



THE SUPREME COURT OF THE UNITED STATES ISSUES ITS WAYFAIR DECISION

Summary

On June 21, 2018, the Supreme Court of the United States issued its widely anticipated decision in *South Dakota v. Wayfair, et al.* No. 17-494. In a 5-4 decision, the Court held that the physical presence requirement for state tax jurisdiction is incorrect and not a requirement under the Commerce Clause of the U.S. Constitution.

Details

South Dakota enacted an economic presence nexus statute for sales and use tax collection on March 22, 2016. Under that statute, a remote seller is required to collect and remit sales tax if: (1) the seller's South Dakota sales exceed \$100,000; or (2) the seller has more than 200 separate sales transactions into South Dakota.

On January 12, 2018, the Court agreed to hear the case by granting South Dakota's petition for a *writ of certiorari*. On April 17, 2018, the Court held oral argument in the case.

Justice Kennedy authored the opinion for the five Justice majority (joined by Justices Thomas, Ginsburg, Alito, and Gorsuch). In summary, the majority ruled that the "physical presence rule, both as first formulated and as applied today, is an incorrect interpretation of the Commerce Clause." Further, the majority ruled that South Dakota's \$100,000 of sales or 200 separate sales transactions statutory requirement satisfied the substantial nexus requirement. However, the case was remanded to the South Dakota Supreme Court for further proceedings to determine if any other features of the South Dakota law discriminated against or unduly burdened interstate commerce.

Chief Justice Roberts authored the four Justice dissenting opinion (joined by Justices Breyer, Sotomayor, and Kagan).

Insights

- The U.S. Supreme Court's *Wayfair* decision is most likely the most significant U.S. Supreme Court decision on state taxation issued in the last 50 years.



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