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U.S. Supreme Court's Decision on Sales Tax Has Big Implications

Service

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The decision creates immediate tax implications for compliance practices and business acquisitions.

Prior case law (*Quill Corp. v. North Dakota*, 504 U. S. 298) held that nexus required some type of physical presence in a state. This standard allowed businesses, particularly online retailers, to avoid collecting sales tax in states where they did not have the required physical presence in the form of property or employees.

South Dakota enacted a law that ignored the physical nexus standard and allowed for taxation based on a minimum level of sales ($100,000 or 200 sales per year). The U.S. Supreme Court specifically overruled *Quill* and remanded the case to the South Dakota Supreme Court for a finding of whether the law passed the new constitutional standards.

The Court did not address several important issues, particularly whether the new standard could be applied retroactively.

What This Means to You

In consideration of this recent development, taxpayers would be wise to consider the following tax tips.

First, taxpayers should immediately assess their sales tax billing practices, particularly in states that enacted nexus thresholds in anticipation of a favorable ruling for South Dakota. The following states have economic nexus standards that require remote taxpayers to register to collect sales tax if they exceed certain thresholds in either sales amount or number of transactions:

Alabama	Indiana	Maine
Massachusetts	Mississippi	North Dakota
Ohio	Oklahoma	Pennsylvania
Rhode Island	South Dakota	Tennessee
Vermont	Washington	Wyoming

States with future effective dates include Iowa, Georgia and Kentucky.

Second, taxpayers should consider the effects of possible retroactive enforcement by states on business mergers or acquisitions. Specifically, acquirers may face significant exposure if states seek to retroactively collect sales or use tax on target businesses that previously relied on the physical presence test in determining they did not need to collect those taxes. This applies to stock purchases and mergers as well as asset purchases. (Most states impose some form of successor liability for sales and use taxes in asset purchases.) While these issues will not be resolved in the immediate future, they are important to consider in due diligence, as well as steps that might be taken to protect acquirers.

Contact Us

To learn more about how this ruling could affect your business, contact your primary Husch Blackwell attorney; State & Local Taxation (SALT) team members Joseph A. Pickart, Daniel B. Geraghty or Robert M. Romashko; or any other member of Husch Blackwell's SALT team.