In 2018, the Supreme Court ruled 5-4 in *Wayfair v. South Dakota* that state governments can mandate that retailers outside of their state to collect and remit sales tax from in-state customers, even if they don't have some kind of physical presence there like a store, warehouse, server, or registered agent. In the wake of this decision that overturned over 50 years of precedent, state tax authorities swiftly enacted thresholds and timelines for sales tax compliance concerning out-of-state sellers.

It's estimated that there are over 9,000 different sales tax jurisdictions throughout the United States and the landmark Wayfair ruling only further complicated their administration. [Washington D.C. has the highest sales tax burden in the entire metropolitan area](https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/2017%20DC%20Metro%20Area%20Tax%20Burden%20Study%20032019.pdf), despite being a quarter of a point lower than Maryland and northern Virginia's 6% general rates, due to the multiple rate system used in the District. For instance, food eaten in restaurants has a higher sales tax rate than the general rate of 5.75%.

Decades ago, mail-order catalogs, home shopping TV channels, and early forms of Internet stores did not yet gain enough ground to get lawmakers' attention until *Quill v. North Dakota* that was decided in 1992. Now that ecommerce is part of daily life for most people, businesses are looking to lawmakers for a more uniform, nationalized solution after the Wayfair case.

Precedent for Sales Tax Nexus in *Quill Corp. v. North Dakota*

Quill Corporation, an office supply company that was incorporated in Delaware with operations chiefly headquartered in Illinois, was sued by the North Dakota state tax commissioner for failure to collect and pay use tax on sales to customers within the state. Quill did a large volume of mail-order business and only collected sales tax from customers in states where they had some type of physical presence: employees, property, or a physical store or warehouse. Quill had no such presence in North Dakota.

The North Dakota tax commissioner argued that Quill established a presence in North Dakota simply because of floppy disks bearing the company's name that were now physically located in the state. The North Dakota State Supreme Court upheld the tax commissioner's position, but the Supreme Court disagreed and based the ruling on the Dormant Commerce Clause. This clause prevents state governments from interfering with business activity across state lines, unless they are authorized to do so by Congress.

The decision essentially barred state governments from imposing sales and use tax collection requirements on out-of-state businesses unless they had valid physical nexus. Selling products that bear the company's name and branding and delivering them to customers in the state did not constitute nexus, per the 1992 ruling. Quill did not have offices or other physical locations in North Dakota and remote employees were rare at the time, but none of their staff was in the state.

However, *Wayfair v. South Dakota* has now overturned this case and states can now impose sales and use tax requirements on businesses that sell to their constituents. With the exponential rise in Internet-driven sales in the decades following the Quill decision, revenue-starved states had been pushing for "Kill Quill" actions that would authorize them to collect more sales taxes as they could not trust individual taxpayers to report use tax on their personal tax returns. Furniture giant Wayfair was brought before the South Dakota State Supreme Court, and after arguments in the Supreme Court, this authority has now been granted to state tax departments.

How is Nexus Redefined Under Wayfair?

In 2016, South Dakota passed a law requiring out-of-state Internet sellers that deliver more than $100,000 of goods or services into the state every year, or have 200 or more transactions regardless of amount, to collect and remit sales tax. Wayfair sued the state, citing Quill and declaring this action unconstitutional. However, the Court sided with the state by holding that Quill and related rulings were outdated because ecommerce and modern logistics now gave out-of-state sellers potentially unfair advantages over sellers located within the state.

45 states impose sales tax and most have used the authority granted by the Wayfair decision to model their economic nexus closely to South Dakota: $100,000 in sales or 200 transactions. At the time of writing, only Missouri and Florida have yet to enact an economic nexus threshold.

Rules for D.C. Businesses Under Internet Amendment of 2018

Washington D.C. businesses are now subject to the Wayfair nexus rules after Mayor Bowser signed the [Internet Sales Tax Emergency Amendment Act of 2018 (Emergency Act)](https://otr.cfo.dc.gov/page/marketplace-sellers-frequently-asked-questions-faqs) on December 31, 2018. In addition to a 6% sales tax on digital goods, businesses in the District that collect sales tax must comply with this mandate for all sales made after April 1, 2019. **This law affects businesses that are not based in Washington D.C. but sell to customers who live there.** Other states and jurisdictions have not taken such immediate steps, and phasing in compliance for businesses that sell to their constituents.

Washington D.C. copied South Dakota and has imposed the $100,000 in sales or 200 transaction threshold for requiring sales tax remission. This only applies to transactions within the District, not gross for the year.

The key takeaway from the Wayfair case is that our laws are finally beginning to catch up with technology, and it isn't always for the better. While state governments are pleased with the Wayfair decision and this will help state budget shortfalls, many commerce groups feel this decision hurts the smallest businesses that are now faced with undue compliance burdens, which gives large corporate sellers like Wayfair and Amazon an unfair advantage. With thousands of jurisdictions that would potentially require sales tax returns, retailer advocates are seeking a federal solution to this problem.

Jeff Lipsey and Associates can assist small business taxpayers with their Washington DC and metro area sales tax compliance questions if they are out of state. Contact us today to speak to one of our friendly and professional business tax experts.