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Small Business Issues Emerge in Oral Argument on Internet Sales Tax Collection

In this issue:

▪ **Small Business Issues Emerge in Oral Argument on Internet Sales Tax Collection**

(See *Small Business Notes* for January 2018 for an introduction to the issue.)

On April 17 the U.S. Supreme Court heard oral argument in the case of *South Dakota v. Wayfair* (U.S. No. 17-494) regarding whether or not a state can impose a sales tax collection obligation on a retailer that does not have a physical presence in the state. As noted in the above referenced January 2018 piece on this case, the actual issue before the court is whether the state court in South Dakota properly granted summary judgment in the case when it was first heard. But oral argument raised additional issues relating to the impact that the Court's decision will have on interstate commerce and small retailing.

Opponents of the South Dakota position imposing a sales tax collection requirement depended heavily on the cost of nationwide compliance with sales tax collection, not just in the fifty states, but also in several thousand other sales tax administering districts. The justices themselves debated whether resolution of the question was appropriate for judicial action or should require Congressional action (as in a national sales tax or national sales tax collection process) as the Supreme Court had held in its earlier *Quill* decision.

Further comments among the justices asked what scale of sales was necessary to create a tax nexus (that is, was one sale enough?); whether application of a decision should be prospective or retroactive; whether *Quill* was erroneously decided and should be overturned or, regardless of the nature of the decision, whether reliance on the law for decades was a substantial enough reason to keep it in place.

A number of small business advocacy organizations have already begun preparing for campaigns to change the law at the Congressional level if the judgment goes in favor of states' ability to impose the collection requirement on businesses without a tax nexus and instead selling in a state by internet, telephone, or catalog.

A decision in the case may come as early as June.

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