

## **What the Overturn of the Physical Presence Standard Means for Your Business**

On June 21, 2018, The U.S. Supreme Court issued its highly anticipated decision in the South Dakota v. Wayfair case. The verdict, declaring that states can impose sales tax nexus without requiring a seller's physical presence in the state, will have serious implications for all sellers, not just online retailers.

The decision overturns the Supreme Court precedent in Quill Corp. v. Dakota which required retailers to have a physical presence in a state before a state could require the seller to collect sales taxes from in-state customers.

The court's decision sides with states like South Dakota, that were ultimately missing out on billions of dollars in income by not collecting and remitting sales tax from online retailers who lacked a physical presence in their state. According to the U.S. Government Accountability Office, state and local governments could have gained up to \$13 billion in 2017 if states were given authority to require sales tax collection from all remote sellers.

### **Historical Perspective**

In 1992, North Dakota attempted to require Quill Corporation, a retailer with no physical presence in North Dakota, to collect and pay sales tax for doing business in the state. Having done business through mail orders and by phone, Quill was able to successfully argue that they should not be required to pay taxes in a state in which they had no physical presence. The courts agreed, and thus the physical presence standard was born.

Since then, states have enacted a variety of nexus provisions to counteract the loss of revenue by out of state businesses that do not collect sales tax for the state. These types of provisions, which require remote sellers to collect tax or provide information about in-state customers, are known as remote seller nexus. This chart maps out the states that have passed legislation.

In the 1990's, no one could have anticipated how predominate online sales and e-commerce would become. What was once a fraction of interstate sales had become a \$450 billion industry. Supreme Court Justice Anthony Kennedy displayed willingness to revisit the Quill case, recognizing the decision had become dated. South Dakota identified the window of opportunity to re-challenge the 1992 Quill verdict. In a 5-4 ruling, the Supreme Court overturned Quill's physical presence standard in Dakota v. Wayfair.

### **Who Will This Impact?**

It is important to note that all sellers, not just online retailers, will be impacted by the overturn of the physical presence standard. This ruling will result in increased complexities for consumers, brick-and-mortar retailers, online retailers, accountants, and the technology companies that develop accounting software.

If your business sells products or services in multiple states, this ruling should warrant your attention. It will be imperative to be proactive; start by determining what the impact will be and plan

accordingly. While it is unlikely that states will enforce sales tax economic nexus statutes immediately, we still urge all businesses to be prepared.

### **Looking Forward**

While states aren't required to collect tax from out of state retailers, many states are expected to follow South Dakota's path since these standards were reviewed by the Court for the Wayfair decision. Some states have passed economic nexus standards that are already in affect or will take affect within the next year. But until Congress issues guidance or legislation, other states are left navigating their own course of direction.

The Multistate Tax Commission (MTC) negotiated a special program for online sellers to resolve prior sales tax liability. This program was designed for online sellers with sales and income tax obligations from previous unpaid taxes in 25 different states. The program, which ran from August 17, 2017 to November 1, 2017, has expired. If you missed out on this program and would like to evaluate your options, contact us today.