

## U.S. Supreme Court validates Tax Collection Obligations for Out-of-State Sellers

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### An McV Tax Alert

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On June 21, 2018, the U.S. Supreme Court (“USSC”) issued its opinion in [South Dakota v. Wayfair](#), which allows states to impose sales tax collection and remittance obligations on out-of-state sellers that transact certain levels of business in the state, regardless of whether they have physical presence in it.

The ruling validated a South Dakota statute that imposed an obligation to collect and remit the state’s sales tax on sellers that, on an annual basis, delivered more than \$100,000 of goods and services into the state or engaged in 200 or more separate transactions for delivery of goods and services into the state. This decision overturned the “physical presence rule” that had marked the boundaries for state taxation, a rule developed in [National Bellas Hess, Inc. v. Department of Revenue of Ill.](#), 386 U.S. 753 (1967), and reexamined in [Quill Corp. v. North Dakota](#), 504 U.S. 298 (1992).

In [South Dakota](#), the USSC found the [Quill](#) decision flawed because: (i) a physical presence is not a necessary interpretation of the “substantial nexus” requirement for the imposition of state taxes; (ii) the decision creates market distortions rather than resolving them; and (iii) it imposes an arbitrary distinction rejected by the USSC modern Commerce Clause precedents. In particular, the USSC explained that “[m]odern e-commerce does not align” with the physical presence rule, and that the *virtual* presence of retailers was not addressed in [Quill](#). The Court affirmed the substantial nexus principle from [Complete Auto Transit v. Brady](#), 430 U.S. 274 (1977) to support its conclusion that the plaintiff retailers had enough economic and virtual contacts with South Dakota to establish the nexus required for the imposition of state sales tax.

In validating South Dakota’s tax imposing statute, the USSC held that the business transactions (i.e., \$100,000 or 200 separate transactions) could not have occurred unless the seller availed itself of the substantial privilege of carrying on business in South Dakota.

Under Act 25-2017, Puerto Rico requires certain notifications and reports, but not collection of sales and use tax (SUT), from out-of-territory retailers based on prior USSC case law validating such requirements. A proposed regulation under Act 25-2017 calls for registration as a non-collecting merchant based on

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thresholds similar to those established by South Dakota's statute. It remains to be seen if, in view of the [South Dakota](#) ruling, Puerto Rico will amend its tax statutes and regulations to require out-of-territory retailers to collect, report and remit the Puerto Rico SUT on sales to Puerto Rico customers.

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