

Is your business a “Remote Seller”?

Are you aware of the landmark decision that has changed the nexus rules for sales tax requirements if you sell goods to other states?

A remote seller is a business that sells products to customers in a state using the Internet, mail order, or telephone, without having a physical presence in that state. Since 1967, and supported by the 1992 US Supreme Court decision of Quill Corp v. North Dakota, a state could NOT require a remote seller to collect sales tax on items delivered into that state because the company did not have a physical presence there. If a business did not have a physical presence in the state, it did not have nexus for the purpose of collecting sales tax.

This past June, a landmark decision was made by the US Supreme Court regarding sales tax and how it impacts remote sellers. The sales tax case was South Dakota v. Wayfair. The decision made in favor of South Dakota was in direct challenge of the Supreme Court’s 1992 Quill decision.

Here is the background...in 2016 South Dakota passed a law that required any remote seller, whether they have nexus (a physical presence) in the state or not – to collect South Dakota sales tax if they have either 200 transactions or sales exceeding \$100,000 in the state in a year. Under the South Dakota law, no physical presence is required. The state of South Dakota followed this action by suing multiple e-commerce retailers including Wayfair who at the time had not been collecting South Dakota sales tax. South Dakota Supreme Court ruled the legislation unconstitutional. The case was taken to the US Supreme Court and the result was that the court upheld the 2016 South Dakota law, eliminating the physical presence requirement.

This decision will have continued ripple effects on sales and use tax collection responsibilities for remote sellers. At this time, with no physical presence requirement to collect sales tax, businesses will need to be intentional about considering their collection and filing requirements for sales made out of state. Each state is unique in its requirements. At least 7 states have enacted laws that mirror South Dakota, North Dakota being one of them, and others have similar pending legislation.

What should you do next?

We want you to remain in compliance for sales tax...to best determine how to do that consider the following for your business:

- 1)** What states do you currently sell product to? Do you have a system in place that can track your sales activity by state? If not, consider how to implement a process to keep these records.
- 2)** Once you’ve established the states in which you do have sales activity, determine if you meet the nexus rules of that state and find out what filing requirements that state has in place. This website is a good place to start <https://www.salestaxinstitute.com/resources/remote-seller-nexus-chart>.
- 3)** Once you’ve gathered the above info, we encourage you to call us to discuss how to proceed so you can make the best decision for your business’s continued success and compliance.