

TAX TOPICS

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THE SUPREME COURT OF THE UNITED STATES HAS RULED ON SOUTH DAKOTA v. WAYFAIR

The Supreme Court of the United States (SCOTUS) has made a ruling on a case involving South Dakota's application of its sales and use tax to internet retailers who sell products into South Dakota but do not have nexus within the state. South Dakota was challenging the decision from *Quill Corp vs North Dakota* which set the standard of property or employees for sales tax using the commerce clause to restrict state taxation of interstate commerce. The U.S. Constitution's Commerce Clause has been interpreted to forbid state taxation that excessively burdens or discriminates against interstate commerce. SCOTUS ruled in favor of the petitioner South Dakota in this case by a 5-4 vote.

The Court explained South Dakota's law is no burden to interstate commerce. It also explained that a more complex and overreaching law would be a burden to interstate commerce. Supreme Court Justice Anthony Kennedy stated that, South Dakota's tax system appears to have three features that are designed to prevent discrimination against undue burdens upon interstate commerce. First, the Act provides a "safe harbor" for companies that conduct only limited business in the state. Second, the Act is not requiring any business to collect sales tax retroactively. Thirdly, SCOTUS mentioned South Dakota is a member of the Streamlined Sales and Use Tax Agreement.

The Streamlined Sales and Use Tax Agreement standardizes taxes to reduce administrative and compliance costs. It requires a single, state-level tax administration, uniform definitions of products and services, simplified tax rate structures and other uniformity rules. It also provides sellers access to sales tax administration software paid for by the state. Sellers who use the software are immune from audit liability.

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WHAT DOES THE WAYFAIR DECISION MEAN?

The most obvious outcome of the Supreme Court's decision is that state and local tax revenue will increase. Nevada's Department of Taxation sent out a press release the afternoon of the decision with preliminary projections suggesting \$2.6 billion in taxable sales are expected annually from online retailers. The increase in taxable sales is expected to add an additional \$30 million to the State's general fund from the 2% portion of sales and use taxes. Governing.com estimates Nevada's potential tax revenue to be \$134 million annually.

Nevada is part of the Streamlined Sales and Use Tax Agreement along with 23 other states. Under this agreement, member states have uniformly streamlined their sales tax codes. These states also have access to software for sellers under the agreement which automatically collects and remits sales taxes for every sale in a state. This makes it easier to collect sales and use tax from online retailers. It's possible that more states will join this agreement due to the SCOTUS decision.

Some people are hoping the Federal government gets involved and passes legislation implementing uniformity. The Federal government could step in and provide consistency and clarity for retailers across the country. In 2013 the U.S. Senate passed the Marketplace Fairness Act, which would have implemented uniformity, but the bill died in the House.

REACTION TO THE WAYFAIR DECISION

There has been a lot of reaction from businesses and governments regarding the Supreme Court's decision. Below are just a few of those reactions.

Bob Coffin. *Former Member of the Nevada Senate representing Clark County District 10 from 1987-2011. Current Las Vegas City Councilman.*

"It's been a 30 year battle. We have always been a low property tax state heavily reliant on sales and use tax. They always have been linked. Only a few hundred people know they need to pay tax on products that come into the state. This decision will help close the gap in funding."

Kevin Loscotoff, *Walmart's Public Affairs & Government Relations Department, states,*

"We applaud the Supreme Court for closing a loophole that has existed for over two decades and produced an uneven playing field for main street businesses. Local communities are also the winners because they will now be able to collect sales tax dollars owed and needed to fund public services, including education, public safety and infrastructure improvements. We look forward to continuing to work with Congress and state legislatures to help ensure a level playing field exists for all retailers."

Bill Waltz, *Vice President of Taxation and Public Finance for the Indiana Chamber states*,

“For years, this situation has resulted in substantial loss of revenue to states, thus increasing the tax burden on those who do pay the taxes they owe. The Indiana Chamber has been a long-time advocate for online sales tax collection; it is one of the key goals in our Indiana Vision 2025 plan. We applaud state legislators who took the initiative in the 2017 Indiana General Assembly to prepare for this hoped-for decision. That legislation, which the Indiana Chamber strongly supported, has our state perfectly poised to fully implement an online sales tax law and trigger the tax collection.”

