

## SALT INSIGHTS

Jurisdiction: Multiple  
Tax Type: Sales Tax  
Issue: Wayfair Update - States Respond  
Date: July 19, 2018

### SYNOPSIS:

As anticipated, states have begun to respond to the U.S. Supreme Court's decision in *South Dakota v. Wayfair* nullifying a 1992 Supreme Court precedent set by *Quill Corp. v. North Dakota* requiring physical presence before a state can compel the collection and remittance of sales and use tax.

The *Wayfair* decision now provides a new framework for states to impose sales and use tax collection and remittance obligation on out-of-state sellers making more than \$100,000 in sales of goods or services delivered in South Dakota or engaging in 200 or more separate sales of goods or services delivered in the state.

In reaching its decision, the Court focused on three factors that would most likely sustain any challenge to South Dakota's economic nexus law: (1) the law provided sales thresholds; (2) the law was not retroactive; and (3) the state was a member of the Streamlined Sales and Use Tax Agreement ("SSUTA").

The *Wayfair* decision paves the way for other states to assert sales and use tax nexus on remote sellers who have no physical presence in the state but clarity will be a key factor for challenges as states begin to react. Currently New Jersey has introduced legislation; North Dakota, Mississippi and Vermont have issued statements requiring remote sellers to collect and remit where they meet the *Wayfair* factors; Minnesota, Louisiana, Maryland, Idaho, Texas and Wisconsin have issued statements that *Wayfair* is being reviewed; Indiana will enforce its legislation once a legal challenge is resolved and Alabama, Hawaii, Iowa, Massachusetts, and Rhode Island are enforcing legislation already enacted.

### INSIGHT:

As more states begin to assert economic nexus standards, companies are likely to face challenges in determining nexus exposure based on states various nexus factors. Monitoring the states response to *Wayfair* will be key to managing overall tax exposure. Contact SimekScott to discuss.

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