



## **Physical Presence is Replaced by Economic Nexus**

By, Toni Schwahn, CPA CFE

**O**n June 21, 2018, the Supreme Court overturned a long standing law that required businesses to have a physical presence in a state before that state could require them to levy and remit sales tax on sales within that jurisdiction (Quill Corp. v. North Dakota). The new law under South Dakota v. Wayfair eliminates the long established standard that companies need to have a physical presence in the state before they are required to collect and remit sales tax.

As states scramble to enact legislation that will allow them to increase their sales tax base, it will be difficult for companies to comply with the many different laws that will be put in place. As a means to determine economic nexus, some states are enacting safe harbor thresholds for the total dollar of sales while others are enacting a threshold for the number of transactions within the state.

So how do we advise our clients on how to deal with this? Begin by ensuring our clients have a good understanding of the extent of their out of state sales. Particular attention and considerations will need to include inquiries and details such as:

- Does your client have the capacity to determine the total dollar amount of the transactions?
- Can they determine the number of transactions per each taxing jurisdiction?
- Our clients will have to be proactive and become familiar with the laws for each state for which they are conducting business.
  - What constitutes a filing requirement?
  - Are there sales thresholds to collect sales tax?
- Our clients will also have to determine which products are taxable. Just because a product is taxable in one state does not make it taxable in another state.

The one saving grace with this new Supreme Court decision is that the law prohibits the states from retroactively enforcing it. Business owners can rest assured that no one will be going back to prior periods and assessing taxes and penalties for failure to comply.

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