

CLIENT ALERT

U.S. Supreme Court Overturns *Quill* and the Physical Presence Test for Sales Tax Nexus

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In *South Dakota v. Wayfair, et al.*, No. 17-494, the U.S. Supreme Court overturned its prior ruling in *Quill Corp. v. North Dakota*, 504 U.S. 298. In *Quill*, the Court held that an out-of-state seller must have a physical presence in a state before the state can require the seller to collect sales and use taxes. The Court ruled that the physical presence test of *Quill* was “unsound and incorrect,” and was therefore overruled. Following this landmark decision, states and localities will be entitled to require a company that sells products or services in their jurisdiction, but does not have a physical connection to the jurisdiction, to collect and remit sales taxes. In its ruling, the Court gives weight to several important aspects of the South Dakota sales tax statute, including that it does not apply retroactively, and has exemptions for sellers with limited sales into the jurisdiction.

While the ruling applies directly to South Dakota, other states have enacted statutes that are similar to the South Dakota statute, but have generally been enjoined from their application under *Quill*. Now that the ruling in *Quill* has been overturned, these states are likely to begin enforcing their statutes in the near future. Furthermore, it is likely that other jurisdictions will enact similar statutes shortly.

Prior to the *Wayfair* decision, companies that sold goods or services in a jurisdiction that imposed a sales tax on such goods or services, but did not have sufficient physical presence to meet the minimum contacts rule of *Quill*, were not required to withhold and remit sales tax. Following the *Wayfair* decision, simply selling goods or services within a jurisdiction may be sufficient to establish nexus and permit the jurisdiction to require the collection and remission of sales tax. Most jurisdictions currently do not have laws that require sales tax withholding for companies that do not have a physical presence, but this is likely to change.

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In light of the *Wayfair* decision, companies that sell goods or services online should review their withholding tax policies and procedures to ensure that they are consistent with the rules as they now apply. Companies should also continue to monitor changes in state and local tax laws to ensure that as more jurisdictions conform their sales tax withholding rules to the *Wayfair* decision and remove physical presence requirements, they are prepared to comply with the evolving sales tax landscape.

If you have any questions regarding this client alert, please contact the following attorney or the attorney with whom you regularly work.

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