



## SALT INSIGHTS

Jurisdiction: South Dakota  
Tax Type: Sales Tax  
Issue: South Dakota v. Wayfair US Supreme Court Decision  
Date: June 21, 2018

### SYNOPSIS:

On June 21, 2018, the U.S. Supreme Court issued a decision in *South Dakota v. Wayfair*, overturning the physical presence standard espoused in *Quill v. North Dakota* and *National Bellas Hess v. Department of Revenue of Ill.* The Court held that the physical presence rule in *Quill* has created unfair and unjust marketplace distortions favoring remote sellers and causing states to lose out on significant sales tax revenues. The Court ruled that the correct standard in determining the constitutionality of a state tax is whether the tax applies to an activity that has "substantial nexus" with the taxing state. The case involves South Dakota's economic nexus law, which imposes tax collection and remittance duties on out-of-state sellers meeting gross sales and transaction volume thresholds. Specifically, South Dakota's "economic nexus" standard provided that remote sellers with sales greater than \$100,000 of goods or services into South Dakota or engaging in 200 or more separate transactions for the delivery of goods or services into South Dakota, are subject to collection and remittance of South Dakota sales tax.

In essence, the Court nullified *Quill*, determining that physical presence is no longer essential to meet the "substantial nexus" requirement outlined in *Complete Auto Transit*. The Court held that the respondents had established substantial nexus in this case through "extensive virtual presence."

### INSIGHT:

The Wayfair decision marks a stark change from the traditional "physical" presence standard. Physical presence is no longer the standard and the obvious inference is that more states will now adopt sales tax nexus thresholds subjecting more remote sellers to collect and remit sales tax. As stated by Chief Justice John Robert in the dissenting opinion, "Armed with today's decision, state officials can be expected to redirect their attention from working with Congress on a national solution, to securing new tax revenue from remote retailers". More to come. Contact SimekScott to discuss.

### CONTACT:

Eric Drew  
Principal - San Francisco  
O: 628.243.1763  
E: [ericdrew@simekscott.com](mailto:ericdrew@simekscott.com)

Scott Ambrosino  
Principal - New York  
O: 917.512.8395  
E: [scottambrosino@simekscott.com](mailto:scottambrosino@simekscott.com)

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SimekScott LLP  
1412 Broadway | 21st Floor  
New York, NY 10018

SimekScott LLP  
211 W Wacker Dr.  
Chicago, IL 60606

SimekScott LLP  
100 Pine St | Suite 1250  
San Francisco, CA 94111