



The Way Forward: Wayfair and More



Wayfair falls in a rapidly changing landscape

- The digital economy, artificial intelligence, internet of things redefine our playing field
- New economy, sharing economy, gig economy
- How big? Apple, Alphabet, Amazon, Microsoft, Facebook on top 10 market cap
- On-line consumer spending up 15% 2018

[\(https://www.digitalcommerce360.com/article/us-ecommerce-sales/\)](https://www.digitalcommerce360.com/article/us-ecommerce-sales/)



Summary of Digital Landscape Issues

- E-commerce and taxation
- Sharing economy and taxation
- Cyber crime
- Technology and service provision
- Harnessing technology for taxation – blockchain
- Pressure on workforce (AI and more) at all levels – and taxation



Back to the issue of Wayfair...

- Taxation of remote sales
- Quill and previous legislation supported physical nexus – sales tax via the use tax
- Over time, pressure builds as internet commerce increases
 - Estimates of sales tax loss 4-9%
 - Technology in support of collection
 - Defining economic nexus over physical nexus
 - Disadvantage to brick and mortar



Wayfair landscape

- Previous challenges:
 - National Bellas Hess v Illinois (1967)
 - Quill v North Dakota (1992)
- What happened in 1993?
 - Last Sears Catalog
 - Retail Archaeology
- What happened in 2018?
 - Supreme Court decision on Wayfair vs. South Dakota



Wayfair Decision

- June 21, 2018: 5-4, Justice Kennedy writing for the majority
 - The physical presence nexus standard articulated in *Quill* “is unsound and incorrect”
 - Court overturns both *Quill* and *National Bellas Hess*
 - Dissenting Justices agreed on substance (i.e., *Quill* was wrongly decided) but would have upheld *Quill* on stare decisis grounds, leaving it to Congress to overturn the decision.



Basic guidelines

- Remote sellers should collect and remit sales tax based on economic nexus
- Not retroactive
- Safe harbor for small businesses (define economic nexus)
- Single tax administration at state level
- Simplified rate structure
- Uniform definitions
- Access to software provided by state; immunity for use of it



Implications

- Tax revenue increase
- Administrative burdens
- Change in competitive advantage (winners and losers)
 - Brick and mortar
 - Non-tax states
- Economic nexus may mitigate in-state advantage



Implications

- Local sales tax – simplification
- Level playing field for physical location
- Acknowledge that use tax not effective



What are states seeing?

- Little evidence of sales tax revenue growth-yet
 - Future growth is the key
- Bits of confusion over nexus
- Cleaning up of previous “band-aid” legislation
- Concerns of businesses
- Local issues – complications of the tax



What's next?

- Impact on e-commerce vs. brick and mortar
- How quickly will innovation (evasion) happen?
 - Sales suppression technology and disappearing transactions
 - Increased digitization of consumption
- Demographic changes still huge
- Way forward for taxation?
 - Focus on simplification, immobile bases
 - Sounds familiar! But not quite