

## South Dakota V. Wayfair: What it means for your firm

On June 21, 2018, the Supreme Court voted 5-4 in the case of South Dakota v. Wayfair. This historic ruling favored South Dakota, determining that states can broadly require online retailers to collect sales tax even if they lack a physical presence in the state.

### Details of the case

This ruling overturns Quill. *Quill Corp v. North Dakota* served as the law of the land since 1992. This case used a commerce clause that physical presence was necessary to establish nexus.

In 2016, South Dakota passed a law requiring remote sellers to register, collect, and remit sales tax if they meet the following criteria:

- \$100,000 of annual gross revenue from the sale of tangible property, electronic products or services delivered into South Dakota; or
- 200 separate transactions per year in which there is a sale of tangible property, electronic products, or services delivered into South Dakota.

With the ruling in favor of South Dakota, the definition of nexus has expanded to include not only sufficient physical presence, but also economic presence as a determining factor of whether an out-of-state business selling products into a state is liable for collecting sales and use tax. This decision stands to change the landscape around sales & use tax.

### What this means for businesses

This decision could potentially impact any business that sells goods remotely. Companies could be required to collect and remit sales tax in up to 45 states.

Over the past year, states have started responding by enacting new rules and regulations. South Dakota is relatively straightforward and simplified, other states

with more complex rules may have an uphill battle ahead of them. These new guidelines and changes will only add to the complexity for your clients' SUT liabilities and the collection and remittance of sales and use tax.

### How you can help your clients

There has never been a better time to reach out to clients to increase your trusted advisor role. There may be some confusion about how to comply with these changes, and clients need help navigating them. Firms can help businesses prepare by taking the following next steps:

- Conduct a nexus study and product taxability review. Review business activities and sales in different states and identify where there is risk under traditional, physical nexus and economic nexus.
- Prioritize states where the company has the greatest economic presence and create a plan to register to collect and remit sales tax.
- Evaluate technology that offers the following:
  - o Calculates correct rates
  - o File and remit payments
  - o Maintains exemption certificates

### How the Vertex Firm Advisor Program can help

In partnership with Vertex, CPA.com created the Vertex Firm Advisor Program to help firms support clients through access to SUT automation, practice development resources, dedicated account management and special pricing.

Vertex Cloud is equipped to accommodate any new calculation and reporting requirements that may be enacted in the coming months.

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