



Canadian indirect tax news

US Supreme Court issues *Wayfair* decision: Physical presence sales/use tax nexus standard overruled

June 26, 2018

On June 21, 2018, the US Supreme Court issued its opinion in *Wayfair et al.* In a 5-4 decision, the majority held that the physical presence rule established in its previous decisions in *Quill* (1992) and *National Bellas Hess* (1967) for purposes of sales/use tax nexus "is unsound and incorrect". As a result, the Court reversed the lower court decisions and upheld the constitutionality of the 2016 South Dakota law establishing a sales/use tax nexus standard based on the existence annually of more than \$100,000 of in-state sales or 200 or more transactions involving in-state deliveries of goods or services. Please click the link [here](#) to read the decision of the majority (authored by Justice Kennedy)

Contacts:

Doug Myrden

National Indirect Tax Leader
Tel: 416-601-6197

Jim McDonald

National US Tax Leader
Tel: 416-874-3139

Quebec

Michel Lagrange

Tel: 514-393-7124

Eastern Region

Michael Matthews

Tel: 613-751-5310

and the dissenting opinion (authored by Chief Justice Roberts in which he stated that he would “let Congress decide whether to depart from the physical-presence rule”). For additional details regarding the underlying South Dakota law as well as the potential technical and logistical implications for remote sellers, please see our [February 21, 2018 Deloitte US tax alert](#).

This decision is important to remote sellers – including Canadian sellers - as vendors that sell goods into South Dakota (and other US states that have or will soon adopt nexus provisions similar to those now upheld as constitutional in South Dakota) may be required to collect indirect taxes from their customers even though they have no operations in or otherwise visit the United States.

Considerations for Canadian sellers:

- There is no input tax credit for sales taxes for businesses; they are a **hard cost**.
- There is no Canada-US treaty relief for sales taxes - even if a business pays no income taxes in the United States, it is subject to this tax regime.
- There is no Canadian foreign tax credit allowed for indirect taxes paid in the United States.
- Title passage in Canada does not always mean that a vendor can avoid sales tax, as collection is based on where the goods are going, not where title passes.
- The taxation of goods and services varies widely among US states. There is no “general rule” that uniformly applies, nor is there a requirement for consistency across states.
- A broad range of possible tax rates could apply. Even within a state, there is no single tax rate in most cases.
- The Internal Revenue Service has no role in collection of state sales taxes, and collection will not be undertaken at the border.

In this regard, please consider attending our Special Edition Dbriefs Webcast - *SCOTUS on Wayfair case: The path forward for sales-and-use tax reporting* – which will be held on June 29, 2018 at noon, EDT. Invitation details are available [here](#).

If you have any questions regarding the sales and use tax implications of this important decision, please contact any of the Deloitte professionals listed on this newsletter.

Bruce Todd, US State Tax Leader for Canada

Deloitte LLP
Bay Adelaide Centre, East Tower
8 Adelaide Street West, Suite 200
Toronto ON M5H 0A9
Canada

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Toronto

Danny Cisterna

Tel: 416-601-6362

Jason Riche

Tel: 416-607-1244

Western Region

Andrew Azmudeh

Tel: 587-293-3258

Janice Roper

Tel: 604-640-3353

Bruce Todd

Tel: 403-298-5981

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