Wayfair *released a statement saying*,

We welcome the additional clarity provided by the Court’s decision today. Wayfair already collects and remits sales tax on approximately 80% of our orders in the United States, a number that continues to grow as we expand our logistics footprint. As a result, we do not expect today’s decision to have any noticeable impact on our business, as it may on other retailers who do not currently collect and remit sales tax.

Ebay *also released a statement saying*,

If state tax authorities attempt to subject remote small businesses to audits and lawsuits, there will be increased litigation across the country to protect small business from unfair burdens. Now is the time for Congress to step in and provide clear tax

rules, with a strong small business exemption, to help small businesses take advantage of the Internet to grow and create local jobs. [Ebay also sent users an email seeking signatures on a petition urging Congress to act.]

Etsy, *an internet arts and crafts market for remote sellers stated*,

The Supreme Court did acknowledge the important difference between big internet retailers and the creative entrepreneurs on our platform. Chief Justice John Roberts echoed our stance in his dissent, stating “The burden will fall disproportionately on small businesses. One vitalizing effect of the Internet has been connecting small, even ‘micro’ businesses to potential buyers across the Nation. People starting a business selling their embroidered pillowcases or carved decoys can offer their wares throughout the country—but probably not if they have to figure out the tax due on every sale.” ... By vacating *Quill*, we believe there is now a call to action for Congress to create a simple, fair federal solution for microbusinesses. ... We will continue to stand with our community of two million sellers, urging Congress to thoughtfully consider today’s decision and act swiftly and in the best interest of the microbusinesses they represent.

Arizona Tax Research Association *had this to say*,

“overturning *Quill/Bellas Hess* in *South Dakota v. Wayfair* is good news for Arizona businesses and taxpayers.”

BUREAU OF LABOR STATISTICS RELEASE MAY 2018 STATE EMPLOYMENT AND UNEMPLOYMENT SUMMARY

The Bureau of Labor Statistics released the May 2018 State Employment and Unemployment Summary on June 15. The report shows the unemployment rates were lower in May in 14 states and stable in 36 states as well as Washington DC. Eleven states had jobless rate decreases from a year ago, and 39 states had no change. The national unemployment rate edged down from April to 3.8 percent and was 0.5 percentage point lower than in May 2017. Nevada has an unemployment rate of 4.8 percent, which is 1 percent higher than the national average of 3.8 percent. Nevada has 37,400 more people employed in May 2018 than in May 2017.

For more information on the State Employment and Unemployment Summary for May 2018, click [here](#).

2018 NEVADA ELECTIONS

Elections for State Senate and Assembly will take place in November 2018. There are a total of 11 seats out of the Senate chamber's 21 that are up for election. Nevada State Senators serve staggered 4 year terms with half of the Senate up for election every 2 years. All 42 Assembly seats are up for election. Nevada Assembly members serve two year terms with all seats up for election every two years.

Nevada Secretary of State Barbara Cegavske announced the primary election results as well as voter turnout statistics. Winners of the primary election will move on to the general election in November 2018.

There were a total of 329,863 ballots cast in Nevada's primary election. That represents 22.86% of active voters. Of the total ballots cast, 146,677 are Democrat, 143,645 Republican, and 39,541 are Other. 44.47 percent of the ballots cast were Democrat, 43.55 percent Republican, and 11.99 percent Other. 20.99 percent of the total ballots cast were in Washoe, and 60.62 percent were cast in Clark County.

Petitions

The Commerce Tax repeal ballot measure was turned in with no signatures. The Commerce Tax was proposed and enacted during the 2015 legislative session. When the Commerce Tax was first proposed, the NTA Board of Directors was polled for its position. No consensus was reached either way and consequently, the NTA did not testify either for or against the policy of the Commerce Tax. Instead, the NTA took the position that it would comment on the administrative aspects of the Commerce Tax, and particularly would attempt to make compliance with the Commerce Tax as simple and straightforward as possible.

You can find more information on 2018 Petitions [here](#).

