

# Accounting for Success



by

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## South Dakota v. Wayfair

Prior to a recent U.S. Supreme Court ruling, the standard to determine "substantial nexus" for sales tax purposes was based on "physical presence" as provided in *Quill v. North Dakota*. Essentially, to be required to collect and remit sales tax you needed to have either employees or property in the state, or some other physical connection to the state. On June 21st, the U.S. Supreme Court ruled 5 to 4 that the physical presence standard is "unsound and incorrect" and overturned the *Quill* case.

While the ruling is clear that "physical presence" no longer rules this determination, many questions remain on actual implementation at the state level. Does this change everything, does this change nothing, or is it something in between?

In recent years, several states started enacting what has come to be known as an "economic nexus" standard. Basically, if you exceed a certain amount of activity from customers located in that state you have created nexus with that state and are responsible for collection and payment of sales tax. Certain states including South Dakota, which this case is based on, also enacted a "bright line" test allowing certain activity below that threshold to not trigger a tax obligation. South Dakota uses threshold of \$100,000 of gross revenue from sales of good or services delivered into the state or 200 or more separate transactions.

While we will continue to consider the impact of this decision, here are some general observations:

- Businesses with significant digital or economic presence (internet sales) in a state that currently asserts economic nexus could possibly now have nexus in those states and should review and consider the tax compliance obligations.
- Businesses with little digital presence outside their home state may have no current direct impact.

- Businesses selling into South Dakota should review their filing obligations in the state.

- Businesses should be prepared for states to aggressively enforce current economic nexus provisions and states that do not currently have them will most likely quickly add similar provisions.

- Foreign businesses based outside the United States may also be affected by this ruling, triggering an obligation for sales tax at the state level regardless of treaty protection for income tax obligations.

Please note this case does not change any existing state laws that limit exposure to sales/use tax. For example, states with no enacted sales tax still have no sales tax. States that provide for exemptions related to sales of certain goods/services or sales to customers that possess an exemption remain exempt.

Future legal challenges or Congressional action could change the course of this ruling or limit its scope. We will continue to monitor forthcoming legislation and provide recommendations for our clients. Stay tuned and see what happens next.

*A tax generalist with a strong knowledge base in providing compliance and advisory services to her clients, Valerie Middlebrooks works closely with the many experts within the firm to address her clients' varied circumstances. Valerie's experience includes working with large privately-held companies, nonprofits, small businesses, high net worth families, and international businesses (and individuals), and has extensive knowledge leading an engagement team acting as a back office tax department for a global manufacturer. Her widespread background provides a wealth of insight and expertise for the many issues her clients may face.*