

**From the desk of
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U.S. Supreme Court Ok's Sales Taxes on internet sales!

The United States Supreme Court has overturned two and a half decades of sales and use tax law in *South Dakota v. Wayfair* ruling the physical presence standard established in *Quill v. North Dakota Quill Corp.*, (1992, U.S.) 504 U.S. 298, as "unsound and incorrect".

Justice Kennedy authored the majority opinion joined by Justices Ginsburg, Alito, and Gorsuch. Justices Thomas and Gorsuch filed concurring opinions. Justice Roberts dissented joined by Justices Breyer, Sotomayor, and Kagan.

In the case under scrutiny three major internet retailers challenged South Dakota's economic nexus law.

The law asserts nexus against an out-of-state retailer if the retailer made more than \$100,000 taxable sales of property or services into the state or made taxable sales into South Dakota in 200 or more transactions.

Quill required that an out-of-state retailer have some physical presence in a state, either property, activities, or representatives before a state could assert jurisdiction to tax that retailer.

The *Wayfair* court characterized the physical presence standard as a "judicially created tax shelter", noting that many retailers with a physical presence have been at a disadvantage to larger ones that do business across the country but limit their presence to one or two states.

In recent years a growing number of states have enacted economic nexus laws that intentionally flout the physical presence requirement by asserting nexus based on the number and/or dollar amount of sales into the state.

A number of states have also enacted detailed notice and reporting laws for out-of-state sellers.

Often these are tied to a dollar threshold of taxable sales into the state.

Many are cumbersome and impose stiff penalties for noncompliance.

A handful are explicitly the default alternative to registering to collect and remit the tax under elective economic nexus provisions.

The majority of states have been urging the Supreme Court to reach this decision asserting the nexus issue for out-of-state retailers is archaic and unfriendly to brick and mortar businesses within their borders.

It is important to bear in mind that many states have laws on the books that by their plain language exceed the physical presence standard and assert nexus based on remote solicitation and resulting in-state sales.

Traditionally taxing agencies in those states tended to accept the physical presence standard and have adopted regulations or issued guidance to that effect, but with the physical presence rule eradicated, those laws are likely to be repealed or rescinded, and an overall national change to each state now moving to collect sales taxes for any sales taking place within their jurisdictions which means that the end users will be charged sales taxes for the items they purchase over the internet.

Businesses selling over the internet should look to comply with each and every jurisdiction's right to charge sales taxes for items sold into their jurisdictions in light of the *Wayfair* standard.

In many states such as California there are hundreds of different sales tax rates depending upon the county into which the sale is made.

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