

Are your US sales effected? Your Sales and Use Tax compliance obligations may be greatly impacted by a Supreme Court ruling on the horizon

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Online Tax Strategies

We are eagerly awaiting a ruling that may reshape Sales and Use Tax compliance for Canadian businesses selling into the United States.

THE PRESENT STATE OF AFFAIRS

Presently, states cannot force a business to register for nor collect sales and use tax if the business has no physical presence in the state (for example: a place of business, inventory, equipment, sales staff, independent agents, contractors, technicians). States may provide for a minimum threshold of sales for registering; however, they may not force a business to register based solely on a business' volume of sales if they do not have any physical presence.

These precedents were established long before the prominence of internet sales, when the closest equivalent was catalogue sales (see *National Bellas Hess v. Department of Revenue*, 386 U.S. 753 (1967), *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992))

However, recently states have been frustrated with the loss of tax revenue and have been challenging these precedents on the basis that they are outdated and were formulated at a time that does not square adequately with today's economic reality.

WHAT'S HAPPENING

In *South Dakota v. Wayfair, inc.*, the Supreme Court of the United States will be in a position to change the rules, to allow states to require businesses to register based solely on the volume of sales. A number of states have already enacted legislation that would require out-of-state businesses to register if they are above a certain threshold in sales; in the case in question, South Dakota enacted legislation to require an out-of-state business to register if they have

over \$100,000 in gross sales or if they have made more than 200 separate transactions in South Dakota, even if the business has no physical presence in the state. These laws are presently unconstitutional and unenforceable since they violate the Supreme Court precedents mentioned above.

If the court decides on a new standard, these rules may come into effect and we will see a massive move towards creating and enforcing these new registration and collection obligations for out-of-state businesses. Failure to comply with these obligations could lead to significant costs for the businesses caught unaware in terms of uncollected taxes, penalties and interest.

The court is expected to give its ruling by June 29, 2018.

WHAT THIS MEANS FOR YOUR BUSINESS

Do you have significant sales in the United States but are not registered for any state sales and use taxes? Do you have a high volume of transactions in the United States (e.g. via an online store)? If so, you should eagerly await the ruling in this case, and keep an eye out for our future update on the matter.

If you would like to know more about how your business may be impacted, contact your RCGT tax professional.

Caveat: this alert is general in nature, and is not a tax opinion