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## Online Retailers

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Supreme Court arguments are about to begin in [South Dakota v. Wayfair, Inc.](#), and it's vital for online retailers, as well as the tax and accounting advisors who serve them, to understand how the court's decision may impact them. South Dakota v. Wayfair is a challenge to Quill Corp. v. North Dakota, 504 U.S. 298 (1992), a previous Supreme Court decision reaffirming that a state could not require a business to collect and remit sales tax unless the business had a physical presence in the state.

The Quill decision, however, occurred before the explosion of ecommerce, which has enabled online retailers to easily sell into states in which they have no physical presence. In fact, according to the U.S. Accounting Office, states lost \$13.4 billion in revenue in 2017, significantly impacting South Dakota and other states that rely heavily on sales taxes instead of collecting income taxes.

While online retailers are fighting sales tax collection because the lower total cost makes their products more appealing, states are mounting a relentless assault on the Quill decision. For example, in 2016, South Dakota passed an [economic nexus law](#) requiring out-of-state sellers making at least 200 sales of taxable goods or services in South Dakota – or making more than \$100,000 from such sales – to collect and remit South Dakota sales and use tax. The law directly challenged the Quill decision, declaring an “[urgent need for the Supreme Court of the United States to reconsider](#)” [the physical presence precedent](#).

Wayfair, Inc. immediately challenged the law and the case has now made its way to

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laws and hoping that a South Dakota win means their laws will automatically become legal. However, this is not guaranteed. The court could make its decision very specific to South Dakota, which would require these other states to carefully examine their laws to ensure they won't face additional court challenges.

It is also possible that Congress could finally take action. A court decision in favor of South Dakota essentially says that it's law as written is sufficient under current federal law to give the state the authority to levy sales taxes on out-of-state sellers. However, Congress could simply change the federal laws related to sales taxes and nexus, which would essentially reverse the Supreme Court's decision. Then again, Congress could go in the opposite direction, giving states more authority to collect sales taxes. They could also do something in between, granting the states more authority while imposing a number of restrictions.

## **If Wayfair Wins**

Should the court decide in favor of Wayfair, Inc., the entire sales tax issue would remain unresolved. Other states will likely continue to push challenges to Quill to the Supreme Court. Wyoming, Indiana and Tennessee, for example, have ongoing cases and could eventually make their own distinct arguments to the court.

Further, states have additional actions to deploy in the event of a Wayfair win. For example, marketplace facilitator laws require marketplaces to collect the appropriate sales tax, taking the sales tax collection responsibility out of the hands of retailers and ensuring tax collection even if the retailers are not involved.

## **Retailers Need to Act**

Online retailers need to be ready no matter how the Supreme Court decides South Dakota v. Wayfair. Sales tax collection is almost certainly in their future, whether this year or next, and they should begin immediately working with the appropriate

resources to identify the states already collecting sales and use taxes and whether

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ability to focus on satisfying the needs of customers – should immediately develop a reliable strategy for tracking evolving sales tax regulations, assessing their impact on their businesses, and automating sales tax compliance.

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Scott Peterson is VP of U.S. Tax Policy and Government Relations for Avalara.

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