MORE SCOTUS

The U.S. Supreme Court today announced it would hear two cases of interest to state tax administrators, **Washington Department of Licensing v. Cougar Den, Inc.**, U.S. Supreme Court Docket No. 16-1498 and **Dawson v. Steager**, U.S. Supreme Court Docket No. 17-419.

The background in the **Cougar Den, Inc** case is an 1855 treaty between the United States and the Yakama Indian Nation providing members of the tribe "the right, in common with citizens of the United States, to travel upon all public highways." In a series of cases, the Ninth Circuit has rejected claims that this language exempts the Yakama from taxes or state fees on off-reservation commercial activities, holding instead that the language is limited to securing for tribal members a right to travel on public highways without paying a fee for that use or obtaining state approval. In this case, however, the Washington Supreme Court interpreted the treaty far more broadly, holding that it implicitly prohibits states from taxing "any trade, traveling, and importation" by the Yakama, even off-reservation, "that requires the use of public roads." The court therefore held that the treaty preempts Washington from imposing wholesale fuel taxes on Respondent Cougar Den, a Yakama-owned fuel distributor that imports millions of gallons of fuel into Washington annually for sale to the general public. The question presented is whether the Yakama Treaty of 1855 creates a right for tribal members to avoid state taxes on off-reservation commercial activities that make use of public highways.

Dawson vs Steager is a case dealing with FERS (Federal Employees Retirement System) and

state income taxes. In *Davis v. Michigan Department of Treasury*, 1989, this Court held that a state may not impose a heavier tax burden on federal employees than state employees, unless the discriminatory treatment is "justified by significant differences between the two classes." Such tax discrimination, even against a "subcategory" of federal employees violates the doctrine of intergovernmental tax immunity. James Dawson worked as a deputy U.S. Marshal before being presidentially appointed as the U.S. Marshal for the Southern District of West Virginia. Mr. Dawson was enrolled exclusively in the FERS. He sought a West Virginia tax exemption for all of his FERS retirement income, but that exemption was ultimately denied. Under West Virginia Law, Mr. Dawson is entitled to exempt a portion of his FERS income from his state taxable income. In contrast, West Virginia law allows state law enforcement retirees to entirely exempt from their taxable income all benefits received from four West Virginia retirement plans. Federal law enforcement retirees like Mr. Dawson are not entitled to full exemptions, although it is undisputed that Mr. Dawson's job duties were not significantly different from those of the exempted state law enforcement officers. The question presented by this case is whether this Court's precedent and the doctrine of intergovernmental tax immunity bar states from exempting groups of state retirees from state income tax while discriminating against similarly situated federal retirees based on the source of their retirement income. Does the doctrine of intergovernmental tax immunity, prohibit the State of West Virginia from exempting from state taxation the retirement benefits of certain former state law-enforcement officers, without providing the same exemption for the retirement benefits of former employees of the United States Marshals Service?

ODDS AND ENDS

- The official **2017 Nevada Revised Statutes with Annotations** are now available for purchase and shipment. The 2017 Official Nevada Law Library (ONLL) is also available on either computer disc or flash drive. Instructions to order on line can be found [here](#) .
- The IRS released a draft of a new W-4 form on June 7, 2018 with a goal of implementing in 2019. The draft of the newly designed federal W-4 and instructions both are now available for review and comment. Once implemented, the new W-4 is intended to calculate more accurate withholdings. In particular, credits, additional income and deductions will be accounted for directly. IRS is encouraging the states in particular to share their comments. The final W-4 is expected to be available for use prior to January 2019. Its use will not be mandated, but will be strongly encouraged. You can find the new W-4 form [here](#).
- The Senate has at last decided to hold the requisite hearing on the nomination of **Charles Rettig** to become the next **Commissioner of the Internal Revenue Service**. The hearing before the Senate Finance Committee will be Thursday.
- The **Nevada Tax Commission** approved the Property Tax Rates for Nevada Local Governments, also known as the Red Book. The Department is currently getting resolutions from each of the counties that the tax rates they will levy are the ones reflected in the Red Book. The book should be available in July 2018.

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