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## A US SUPREME COURT SALES TAX CASE

### South Dakota v. Wayfair Inc., Overstock.com, Inc., & Newegg, Inc.



Likely once in a lifetime, the United States Supreme Court is hearing a sales tax case! While this might sound uninteresting for many of you, for us in the sales tax business, this is big news. The case is *South Dakota v. Wayfair Inc., Overstock.com, Inc., and Newegg, Inc.* which is scheduled for argument on April 17, 2018.

In 1992, the US Supreme Court ruled in the *Quill Corp. v. North Dakota* case that a taxpayer must have a physical presence that is more than de minimus in order to have sales tax nexus in a state. However, the Supreme Court never defined de minimus and over the years, states have been pushing the boundaries of nexus. If a taxpayer has nexus in a state, it is required to follow that state's sales tax rules including collecting and remitting sales tax on applicable taxable sales.

In the upcoming court case, South Dakota is asking the US Supreme Court to revisit its decision in *Quill* and expand nexus to include out of state internet retailers such as Wayfair, Overstock.com, and Newegg. At issue is a South Dakota law that looks at a seller's economic presence within a state to determine nexus rather than a physical presence. The law requires that any retailer transacting more than \$100,000 of business or more than 200 times annually with a state resident be required to collect and remit sales tax. South Dakota argues that in the digital age, keeping with a physical presence requirement is outdated and gives online retailers an unfair advantage.

On the other hand, Wayfair, Overstock.com, and Newegg are arguing that it is inappropriate for the US Supreme Court to make law. Rather, Congress should decide if nexus should be expanded to include economic presence. The companies argue that the constitution restricts a state's authority to require a business that lacks physical presence to collect sales tax and that there are no circumstances that warrant overturning *Quill*.

Whether the US Supreme Court will make a decision that will substantially shake up the sales tax world, we will shortly see...

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-Vin G. CEO

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