

Anchin Alert

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South Dakota v. Wayfair Inc. May Significantly Change How Retailers Collect Sales Tax

It is no secret that there has been a dramatic change in the system of collection of sales tax in the United States in recent years, partially due to trends such as online shopping. A recent court case that could dramatically change the laws on sales tax and have a potentially significant impact on businesses and consumers is progressing through the judicial system.

The U.S. Supreme Court has agreed to hear South Dakota v. Wayfair Inc. which challenges the seminal Quill case. This sets the stage for the court to decide whether states may force retailers that do not have a physical presence in their state to collect and remit use tax. Overturning Quill could mean that all retailers could be forced to collect sales tax on all of their sales. If a company ships into a state, it could be legally required to collect and remit the tax. Retailers will be forced to learn and follow the sales tax rules and rates for the 46 states who impose a sales tax, along with the varying rates among the states' various counties and localities.

States are saying that commerce has changed over the past 30 years and internet sales cost states billions of lost revenue dollars a year. Various states have been trying to force retailers to collect and remit this tax. Numerous states have passed laws and presented challenges in the court system, but until now, the Federal Government has not been involved. Taxing agencies have been working very hard to find out-of-state sellers who have nexus in their states. Should South Dakota's challenge prevail, these agencies will be well equipped to spend more time and resources auditing without having to search or survey to determine what businesses owe them money. This will put a dramatic burden on the smaller online retailers.

If Quill v. North Dakota is overturned, then lawmakers may try to work out a uniform national sales tax. With a wide disparity in state and local sales tax rates, along with each state determining what goods and services are subject to sales tax, a nationwide system may be hard to achieve.

It is important to maintain an understanding of how potential law changes may impact business operations. For more information or to discuss the possible impacts in greater detail, contact your Anchin Relationship Partner or Sharon Ackerman, Tax Director in the firm's Tax Controversy Services Group, at 212.840.3456 or info@anchin.com.



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