



Dear Clients,

MuniServices appreciates that many of you have reached out about today's U.S. Supreme Court decision regarding *South Dakota vs. Wayfair, Inc.*

States now have the broad authority to require online retailers to collect sales taxes. States now can require out-of-state retailers to collect their state's sales taxes, at least in some circumstances, even if they do not have a store, warehouse, or physical presence in that state.

Collecting sales tax on online purchases has been a controversial subject for decades, and the Supreme Court decision reflects that things are not completely settled. The vote was a 5-4 decision, with Justice Kennedy writing for the majority together with Justices Thomas, Ginsburg, Alito, and Gorsuch. "Quill puts both local businesses and many interstate businesses with physical presence at a competitive disadvantage relative to remote sellers," Kennedy wrote. "Remote sellers can avoid the regulatory burdens of tax collection and can offer de facto lower prices caused by the widespread failure of consumers to pay the tax on their own." President Trump in a tweet wrote: "Big Supreme Court win on internet sales tax - about time! Big victory for fairness and for our country. Great victory for consumers and retailers."

MuniServices (Avenu) Implementation Webinar, Wednesday, June 27, 2018 at 10:00 am (PST)

We know that details are unfolding including what is next and what may or may not be needed from the State Legislature and/or Congress.

Please join our interactive "Implementation Webinar" on Wednesday, June 27, 2018 at 10 am. that will cover what the decision means for your jurisdiction. Fran Mancia, MuniServices Vice President of Government Relations and special advisor John Kroll will lead the discussion.

What Will Be The Effect To Your Sales Tax Revenue?

Many localities are preparing budgets and would like to include forecast adjustments based on today's ruling since it will directly impact counties, cities and transportation and special districts. *Please contact your MuniServices / Avenu Client Manager for specific revenue impact estimates.*

The Legislature may change by statute the method of distributing the revenues derived under a use tax imposed pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law to allow the State to participate in an interstate compact or to comply with federal law. The revenues that will flow from today's decision are considered "use" taxes meaning they are from out-of-state retailers coming into the State of California. The revenues will flow to the countywide pools because the distinction remains for those businesses that have a physical presence in California versus not. For entities who receive Transactions and Use Tax (TUT), we anticipate the CDTFA to register the affected companies just like they would any other out-of-state business and instruct them to collect the tax rate of the ship to location thus collecting the add-on tax rates.

According to the CDTFA, effective August 1, out-of-state retailers will be expected to collect sales, transactions and use taxes. We are expecting that based on the August 1 implementation date that the 3Q2018 returns would include the revenue associated with those online retailers that have registered for a California Sales Tax Permit, with cash flowing through the countywide pools and TUT recipients and potentially funding November 2018.



CDTFA Implementation Guide / New Collection Requirements To Begin August 1, 2018

The CDTFA today published a “Tax Guide for New Tax Collection Requirements for Retailers Making Sales for Delivery into California.” <https://test.cdtfa.ca.gov/industry/economic-nexus.htm>

Specifically, the Guide states:

*Due to the recent U.S. Supreme Court decision in **South Dakota v. Wayfair, Inc. (Wayfair) (Dock. No. 17-494)**, certain retailers are required to register with the California Department of Tax and Fee Administration (CDTFA) and collect California use tax from their customers on their sales of tangible personal property into California.*

Beginning August 1, 2018, the new collection requirement applies to a retailer if during the preceding or current calendar year either:

- *The cumulative sales price from the retailer's sales of tangible personal property for delivery in California exceeds \$100,000, or the retailer sold tangible personal property for delivery in California in two hundred (200) or more separate transactions.*

Retailers reaching either of the above sales thresholds are now required to register with the CDTFA to collect the California use tax even if they were not previously required to register. These retailers include retailers that sell tangible goods for delivery into California through the internet, catalogs, by phone, etc. There will be no change in the registration or collection obligations of retailers that were already required to collect California use tax prior to the Wayfair decision. Prior to Wayfair, the meaning of "retailer engaged in business in this state as defined in Revenue and Taxation Code section 6203 was limited by the U.S. Supreme Court's decision in Quill. That is, a retailer could only be engaged in business in this state if the retailer had a physical presence in California.

Does the Decision Address Digital Goods?

The decision does not address digital goods. For several years, the wireless industry has sought a moratorium on new wireless taxes (content/ digital goods such as music downloads. One of the arguments made by the industry is that they cannot be compelled to collect UUT because they do not have sufficient contacts with the taxing jurisdiction -- no physical presence. That argument is now weak. The State Auditor last year recommended several changes to the sales tax law to broaden its base and to increase collections. To broaden the tax base and to recognize the changing economy, the Auditor recommended extending the sales tax to digital goods (such as games, streaming or downloaded video and music, and e-books). <https://auditor.ca.gov/pdfs/reports/2017-106.pdf>.

Resources

South Dakota vs. Wayfair, Inc.: <http://www.scotusblog.com/case-files/cases/south-dakota-v-wayfair-inc/>

CDTFA Tax Guide: <https://test.cdtfa.ca.gov/industry/economic-nexus.htm>

MuniServices/ Avenu Policy Update: <https://www.avenuinsights.com/wp-content/uploads/2018/01/Jan-22-1.pdf>

Uncollected Sales Tax (March 2017): <http://www.efairness.org/files/Updated%20Sales%20Tax%20Loss%20Report.pdf>

Measuring the Electronic Economy: <https://www.census.gov/library/publications/2018/econ/2016-e-stats.html>

MSN Story: <http://www.msn.com/en-us/money/markets/states-set-to-gain-billions-in-sales-taxes-after-court-ruling/ar-AAyYyus?li=BBnbfN&ocid=U348DHP>



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