

## Supreme Court Abandons Physical Presence Standard for Sales Tax

On June 21, 2018, the U.S. Supreme Court issued a decision in the *South Dakota v. Wayfair* case, which overturned the physical presence standard that was adopted in the *Quill v. North Dakota* case in 1992. The Court held that the physical presence rule from *Quill* is an “unsound and incorrect” interpretation of the U.S. Commerce Clause that created an unfair and unjust marketplace which favored remote sellers and caused states to lose out on an enormous amount of tax revenue.

The *Quill* case mandated that physical presence was necessary in order for a state to require an out-of-state retailer to collect and remit sales tax. Physical presence included property, people, or some other physical connection with a state. As more businesses began selling through the mail and then the internet, there were calls from various state officials that perhaps the physical presence standard needed to be revisited. Per the *Wayfair* case, substantial nexus (which would require sales tax collection) exists when a taxpayer “avails itself of the substantial privilege of carrying on a business in that jurisdiction” that can be established on the basis of both “economic and virtual” contacts with a state. This definition is somewhat vague but it is much easier to meet than the requirement to have a physical presence.

Despite the overturning of the *Quill* case’s physical presence requirements, the ruling in *Wayfair* does not mean that all states can automatically start requiring remote sellers to collect sales taxes. States that have enacted economic nexus laws that assert nexus based on the number and/or dollar amount of sales into the state are ahead of the game. Pennsylvania has enacted laws that require remote sellers with aggregate sales of \$10,000 or more to file an election to either collect and remit sales taxes, or comply with reporting requirements (these reporting requirements mandate that the seller notify its customers that they may owe use tax).

This is a new law and, as is often the case, additional information and interpretation will be forthcoming. In the meantime, please reach out to us should you have any questions.

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“Personal Attention – Valuable Results”, is the principal component of our mission statement. It highlights the GMS Surgent commitment to forging strong relationships and ensuring constructive communication while earning consistently effective results for our clients. It plays an essential role throughout every aspect of our firm, guides our actions and acts as a benchmark for the services we provide.

This information is of a general nature. It may omit many details and special rules and is current only as of its published date. Please contact us for more information and how it pertains to your specific tax or financial situation.

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