

TAX ALERT

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Big changes for internet shopping



On June 21, 2018, the U.S. Supreme Court [ruled](#) in *Wayfair v. South Dakota* that internet and catalogue retailers can be required to collect sales taxes from customers in states where they have no physical presence. In plain English, in most situations, no more tax-free shopping on the internet. Buyers have always technically been required to pay a use tax to their state if no sales tax was collected by the seller. This decision overrules two older decisions that allowed retailers to avoid collecting sales tax on customers outside of its home state and outside other states where the retailer had employees, a store, a warehouse or some other physical presence. This is likely the most significant state and local tax case in 25 years and will have a profound impact on businesses who sell taxable goods or services online. Further, there are implications for mergers and acquisitions and could have a chilling effect when the potential buyer of a company realizes that the target has major sales tax exposure.

In *Wayfair v. South Dakota*, South Dakota enacted a law that required all merchants to collect its sales tax if they had more than \$100,000 in annual sales or more than 200 individual transactions in the state. State officials sued three large online retailers — Wayfair, Overstock.com and Newegg — for violating the law. In a 5-4 decision, Justice Kennedy stated that with every passing year the “physical presence rule becomes further removed from economic reality” resulting in significant losses to the states.

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Many states have already enacted legislation that requires sales tax collection for most retailers making sales into the state. Because these statutes are no more onerous than South Dakota's statute that was upheld on June 21, 2018, the decision makes these statutes now no longer constitutionally prohibited. Further, this decision could be applied retroactively in some states whose legislation required collection beginning before now. That said, there have been some efforts within the Streamlined Sales Tax Project to get states to come together to agree to enforce these statutes prospectively only if *Wayfair* was decided the way it has been decided. Stay tuned for further developments.

Please contact [Mark Snider](#) or any member of the Porter Wright [Tax Practice Group](#) with any questions.

