



# Tax Alert: U.S. Supreme Court Expands Sales Tax Nexus

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The U.S. Supreme Court has significantly expanded the obligation of sellers—and in particular e-commerce businesses—to collect sales tax on their sales. On June 21, the Court overturned the physical presence requirement for sales tax collection nexus. In a 5-4 decision in *South Dakota v. Wayfair, Inc.*, the Court overruled its prior decision in *Quill Corp. v. North Dakota* in which the Court had ruled that a state could require an out-of-state seller to collect sales tax on sales into the state only if that seller had a physical presence in the state.

The Court in *Wayfair* eliminated the physical presence requirement for sales tax nexus stating that it was an unsound and incorrect interpretation of the U.S. Constitution's Commerce Clause and that it imposed arbitrary formalistic distinctions between sellers and created market distortions. The Court also noted that e-commerce sales by sellers with no physical presence in a state had grown dramatically and that states were losing significant sales tax revenues because sales tax was not being collected. The Court was reviewing South Dakota's economic nexus statute imposing a sales tax obligation for out-of-state sellers with at least \$100,000 in sales or at least 200 sales into the state during a year.

It is very likely that other states will adopt South Dakota's model of imposing a sales tax obligation on out-of-state sellers meeting certain minimum thresholds of sales in the state. Even after this decision, though, there is still uncertainty regarding sales tax collection by out-of-state sellers, including whether this can be applied retroactively and whether states can adopt lower thresholds than South Dakota.

Businesses should evaluate their sales tax exposure and collection policies in light of this new nexus standard, focusing in particular on the states in which the business has more significant sales activity. If a business makes significant sales into a state but has not collected sales tax because it does not have a physical presence in the state, it should prepare for a potential increase in sales tax collection obligations.

Please contact your Gray Plant Mooty attorney, or any member of the tax practice group, for more information on this case.