

## BUSINESSES MAY NOW BE REQUIRED TO COLLECT SALES TAX ON OUT-OF-STATE SALES

*On June 21st, 2018 the US Supreme Court ruled that states can require on-line retailers to collect and remit sales tax on sales into that state even if the retailer has no “physical presence” in the state.*

(South Dakota v. Wayfair).

### BACKGROUND

In the state tax realm, “nexus” is the amount of contact that must exist between a taxpayer and a state before the state can impose sales taxes on that taxpayer. The US constitution requires that there be some minimum connection between the parties and that there is substantial nexus in order to impose tax.

Since 1992, the *Quill* case was the bright line test of physical presence necessary for nexus. The *Quill* case was based on catalog sales into a state and the court found that *Quill*'s catalog sales did not create nexus, thus no state sales and use tax requirement could be imposed. The *Wayfair* case changes this!

### WHAT IS ECONOMIC NEXUS?

Internet based sales have continued to grow and brick and mortar store sales have continued to decline. Many states, including Washington State, have enacted economic nexus rules in an effort to

require businesses that sell into their state to collect sales or use tax on those sales based on the volume of sales and other factors, disregarding the fact that there is no physical presence in the state. This economic activity creates nexus.

In this case, South Dakota is requiring that businesses that have 200 transactions or more or \$100,000 in sales to South Dakota consumers collect and remit SD sales tax.

### HOW DOES THIS IMPACT YOUR BUSINESS?

Any business selling goods or providing services across state lines may be impacted by the *Wayfair* decision. Businesses will not be able to manage their sales tax exposure by choosing where they have a physical presence.

Businesses need to closely monitor their economic activity and the volume of that activity in order to comply.

Currently at least 15 states have some version of sales tax collection requirements based on economic nexus. 41 states petitioned the Supreme Court to repeal *Quill*! Expect to see more states enact these economic nexus laws modeled after South Dakota's law.

There are over 10,000 sales tax jurisdictions in the United States with their own tax rules. Shannon & Associates can assist you in evaluating your state tax nexus and filing requirements in this changing environment.



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