

## HOW DOES THE SUPREME COURT'S *WAYFAIR* DECISION AFFECT YOUR ONLINE BUSINESS?

**A**s a result of a recent Supreme Court decision, many online retailers may now need to collect sales and/or use tax on sales to customers outside of their own state.

Historically, unless a business had a physical presence in a particular state, it did not need to collect sales tax from its customers located in that state. However, in light of the Supreme Court's decision, *SOUTH DAKOTA v. WAYFAIR, INC., ET AL.*, a physical presence is no longer required in a state before a state may enforce collection of sales and use tax. The new "nexus" standard is based upon economic and virtual contacts between a business and a particular state.



The Supreme Court decision appears to be limited in scope to South Dakota's standard, which mandates that an out-of-state business collect and pay its state sales tax if it has at least \$100,000 in sales *or* at least 200 separate transactions in South Dakota annually. Because the Supreme Court did not declare South Dakota's taxing rule an undue burden on interstate commerce, many other states have rushed to enact or revise their own tax laws based on the minimum requirements set forth in South Dakota.

The vast majority of states now have laws on their books requiring out of state businesses to collect and remit sales tax. If your volume in any particular state exceeds \$10,000 or 100 transactions per year, you should check whether you meet that state's particular requirements. While a few states have a low economic threshold, most have thresholds of \$100,000 or higher. Pay particular attention to the effective date of each state's legislation. While most go into effect October 1, 2018 or later, some states already had laws in place with earlier effective dates.

There is a voluntary Streamlined Sales and Use Tax Agreement which allows businesses the benefit of simplified tax rate structures and software systems. The streamlined program may be appropriate for businesses that conduct large volumes of out of state business. Currently 24 states participate in this program. It allows users a one-stop registration process to collect sales and use tax in all 24 streamlined states. For more information please visit: <http://www.streamlinedsalestax.org/>.

If you have questions about the *Wayfair* decision or how it may affect your online business, or if you need assistance with any other business matter, please contact Attorneys [Stacey DiDomenico](#) or [Joe Wener](#).