

## The Supreme Court has overturned the Quill Sales Tax Physical Presence Standard

On June 21, 2018 the Supreme Court decided in a 5-4 majority decision in *South Dakota v Wayfair* that sellers are subject to sales tax nexus even if they do not have a physical presence in the State. In arriving at their decision, the Court found that the physical presence standard is an unsound and incorrect interpretation of the Uniform Commerce Clause that results in marketplace distortions favoring online retailers.

In rejecting the physical presence model as the sole standard, the Court has accepted the South Dakota substantial nexus standard of 200 or more sales transactions and/or annual gross revenues of \$100,000 from in-state sales. By meeting either of these thresholds, a taxpayer is required to collect and remit South Dakota sales tax.

In summary, barring legislative changes by Congress, states are now free to levy sales taxes on goods and services using substantial nexus requirements in addition to the traditional physical presence requirements.

Presently, 45 states have sales tax laws. 31 states participate in a registration process that will allow for applicants' streamlined registration. 16 states have laws that are similar to that of South Dakota and will be considered in compliance with the Court's decision. It is expected that many states not currently applying the accepted substantial nexus rules will adapt their laws to allow for the imposition of sales and use tax under the substantial nexus standard.

While not specifically addressed in the Supreme Court's decision we are closely monitoring the state taxation issues that may arise from this decision. Issues include:

- States retroactively applying the substantial nexus standard
- States attempting to apply the substantial nexus standard to taxation of net income
- States asserting that substantial nexus applies with fewer sales transaction or a lower revenue thresholds

We encourage you to contact us to discuss the Supreme Court decision and the impact it may have on your business operations.

Very truly yours,

**MillerSearles LLC**

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