



Tax Alert

South Dakota v. Wayfair, Inc.

U. S. Supreme Court Decides

State and Local Sales Tax Can Be Imposed on Internet Sellers!

June 21, 2018

The U. S. Supreme Court (the "Court") has held in the case of *South Dakota v. Wayfair, Inc. et al*, No. 17-494, decided June 21, 2018, that States can charge out-of-state retailers sales tax, at least in some circumstances, even if they don't have a store or warehouse in the State, clearing the way to allow State sales taxes on internet purchases.

The Court held that a South Dakota law requiring out-of-state sellers to collect and remit the State's sales tax "as if the seller had a physical presence in the State" does not violate the Commerce Clause of the U. S. Constitution.

The South Dakota law was challenged by online retailers with no employees or real estate in South Dakota, but who met threshold standards to be subject to the law by on an annual basis delivering more than \$100,000 of goods or services into the state or engaging in 200 or more separate transactions for delivery of goods or services into the State.

The lower courts in South Dakota had held that the law was not enforceable under the Commerce Clause and prior decisions of the Court that held an out-of-state seller that has no physical presence in a State may not be required by the State to collect the State's sales tax. This "physical presence" rule was determined and applied in the 1992 case of *Quill Corp. v. North Dakota*, 504 U. S. 298.

In the *Wayfair* case the Court ruled that the physical presence rule in the *Quill* case is unsound and incorrect. The court stated that under the Commerce Clause two basic principles apply, which are that a State may not discriminate against interstate commerce, and a State may not impose undue burdens on interstate commerce.

In applying these standards, the Court determined that the physical presence rule has long been criticized as giving out-of-state sellers an advantage; and that each year it becomes further removed from economic reality and results in significant revenue losses to the States. The Court also observed that the evolution and extent of e-commerce has made the physical presence rule now an artificial standard that arbitrarily limits State collection of sales tax and prevents businesses from competing on an even playing field. Based on these facts and effects of the physical presence rule today, the Court held that it is now an incorrect interpretation of the Commerce Clause. The Court indicated that an argument that the physical presence rule should be preserved to protect small out-of-state businesses and startups from having to collect sales tax of numerous States was countered and overcome by the South Dakota law provisions that only required the State sales tax to be collected by businesses with a significant level of sales to customers in the State.

Oklahoma has recently enacted a new law that contains requirements for reporting, collection and payment of Oklahoma sales and use tax by remote sellers for sales of tangible personal property to customers in Oklahoma through the Internet. The new Oklahoma law has features that appear to be similar to the South Dakota law upheld by the Court in the *Wayfair* case. See, HB 1019XX, 56th Leg. 2nd Spec. Sess. (Ok 2018), adding 68 O. S. Supp. 2018, §§1391-1397, effective April 10, 2018.

If you have questions or would like to discuss this important state and local tax decision and how it may affect you, your business or any other persons or entities please contact any attorney of GableGotwals you know or our Tax Law Practice Group. GableGotwals attorneys who practice and assist clients with respect to federal taxation include:

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