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Wayfair Vs South Dakota and its Impact on Manufacturers

By Mary Jo Dolson

As you may recall, in June 2018, the U.S. Supreme Court rendered its decision in the landmark [Wayfair vs. South Dakota](#) court case. Now that a year has passed, we will revisit the decision and discuss the impact it has had on manufacturers.

The *Wayfair* decision changed the landscape for the imposition of sales tax. Specifically, it changed the nexus standard from a physical presence standard to an economic nexus standard. How has this change affected the manufacturing industry?

As a quick refresher, in the *Wayfair* decision the Supreme Court ruled that the economic nexus standard enacted in South Dakota (\$100,000 in sales or 200 transactions) is sufficient for a taxpayer to be required to comply with South Dakota sales tax laws. Many states have adopted similar provisions to South Dakota's and have begun enforcing sales tax laws based on these provisions.

Still, months after the Supreme Court decision, I continue to hear taxpayers assert that the decision does not pertain to them because they are not a remote seller. Yet, this does not indicate a correct understanding of the court case. Manufacturing companies can also be impacted by the decision; they must comply with the new economic nexus standards. For example, if a manufacturer generates more than \$100,000 in sales in South Dakota, that manufacturer now has economic nexus with the state. This would mean the manufacturer has a requirement to comply with the South Dakota sales tax laws. Even though nexus has been established, a manufacturer must determine if the product being sold is taxable, or if the customer purchasing the product is taxable. This must be determined before sales tax registration with the state is undertaken. Manufacturers need to make sure they understand the taxability of their product(s) and their customers.

What exactly are we referring to when we make this statement?

Product: Even though a manufacturer may have economic nexus with a state, if the product being sold is not taxable, the manufacturer would not have a requirement to register for sales tax.

For example, if the product your manufacturing company sells is used by other manufacturers in their production, you would not have a requirement to register for sales tax—but, you would want to make sure you are securing exemption certificates from your customers. Conversely, if one of your customers is purchasing your product and using it in a taxable manner, you would have a requirement to collect sales tax and to register for sales tax. You also should make sure the product you are selling is exempt—there

are numerous states that do not provide an exemption for items used in manufacturing, so you would need to know the specific state laws to make sure there is no requirement to register for sales tax.

Customer: The customer is the entity you are selling to. If you are selling to a distributor who will resell your product, or to a nonprofit organization, the sale would be tax-exempt, so again, you would not have an obligation to register for sales tax. Two important things to keep in mind with regard to this:

- Make sure you secure the proper exemption certificates from your customers.
- Make sure the state provides an exemption for the customers to whom you are selling. Numerous states do not provide exemptions to nonprofit organizations, so you might have a requirement to collect sales tax even though you are selling to a nonprofit.

The important takeaways are that manufacturers must determine which states they have created economic nexus with, and whether or not their transactions in a particular state would be subject to sales tax. If the products and/or customers are taxable, sales tax registration would be required.

The *Wayfair* decision has far-reaching ramifications beyond remote sellers. Use this [link](#) to an updated sales tax economic nexus standard chart to help you determine whether you have created economic nexus.

Do you have questions about the *Wayfair* decision and its impact on manufacturers, or any other [state and local \(SALT\) tax issues](#)? Please reach out to Mary Jo Dolson, CPA, at 888-201-4484 or [email Mary Jo](#).