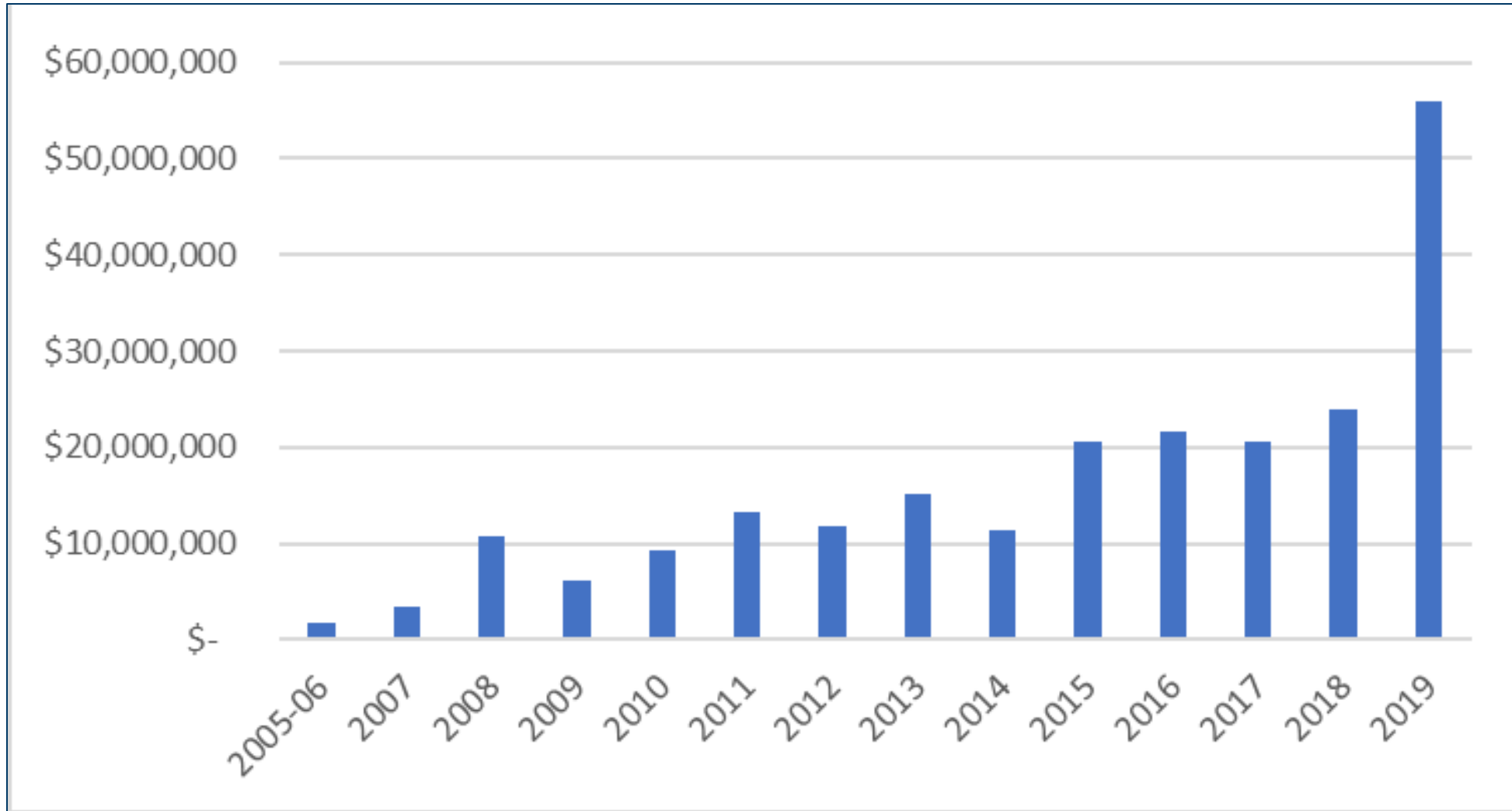
# Streamlined Success to Date

- Over 13,000 sellers registered
- Over 300% Increase in registrations since *Wayfair*
- Nearly \$5 billion collected by member states

