



## Supreme Court Holds That States Can Require Internet Retailers To Collect Sales Taxes

*South Dakota v. Wayfair, Inc.*, No. 17-494

Decided June 21, 2018

Today, the Supreme Court held 5-4 that States may require internet retailers to collect sales taxes on online purchases.

### Background:

In *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), the Supreme Court reaffirmed that States could not require catalog retailers to collect sales taxes if the retailers were not physically present in the State. In a 2015 concurrence, Justice Kennedy urged the Court to reconsider *Quill* because it inflicted “extreme harm and unfairness” on States unable to tax the ever-growing number of online transactions. That urging spurred multiple States, including South Dakota, to require internet retailers to collect sales taxes notwithstanding their lack of a physical presence in the State. South Dakota then sued a number of internet retailers for not collecting sales taxes.

### Issue:

Whether the Court should overrule *Quill*'s physical presence requirement and allow States to require retailers to collect sales taxes, even if the retailer is not physically present in the State.

### Court's Holding:

States may require the collection of sales taxes by retailers with no physical presence in the State.

*“In the name of federalism and free markets, Quill does harm to both. The physical presence rule it defines has limited States’ ability to seek long-term prosperity and has prevented market participants from competing on an even playing field.”*

Justice Kennedy,  
writing for the majority

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## What It Means:

- The Court overruled *Quill* because its physical presence rule was unnecessary to satisfy due process or the Commerce Clause's requirement that state taxes not "unduly burden" interstate commerce. The Court observed that "*Quill* has come to serve as a judicially created tax shelter for businesses that decide to limit their physical presence and still sell their goods and services to a State's consumers," and that the "Internet revolution" has only made *Quill*'s rule "further removed from economic reality."
- Still, under the Commerce Clause, States may tax only those activities that have a "substantial nexus" to the State. The Court held that South Dakota's tax satisfied that test because it applied only to retailers that delivered more than \$100,000 of goods in the State or engaged in more than 200 transactions in the State.
- South Dakota, and the other States that have passed similar tax laws, will now require internet retailers to charge sales taxes on online purchases. States lost between \$8 and \$33 billion in sales taxes every year under the old physical presence rule.
- More States may now require internet retailers to collect sales taxes. These States may also change alternative tax provisions that they had enacted to make up for sales-tax shortfalls from internet retailers under *Quill*.

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Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the Supreme Court. Please feel free to contact the following practice leaders:

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