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How Prepared Are You for Sales Tax Changes?

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States no longer need to use physical presence as the standard to collect sales tax, and the result could spell significant changes for retailers, e-commerce businesses and, to some extent, their customers.

On June 21, the Supreme Court ruled on *South Dakota v. Wayfair Inc.*, a case that involved whether South Dakota could impose state sales tax on a business that did not have a physical presence within the state but did have significant South Dakota transactions. Previous Supreme Court rulings (notably *National Bellas Hess, Inc. v. Department of Revenue of Illinois* and *Quill Corp. v. North Dakota*) required a company to have a physical presence before a state could subject the company to its sales tax registration and reporting.

South Dakota's push for "economic nexus" to be considered a substantial presence for state sales tax purposes echoes the issue that many states are encountering in the internet age. As more transactions take place online, states lose out on potential sales tax revenue. Consumers are required to remit use tax on their purchases that are not subject to state sales tax; however, compliance under this self-assessment system is notoriously low. The Supreme Court sided with South Dakota in the *Wayfair* case and cited the lost revenue as a reason to overturn the precedent set in *Quill*. In its decision, the Court estimated that the physical presence standard could cost states as much as \$33 billion in lost state sales tax opportunities.

What the 'Wayfair' Decision Means for Retailers & Other Businesses

Companies that interact with South Dakota resident customers remotely will be affected immediately by the decision, but other states will be making changes to their sales tax policies in short order. At the time of the ruling, 41 states had asked the Court to overturn the physical presence standard. Nearly 20 have made changes since the June ruling.

Retailers and any other businesses using electronic commerce should also prepare for a profound increase in their sales tax collection responsibilities. The Supreme Court decision leaves the door open for states to retroactively



impose sales tax (though it is anticipated that most will not). Some states will implement new sales tax policies for 2018. Others may immediately enact new policies but include a grace period. Others will begin collecting state sales tax on companies with economic nexus starting in 2019.

The 'Wayfair' Impact on Consumers

The Supreme Court overturned the physical presence standard in part so it could level the playing field between remote sellers and brick and mortar sellers. Consumers accustomed to "sales tax free" purchases online may now find the prices are more consistent with what they would expect to pay in person.

How to Get Ready for the Post 'Wayfair' World

State sales tax compliance will be a challenge. The Supreme Court ruled on *Wayfair* with a 5 to 4 vote. One of the arguments against eliminating the physical presence standard involves the complexity that will follow. Sales tax is not limited to states alone; there are over 10,000 sales tax jurisdictions with different rates, various applications to products or services, and differences in substantial presence standards. Smaller retailers in particular may want to enlist the help of a tax professional to help make the necessary changes that are coming their way. 



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