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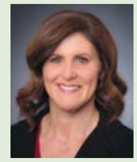
"If you do business across state lines, consult with a reputable attorney to ensure your business complies with individual state laws."



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U.S. SUPREME COURT DECISION CHANGES TAX IMPLICATIONS FOR INTERNET SALES

It's that time of year again, when consumers are scrambling to purchase gifts for the holidays, and retailers are pushing to earn a substantial portion of their annual revenue. Now, more than ever, a significant number of consumers are choosing to make their purchases online. Forbes reported that this year's online Black Friday sales were about 24 percent above last year's level, reaching a record $6.2 billion. While consumers are thrilled with the growing ease of online shopping, the U.S. Supreme Court's decision in *South Dakota v. Wayfair* may complicate the holidays for online retailers.

Prior to *Wayfair, Quill Corp. v. North Dakota* was controlling sales tax law for states and online retailers. Under *Quill*, a state could not require a retailer to collect and remit sales tax if the retailer had no "physical presence" in that state. The "physical presence" standard meant that out-of-state internet retailers were only subject to a state's sales tax requirements if the retailer had a physical presence, such as property or employees, within the taxing state.


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On June 21, *Wayfair* directly overruled *Quill*. At issue in *Wayfair* was a South Dakota law requiring that out-of-state sellers collect and remit sales tax if the out-of-state seller, on an annual basis, delivered more than $100,000 of goods into the state or engaged in 200 or more separate transactions for the delivery of goods into the state. South Dakota filed suit seeking a declaration that the law was valid. Respondents, top online retailers with no employees or property in South Dakota but with sales or transactions meeting the law's requirements, argued that the law was unconstitutional.

Ultimately, the Supreme Court overruled *Quill* and found that while the Constitution does prohibit states from creating tax laws that are an undue burden on interstate commerce, it does not require a physical presence; rather, the state only needs to show the law is based on a "substantial nexus" between the state and the online retailer. The Court did not determine whether the thresholds in *Wayfair* were sufficient to establish a "substantial nexus"—it left that for the lower court to decide.

Unfortunately, *Wayfair* leaves online retailers with more questions than answers. Currently, 31 states have laws requiring that out-of-state retailers collect and remit sales tax for online sales and it is not clear whether these laws contain the Constitution's "substantial nexus" requirement. For now, internet retailers should be tracking all out-of-state sales, noting the states in which they do the most business, and researching such state's sales tax laws. Sales tax liability may represent a significant issue for internet retailers that do not comply with state sales tax laws as such liabilities grow quickly with penalties, interest and potentially collection costs. In the wake of *Wayfair*, lower courts and state legislatures will be wrestling with what laws implicate a substantial nexus and are not an undue burden on interstate commerce, so it will also be important for internet retailers to keep apprised of changes that are likely to come.

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OHIO IMPLEMENTS STRONGER "DISTRACTED DRIVING" LAWS

HOLLY CLINE
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Effective Oct. 29, House Bill 95–in an attempt to deter and punish "distracted driving"–enhances the penalties for moving violations that occur as a result of "distracted driving." The new legislation also provides that law enforcement officers no longer will need to prove a driver is texting, but only that a moving violation has occurred and that the driver was distracted at the time.

In addition to existing fines, HB 95 requires enhanced financial penalties or the completion of a distracted driver course for drivers who commit moving violations while distracted. For example, a driver operating a vehicle outside marked lanes who is also engaging in a distracted behavior will face an enhanced fine of up to $100 in addition to a fine for the lane violation. Other violations–such as running a red light, stop sign, speeding or other moving violations–similarly would result in potentially higher fines.

The Ohio Department of Public Safety was tasked with creating a distracted driver course for offenders who plead guilty or are convicted of a specific traffic violation while distracted. This course is available in lieu of paying the enhanced court fine of $100 or less, so long as the offender pays the total amount of the fine established by the violation and submits written evidence of completion of the distracted driver course.