

Legal Update

June 26, 2018

INTERNET SHOPPING JUST GOT MORE EXPENSIVE

By Paul M. King

Last week the United States Supreme Court in *South Dakota v. Wayfair*, decided that states may charge a business a sales tax whether or not the business has a physical presence in the state. Previously, a physical presence in the state was required before a state could charge a business a sales tax on goods and services. Now that the physical presence requirement is gone, businesses must reevaluate their compliance with state sales tax laws.

What is next?

Currently, there are over 30 states with an internet sales tax on the books. Some of these laws were potentially unconstitutional prior to the Court's decision last Thursday because of their broad definition of physical presence. For example, states like New York and Illinois required sales tax be paid if a business (a) had a referral agreement with a person located in that state, or (b) had minimum gross sales in state. Whether all of these laws are constitutional under the Court's ruling is still yet to be determined.

The Court gave limited guidance on what parameters states can establish to require sales tax. The Court, however, did provide a clue. The Court stated that South Dakota's law, which was the law at issue in the case, passed constitutional muster. South Dakota's law requires a business to pay sales tax if the business sells over \$100,000 of goods or services into the state, or engages in 200 separate transactions for the delivery of goods and/or services into the state on an annual basis. How far below those benchmarks, if at all, would justify a state imposing a sales tax on businesses is unclear and will only become clear in the coming years as state sales tax laws are tested in the courts.

What businesses should do?

The Court's decision will affect every business that buys or sells over the internet. Businesses should contact a legal or accounting professional to determine the extent to which they are affected by the Court's decision. Businesses should also keep an eye on what will likely be sweeping changes and additions to state sales tax laws in the months and years ahead.

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