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# South Dakota v. Wayfair: Economic Nexus in a Rapidly Changing Field

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State legislature and taxing authorities across the country were busy in 2018. While much attention has gone to how states are handling the Tax Cuts and Jobs Act of 2017 (“TCJA”) for income tax purpose, any taxpayers operating in more than one jurisdiction must not ignore the rules being derived from the United States Supreme Court case South Dakota v. Wayfair (“Wayfair”). As the one-year anniversary of Wayfair approaches, these new rules may serve as traps for the unwary and create liability for companies where they were previously safe.

## Changing the Playing Field

On June 21, 2018, the Supreme Court overturned nearly half a century of legal precedent about when jurisdictions could impose a tax. Historically, the Court had held that a state could only tax companies that had a “substantial nexus” with the state. Otherwise, imposing tax by a state would be infringing on Congress’ power to regulate interstate commerce and violate the taxpayer’s due process rights. In 1992, the Court further clarified this standard by stating that taxpayers had substantial nexus with a state only if they were physically present in the state.

The Court in Wayfair changed this and that the substantial nexus requirement could be met by taxpayers being “economically” present in the state. The Court upheld a South Dakota statute that established “economic nexus” with a state if a taxpayer had \$100,000 in sales within the state or had engaged in 200 or more separate transactions.

## Going Forward

By the time Wayfair was decided, and since then, several states have passed economic nexus statutes similar to the one implemented by South Dakota. Further, many states require taxpayers with an economic nexus in the state to file returns even if no tax is owed (i.e. the sales are exempt). While the rules and start dates for each statute varies by state, the new administrative burden faced by taxpayers is being felt across the board.

To add to the chaos, local jurisdictions are also reacting to the Wayfair decision as well. Last November, San Francisco residents approved Proposition D which requires business with economic nexus (i.e. over \$500,000 sales in the city) to pay the city’s gross receipt tax. While the constitutionality of the ordinance is being challenged, the city is attempting to continue enforcing a version of it. Similarly, municipalities in Colorado are considering establishing an economic nexus standard for their locally imposed sales tax, besides the statewide requirements.

It is imperative to consult with a tax attorney or accountant about one’s filing obligation and

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potential exemptions. All states will often impose hefty penalties for a taxpayer's failure to pay and file timely tax returns besides interests accrued on the amount owed. However, all hope is not lost since several jurisdictions offer tax amnesty programs that can mitigate a taxpayer's liability. While the process is complex, the savings may be substantial.

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[1] *Complete Auto Transit v. Brady* (U.S. 1977).

[1] *Id. See Also, National Bellas Hess v. Department of Revenue*, 386 U.S. 753 (1967)

[1] *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992)