

COUNTY SUPERVISORS ASSOCIATION



TAXATION OF ONLINE PURCHASES

South Dakota v. Wayfair Supreme Court Case

Policy Discussion and Impact on Tax Policy and Revenue Collections

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How We Got Here

From Quill to Wayfair

MAY 26

In *Quill Corp v. North Dakota*, the U.S. Supreme Court rules that only businesses with a **physical presence** in a state should be required to collect its sales taxes.

JANUARY 27

South Dakota Senator Deb Peters (R) **introduces SB 106** to require remote sellers to collect and remit state sales tax.

MARCH 6

The South Dakota 6th Judicial Circuit **rules SB 106 unconstitutional**.

JANUARY 12

The Supreme Court **grants** South Dakota's **petition to hear the case**.



1992



1994



2016



2016



2017



2017



2018



2018

AUGUST 11

One of the **first secure retail transactions** occurs over the internet when NetMarket sells a copy of Sting's "Ten Summoner's Tales."

MARCH 22

South Dakota Governor Dennis Daugaard (R) **signs SB 106 into law**.

SEPTEMBER 13

South Dakota Supreme Court **upholds the lower court's ruling**.

JUNE 21

The Supreme Court rules that **states can require remote sellers to collect** and remit applicable state sales taxes (Some elements of the case were remanded back to the SD Supreme Court).



South Dakota Law

- South Dakota Law (Economic Nexus)
- Requires an out of state seller to follow all applicable procedures and requirements of law as if they had a physical presence in the state if they:
 - Generate more than \$100,000 in revenue from sales into the state the previous calendar year,
OR
 - Had more than 200 separate transactions (sales) into the state the previous year.

Nexus refers to the connection between a state and a person or business



Wayfair Supreme Court Ruling

Supreme Court ruled on the “Nexus Issue” effectively eliminating physical presence requirement

- *Quill* case established that a physical presence was needed to prevent undue burdens on interstate commerce.
- In *Wayfair*, the Court concluded that rejecting the physical presence rule was necessary to ensure that artificial competitive advantages were not created by the courts prior precedents (*Quill* and *Bella Hess*).
- Further the court concluded that commerce clause analysis must be based on functional, marketplace dynamics and states need to consider those in enacting state laws (a lot has changed since *Quill* in 1992).

With *Quill* overruled, substantial nexus is still required and the commerce clause still forbids a state from imposing undue burden on interstate commerce

The U.S. Supreme Court only ruled on nexus and remanded other issues related to burden back to South Dakota Supreme Court.

- Court intimated that the following features of South Dakota law should be considered on remand: safe harbor for small sellers, no retroactivity, single state level tax administration, simplified tax rate structure, uniform definitions

Commerce Clause; 1) state regulations may not discriminate against interstate commerce, 2) states may not impose undue burdens in interstate commerce.



**State
Sales Tax**

**County
Shared TPT**

**Local
Excise Tax**

Revenue Potential

- ADOR anticipates roughly **2.5% in new state sales tax revenue**. This would translate into a similar increase on county sales tax revenues.
- It would also **prevent the degradation** of the sales tax base as the economy shifts more towards e-commerce.



What Has to Happen Next

State and/or National Level

Economic Nexus Law Enacted in Arizona

- 22 states have passed economic nexus laws

OR

Arizona Department of Revenue Rule Change

- Several courts cases related to nexus indicate that current law may be sufficient to allow state and local taxes to apply to remote transactions

- Issues:
 - Does Arizona need to further simplify our sales tax system or become members of the “Streamlined Sales and Use Tax Interstate Agreement.”
 - Tax Base Issues, Varying Rates and Business Licenses
- Time Line-Wayfair Attorney commented that this is just the beginning! (may be appealed based on substantial burden)
- What if you ran a business and now have to collect taxes everywhere (certified service providers (CSP) software could help)
- Congressional Action-Lets Hope Not!



“...[The Governor] has reached no conclusion on whether Arizona law should be altered to permit taxation of Internet sales, much less what the state should do with any additional revenues. The problem starts with the **lack of information** - it's very much a hypothetical.



Daniel Scarpinato
Governor's Press Aide

HB 2465 (2014) would have required state tax authorities to determine how much in new sales taxes were collected in internet sales in the first year and reduce the next year's income tax rate by the same amount.

Failed on a 29-29 vote on the house floor

Sponsor: J.D. Mesnard

R-Chandler

“...Question for lawmakers here is not limited to whether to tax Internet sales... The state needs to look at the **larger question of digital goods** that also are purchased online.



Rep. Michelle Ugenti-Rita
R-Scottsdale

“No reason why purchases made by Arizonans on the Internet should be exempt from the state's 5.6 percent sales tax **while local brick-and-mortar retailers are forced to collect** the levy... I have never advocated from the perspective of taking more from taxpayers... New - and unexpected - revenues provide opportunities to consider how to **reform the overall tax structure** of the state.



House Speaker J.D. Mesnard
R-Chandler

“...Interested in Arizona getting its share of taxes from online sales...Implementing such a chance is a very delicate question. The key is what Arizona would do with any new revenues. I have always been one to consider if **we can lower taxes in one place and broaden the base** is not bad idea...If we decided to add a tax, then we would want to reduce taxes somewhere else... The trick, is figuring out **how to do that - and do it in a fair way**.



Sen. David Farnsworth
Senate Finance Committee Chair
R-Mesa



CSA ACTIVITY REPORT



Meetings

- The League of Arizona Cities and Towns
- Arizona Department of Revenue
- Arizona Retailers Association
- International Council of Shopping Centers
- Streamlined Sales Tax Commission
- Governor/Legislative Leadership Staff
- National Conference of State Legislatures Panel



- ▶ Sort out technical issues

Political issues



- ▶ Champions

Messaging



- ▶ Help with local champions

Remand/
Other Legal Action



What's Next?