



# SALT Alert!



## **SALT Alert! 2018-01: U.S. Supreme Court Grants Certiorari in South Dakota Case Seeking to Overturn *Quill***

The first breaking state tax development of 2018 has occurred, and it is a momentous one! On January 12, 2018, the U.S. Supreme Court granted certiorari in *South Dakota v. Wayfair, Inc.*, a case in which South Dakota seeks to have a statute imposing economic nexus standards on remote sellers upheld by the High Court. In its petition for certiorari, South Dakota asked the Court to revisit and abrogate the sales and use tax physical presence nexus requirement upheld in *Quill v. North Dakota*. The granting of certiorari in this case has sweeping implications for all states and state taxpayers.

Recall, in 2016, South Dakota became the first state to enact pure economic nexus provisions for sales and use tax purposes. Specifically, effective May 1, 2016, all entities with annual sales in South Dakota exceeding \$100,000 or with more than 200 separate transactions in the state were required to collect and remit South Dakota sales and use tax. These provisions were intended to—and quickly did—jump-start litigation because they directly contravened the *Quill* physical presence standard.<sup>1</sup> On September 14, 2017, in *South Dakota v. Wayfair, Inc.*, the South Dakota Supreme Court held that the state was bound to follow established U.S. Supreme Court precedent and therefore the law imposing economic nexus standards on remote retailers was not valid in light of the physical presence standard. In reaching this conclusion, the court rejected the state's arguments that the *Quill* physical presence standard is outdated in light of advances in software and technology. South Dakota, as expected, petitioned for certiorari.

### **Next steps**

It remains to be seen when the oral arguments will be scheduled. But, it is likely that the case will be heard in the spring. It also remains to be seen whether the Court will accept South Dakota's invitation to overturn *Quill*. But, whatever the outcome, the holding will have a significant impact on remote sellers and on states. About a dozen other states have enacted laws similar or somewhat similar to South Dakota's.

### **Footnote**

[1] The Department of Revenue is prohibited from enforcing these standards until the litigation is over, assuming *Quill* is overturned, and they can be applied prospectively only.



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