

# CyberLaw Decoded



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## U.S. Supreme Court broadens ability of states to tax e-commerce transactions

The sales tax compliance landscape for online retailers is undergoing rapid change. On June 21, the Supreme Court delivered its opinion in *South Dakota v. Wayfair, Inc.*, paving the way for states to require many out-of-state retailers to collect state sales tax.

The *Wayfair* dispute began when South Dakota's legislature enacted a sales tax law that requires most large online retailers to collect South Dakota sales tax on goods and services delivered to South Dakota customers, regardless of where the retailer is physically located. Under the law, collection is required if a seller annually delivers to residents of South Dakota more than \$100,000 of goods or services or engages in 200 or more separate transactions for the delivery of goods or services into South Dakota.

Prior to the *Wayfair* decision, the so-called *Quill* rule generally provided that a retailer must have a physical presence in a state before the state can compel that retailer to collect its sales tax on goods delivered to customers in that state. This long-standing *Quill* standard insulated many online retailers from collecting sales tax on goods sold into other states, since these retailers often limited their physical presence to one or a few states. The *Wayfair* decision overrules this *Quill* physical presence requirement, but the case is currently pending as the U.S. Supreme Court has instructed the lower court to hear additional arguments on the constitutionality of the law.

While the case is pending in the lower court, several states are rushing to implement laws similar to the one enacted by South Dakota. Many states believe that mirroring South Dakota's sales tax law will insulate those states from similar litigation brought by online retailers. Some states are even considering whether to retroactively attempt to collect sales tax on out-of-state sellers now that the law has presumably broadened. The Wisconsin Department of Revenue, for example, has indicated that it will start requiring collection from out-of-state sellers beginning Oct. 1, 2018, with additional guidance to follow on which businesses will be required to collect.

For struggling brick-and-mortar shops, those arguably hurt most of all by the advent of online sales, *Wayfair* may help level the playing field with their online competitors who were previously able to avoid collecting sales tax on most sales. Many states are also eager to begin collecting the additional sales tax revenue from out-of-state sellers who have no vote in the matter. On the other hand, online retailers and other businesses that deliver a high volume of goods and services into other states will now be faced with the burden of complying with sales tax laws, which vary from state to state, and in some instances, county to county. The compliance burden and risk of audit is likely to increase for these businesses as most states are likely to follow *Wayfair* to the maximum extent possible.

We are closely following the development of these new state laws in the wake of *Wayfair*. Please contact Tim Smith if you have any questions about how these new developments might impact your business.