

What Does the New Supreme Court Sales Tax Ruling Mean for Businesses?

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On June 21, 2018, the U.S. Supreme Court issued its opinion in *South Dakota v. Wayfair*, a landmark sales and use tax nexus case that will have implications for many online sellers and multistate businesses. The Court ruled that a state can require an out-of-state seller to collect sales tax on sales shipped to customers in that state.

Background

Historically, under a precedent affirmed by the Supreme Court in 1992 in *Quill Corp. v. North Dakota*, nexus required a seller to have a physical presence in the state. The presence could be the company's own activities or property, or through the activities of its agents in the state. Over time, states such as Illinois stretched the boundary of this standard by asserting "click-through" nexus and affiliate nexus. Currently, 31 states have laws that allow them to expand their tax collection beyond the physical presence standard. Sixteen states have laws similar to South Dakota.

In *Wayfair*, the U.S. Supreme Court considered the constitutionality of a South Dakota economic nexus law that requires certain remote sellers to register for, collect, and remit South Dakota sales tax. Under the law, an out-of-state seller has established sales tax nexus if the seller, in the current or previous calendar year:

- had gross revenue from sales of taxable goods and services delivered into the state exceeding \$100,000; or
- sold taxable goods and services for delivery into the state in 200 or more separate transactions.

Considerations for Sellers

The *Wayfair* decision affects companies doing business in thousands of state and local tax collecting jurisdictions across the country. The immediate impact will be on sellers with a significant virtual or economic presence in a state that asserts economic nexus similar to the South Dakota law.

It is important to note that *Wayfair* does not give states the ability to tax all transactions regardless of the frequency or volume. The Supreme Court upheld the South Dakota law in part because the minimum requirements limited the law's reach on businesses. There has to be an "economic benefit" received by a company for the collection of tax to be required. In other words, as in the South Dakota law, there are minimum dollar and transaction volume thresholds. Other state legislation and laws will have to provide similar minimum limits to avoid violating the Commerce Clause of the U.S. Constitution.

Followers of the case are now speculating how states will react to the decision. We expect state revenue departments to issue guidance and new legislation regarding the *South Dakota v. Wayfair* decision in the coming months and years, and we will be following those developments closely. You will be informed of the changes and necessary action required as states adjust their laws accordingly.

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In the meantime, if you would like to discuss how the decision might impact your business, please do not hesitate to contact us.

Judy Mason, CPA, CVA – Partner has over 20 years of tax, accounting, business consulting, and compliance experience, serving closely-held and start-up businesses, entrepreneurial and family-owned companies, their owners and families. Her expertise is in federal, state and local taxation. Judy has a broad depth of expertise in state and local tax research, planning, and compliance matters for entities and individuals with multi-state business and/or investment. She has successfully managed a broad range of federal income, and state sales and use tax audits for entities and individuals. As a Certified Valuation Analyst (CVA), Judy prepares business valuations used for various purposes such as estate and gift planning, business succession, buy/sell agreements and litigation support.

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