

Electronic Commerce**Remote Sellers to Collect North Carolina Sales Tax Starting Nov. 1 (1)**

North Carolina will require certain out-of-state sellers to begin collecting sales and use taxes Nov. 1.

In a directive issued Aug. 8, the North Carolina Department of Revenue announced that it will enforce an existing state law requiring remote sellers to collect and remit taxes (N.C. Gen. Stat. Section 105-164.8(b)). The application of that law is supported by the U.S. Supreme Court's June 21 ruling in *South Dakota v. Wayfair*—which tossed out *Quill Corp. v. North Dakota*, the Supreme Court's 1992 physical presence threshold for when states could tax remote sales, the DOR said.

The department said it will apply the state law on a prospective basis starting Nov. 1, and enforce its requirement on remote sellers having gross sales greater than \$100,000 or 200 more transactions that are sourced to the state in a year. That threshold is based on the Supreme Court's decision on South Dakota's requirements.

The majority in the 5-4 ruling suggested strongly that South Dakota's law would pass constitutional muster; the statute imposes a tax collection threshold of 200 transactions or \$100,000 in in-state sales.

The majority stopped short of formally declaring South Dakota's law as valid in the absence of *Quill*, and the South Dakota Supreme Court still has to bless the state's economic nexus model before it can become effective—it's expected to do so in mid-August if the parties don't settle first. In the wake of the decision, dozens of states that haven't already done so are mulling whether to copycat South Dakota's law.

**Administrative Action** The DOR's directive seems to be an attempt to administratively enforce a state law that is much broader than the law that was subject to the high court's review, said William W. Nelson, a partner with Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan LLP in Raleigh.

“Rather than wait for the Legislature to respond to *Wayfair*, the department has chosen to enforce North

Carolina's existing remote seller statute but only within what it believes to be the contours of the *Wayfair* decision,” Nelson told Bloomberg Tax Aug. 8. “The Supreme Court's decision in *Wayfair* does not establish clear rules applicable to all taxpayers, and whether the directive constitutes a correct interpretation of that decision is an open question,” he said.

According to Nelson, North Carolina's law has existed for several years, and it requires sales and use tax collection by any remote seller whose activities create nexus in the state by “exploiting the market” using direct mail, television, or other media. The law remained basically unenforced as, before the *Wayfair* ruling, case law required physical presence to establish tax collection requirements, he said.

The North Carolina DOR's directive doesn't apply to remote sellers already registered or required to collect and remit sales and use taxes, Nelson said.

Because the *Wayfair* ruling was aimed at large companies with extensive presence in a state, North Carolina's approach raises “interesting questions,” including whether the state can constitutionally require compliance by smaller taxpayers, Nelson said. As the directive also isn't really an interpretation of state law, the DOR's authority to enforce it also could be challenged, he said.

**Retailers Applaud Move** The North Carolina Retail Merchants Association praised the DOR's rapid action after *Wayfair*.

The Supreme Court ruling “was only the first step in creating equity for North Carolina's brick and mortar stores,” according to Ann Edmonson, a spokeswoman for the state retail group, told Bloomberg Tax.

“We applaud NCDOR for taking the next step to collect sales and use tax on internet sales, as set out in their recently published directive, and further leveling the field between North Carolina's main street retailers and remote sellers,” Edmonson said in an Aug. 8 email.

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