

Consumers, Get Your Checkbooks Out

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The United States Supreme Court took action on June 21st that it ordinarily is loath to do: overturn itself. The law of *Quill Corp. v. North Dakota* and *National Bella Hess, Inc. v. Department of Revenue of Illinois* no longer govern.

The case of *South Dakota v. Wayfair* asked if a South Dakota law requiring retailers with no physical presence in South Dakota to collect and remit sales tax was constitutional. Previously, the Supreme Court had ruled in *Quill* and *Bella Hess* that states could only require sellers and retailers with a physical presence in the state to collect and remit sales tax. Justice Kennedy stated on Thursday, “Each year, the physical presence rule becomes further removed from economic reality and results in significant revenue losses to States.”

In a 5-4 decision, the Court overturned *Quill* and *Bella Hess*, stating that the “physical presence” test was no longer required and states need not adhere to that when drafting laws to collect sales tax.

Justice Kennedy eloquently sums his position on the issue by making an example of Wayfair:

“Its advertising seeks to create an image of beautiful, peaceful homes, but it also says that “[o]ne of the best things about buying through Wayfair is that we do not have to charge sales tax.” Brief for Petitioner 55. What Wayfair ignores in its subtle offer to assist in tax evasion is that creating a dream home assumes solvent state and local governments. State taxes fund the police and fire departments that protect the homes containing their customers’ furniture and ensure goods are safely delivered; maintain the public roads and municipal services that allow communication with and access to customers; support the “sound local banking institutions to support credit transactions [and] courts to ensure collection of the purchase price,” *Quill*, 504 U. S., at 328 (opinion of White, J.); and help create the “climate of consumer confidence” that facilitates sales...”

States will no doubt be in a hurry to get laws on the books allowing them to collect sales taxes from out of state retailers. Consumers, get your checkbooks out.