

U.S. Supreme Court to revisit *Quill's* physical presence standard

On January 12, 2018, the U.S. Supreme Court granted certiorari in *South Dakota v. Wayfair, Inc. et al.*, a case challenging South Dakota's anti-*Quill* sales tax nexus law.¹ This significant development suggests that the U.S. Supreme Court may be ready to reconsider the decades-old "physical presence" nexus standard required in order for a state or locality to impose a use tax collection duty upon a remote seller.

In its 1992 decision in *Quill*, the U.S. Supreme Court affirmed the existence of a bright-line physical presence standard for substantial nexus under the Commerce Clause before a state or locality may impose a duty to collect use tax on a remote vendor.² In a direct challenge to the current physical presence requirement of *Quill*, the state of South Dakota enacted a law in 2016 providing that sellers - without a physical presence in South Dakota - are required to collect South Dakota sales tax on sales into South Dakota if, in the previous or current calendar year, the seller's sales into South Dakota exceed \$100,000 or the seller had two hundred or more separate transactions into South Dakota.³ On September 13, 2017, the South Dakota Supreme Court affirmed a lower court holding which had struck down the South Dakota law as unconstitutional in violation of the *Quill* physical presence requirement, commenting, "[h]owever persuasive the State's arguments on the merits of revisiting the issue, *Quill* has not been overruled."⁴

In the petition for writ of certiorari, the state of South Dakota presented the single question of whether the U.S. Supreme Court should "abrogate *Quill's* sales-tax-only, physical-presence requirement."⁵ In granting certiorari, the U.S. Supreme Court may be prepared to provide its view on the relevance of a physical presence sales and use tax nexus standard in a 21st century e-commerce environment.

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¹ *South Dakota v. Wayfair, Inc., et al.*, 901 N.W.2d 754 (S.D. 2017), cert. granted (U.S. Jan. 12, 2018) (No. 17-494).

² *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992).

³ S.D. Codified Laws § 10-64-2. Please refer to our previously issued Multistate Tax Alert available [here](#) for additional information on South Dakota's enactment of Senate Bill 106 of 2016.

⁴ *South Dakota v. Wayfair, Inc. et al.*, 901 N.W.2d 754 (S.D. 2017).

⁵ Petition for Writ of Certiorari, *South Dakota v. Wayfair, Inc.*, 901 N.W.2d 754 (S.D. 2017), cert. granted (U.S. Jan. 12, 2018) (No. 17-494).

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