



## Supreme Court Overturns Longstanding Physical Presence Standard

By Mary Jo Dolson, CPA

In its highly anticipated *South Dakota v. Wayfair* decision issued June 21, 2018, the U.S. Supreme Court overturned a physical nexus standard that has existed for over 50 years and was last addressed in the 1992 *Quill v. North Dakota* Court decision, which has prevented states from requiring out-of-state businesses to collect sales tax for transactions originating from their states. In the *Wayfair* decision, the Court decided that a physical presence is not required and found that South Dakota's economic nexus law is constitutional. That law required businesses with over 200 transactions or \$100,000 in South Dakota sales to comply with South Dakota sales tax laws.

The court was split 5-4 in its decision, with even the dissenting justices indicating that the Court had gotten the previous decision wrong but that Congress should determine the fix. The ruling today will pave the way for states to enact similar economic standards and require out-of-state businesses to collect its state sales tax, even without a physical presence.

South Dakota's argument was that brick-and-mortar stores are at a disadvantage to out-of-state businesses because the in-state business must collect sales tax, but the out-of-state/internet business is not required to comply with various state sales tax laws. The concurring justices also indicated that South Dakota's law provides a standard to assist small businesses and does not require retroactivity.

Thirty-one states have already enacted laws similar to South Dakota's, but were holding these laws in abeyance until the case was determined. Since the Court's decision is addressing South Dakota's specific law only, we will have to wait and see what these states do in response. States will have to look at the laws they have in place to determine what changes, if any, need to be made. It is likely some tweaking will have to be done to existing laws; other states will begin the process to enact laws.

Skoda Minotti's State and Local Tax (SALT) Group will continue to monitor the activity following this Court case and will be issuing additional blogs on the topic. You can also check out our recent podcast where we take a closer look at the business impacts of the *Wayfair v. South Dakota* decision.

Be sure to register our upcoming webinar, where we will discuss the impact of this ruling on state sales tax laws moving forward. We also will provide updates as new laws are enacted. Questions about this blog or other state and local tax issues? Please contact Mary Jo Dolson at 888-201-4484 or [mdolson@skodaminotti.com](mailto:mdolson@skodaminotti.com)