

U.S. Supreme Court Overturns Longtime Sales Tax Collection Standard

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Background

In a potential game-changing decision, the U.S. Supreme Court on June 21 determined that a remote seller can be required to collect sales tax from a customer in a state even though the seller has no physical presence in the state.

The decision in [*South Dakota v. Wayfair*](#) struck down the 25-year old standard for state and local sales tax collection set in other cases. The standard set forth previously required a seller to have a physical presence in the state for it to be required to collect sales tax on sales of goods or services. After this month's decision, states can now require out-of-state sellers of goods and services to collect sales tax from their customers even though the sellers do not have a physical presence in the state.

States can now require service providers that have "substantial nexus" with a state to collect sales tax on sales to customers in that state. The majority in its opinion stated that the substantial nexus requirements were met in the *Wayfair* case because the required value of the goods delivered (\$100,000) or the number of transactions engaged (200) in a 12-month period were sufficient to require collection of sales tax under the South Dakota statute. However, the Supreme Court stopped short of stating that these were proper thresholds to be adopted by other states.

State and Local Tax Consequences of the *Wayfair* Decision

The decision now allows state and local jurisdictions to enact laws that require remote sellers to collect and remit sales or use tax regardless of whether a company has a physical presence in the taxing jurisdiction. Based on the decision, taxpayers who are operating in multiple jurisdictions will need to reassess their sales tax collection and reporting requirements in those jurisdictions. The process will be difficult because the Supreme Court only eliminated the physical presence standard. It did not indicate what the new substantial nexus standard should be for the collection of sales tax. The Supreme Court only indicated that it felt that the South Dakota minimum standard of \$100,000 in sales or 200 transactions was sufficient to establish the substantial nexus for South Dakota to impose the sales tax collection requirement. However, it is possible that other states could impose lower standards which could meet the substantial nexus test.

Each state legislature is expected to be evaluating its sales tax statutes over the next few months to determine what adjustments will be needed to participate in this previously lost revenue stream that has become available after the *Wayfair* decision. Accordingly, taxpayers who are selling to multiple jurisdictions will need to be actively monitoring this situation to ensure they are in compliance with their state sales tax

collection and reporting requirements. If you have any questions about this historic ruling and what it could mean for your business, please [contact me](#) or anyone in [Barley Snyder's Business Practice Group](#).

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