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The U.S. Supreme Court decision in the South Dakota v. Wayfair case enormously expands compliance requirements for online sales and e-commerce. Businesses will now have to prepare to collect sales and use tax from out of state customers.

In a series of cases, the U.S. Supreme Court had previously established a general rule of physical presence which required an out-of-state seller to have a physical presence in a state before that state could require the seller to collect and remit sales and use taxes. That standard was upheld 26 years ago in the well-known Supreme Court decision Quill Corp. v. North Dakota.

However, South Dakota's sales tax rules require out-of-state retailers to collect sales tax if the retailer had annual gross revenue of more than \$100,000 from sales in South Dakota. This legislation also applied if the retailer completed more than 200 sales annually in the state. The Wayfair case challenged these rules and was appealed to the U.S. Supreme Court. The Supreme Court then overruled the long-standing Quill case.

The U.S. Supreme Court held that physical presence is no longer necessary to create nexus with a state. The Court decided that South Dakota can require remote sellers to collect and remit sales tax when all the remote seller does is sell to South Dakota customers.

The impact of the decision is far reaching, as States are now free to impose taxes on the sales of goods and services in their states regardless of whether the seller has a physical presence in the state. In the aftermath of the decision, the expectation is that states will immediately begin amending their sales tax statutes to allow for the imposition of sales and use taxes on sellers without a physical state presence.

**Possible actions to take:**

- Implement new internal systems or modify existing ones to respond to the impending wave of new state statutes.
- Review sales by state. Multistate nexus studies can identify those states where remote retailers may have sales and use tax obligations.

- Participate in the Streamlined Sales Tax Registration System: Under the Quill physical presence regime, participation in the system was undesirable. With the removal of the physical presence requirement, the ability to collect and remit sales taxes efficiently in the more than 20 states that have approved software solutions, service providers and liability protection for retailers is much more attractive.
- Acquire the services and technologies needed to track, calculate and collect appropriate sales taxes in any state.
- Businesses should begin changing their processes to ensure compliance with each jurisdiction, as significant penalties and interest are possible for non-compliance. Thought should also be given to potential income tax reporting in those states.

Feel free to call upon your Perelson Weiner contact to assess if and how this landmark case affects you, at 212-605-3100.