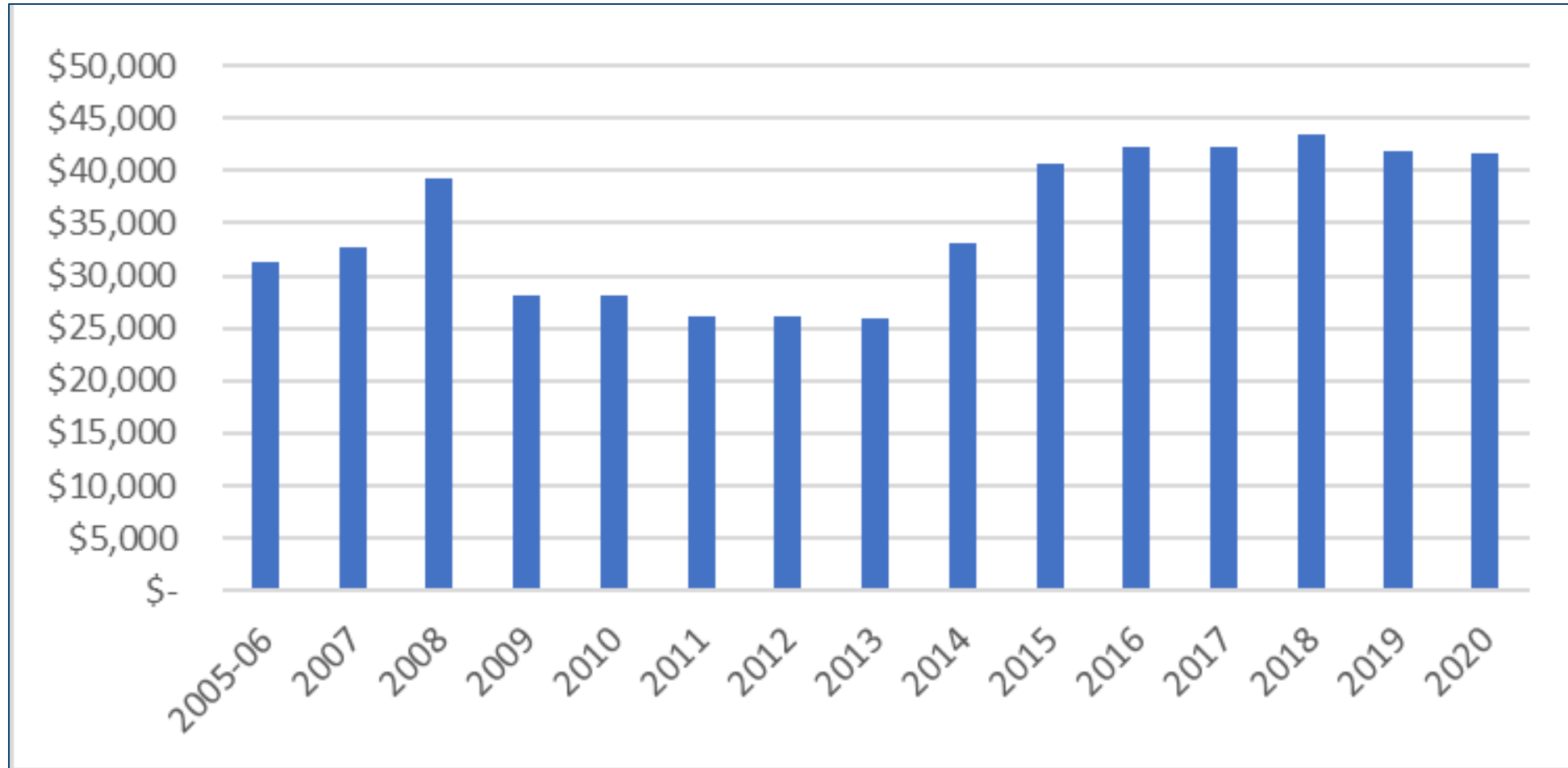
# Minnesota's Success to Date

- About 2,800 active sellers registered in MN at time of *Wayfair* decision
- Over 7,900 active sellers currently registered through SSTRS in MN
- Nearly tripled active registrations in MN since *Wayfair*
- Over \$292 million in SSTP **Volunteer** Collections
  - Total Dues Paid \$523,000 (2006 – 2020)
  - Calendar year 2018 - \$23.9 million
  - Calendar year 2019 - \$55.9 million
  - First 3 quarters of 2020 - \$67.5 million
- 130% increase in volunteer collections (2018-19)

# Streamlined Sales Tax Collections - Minnesota



# Minnesota's Annual Streamlined Dues



**[streamlinedsalestax.org](https://streamlinedsalestax.org)**

# Streamlined Goals

- Educate remote sellers on collection requirements post-*Wayfair*
- Assist member states in enacting legislation that complies with Streamlined and accomplishes their goals
- Encourage nonmember state participation
- Identify additional simplifications/uniformity that may be needed
- Marketplace facilitators – disclosed practices
- Pushback on federal legislation that would overturn Wayfair
- Offer education/training to state members related to Streamlined activities/requirements

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