

# TaxNewsFlash

## United States

No. 2018-152

April 18, 2018

### **U.S. Supreme Court: Oral arguments in state tax case to overturn “Quill”**

The U.S. Supreme Court on April 17, 2018, heard oral arguments in a case in which South Dakota seeks to have a state tax statute imposing economic nexus standards on remote sellers upheld by the Court.

Specifically, South Dakota asked the Court to revisit and abrogate the sales and use tax physical presence nexus requirement that was upheld in *Quill v. North Dakota*.

Read the [transcript](#) [PDF 725 KB] from the oral arguments on April 17 in *South Dakota v. Wayfair*.

#### **KPMG observation**

Tax professionals on considering the oral arguments have noted the following:

- The potential for Quill being overturned is perhaps less certain than it was before oral arguments.
- Policy concerns dominated the oral arguments. Justice Sotomayor indicated that a concern was not about the specifics of the South Dakota statute, but how other states might respond if Quill were overturned.
- The Justices seemed to be primarily concerned with three issues: (1) the costs and burdens that would be imposed on sellers if the physical presence rule were to be overturned; (2) whether states could retroactively apply an economic nexus standard; and (3) whether the issue would be better left to the U.S. Congress to resolve. Chief Justice Roberts suggested that perhaps Congress has acted through its inaction.
- The U.S. Solicitor General made some surprising comments. Notably, he commented that he believed a single sale into a state could create nexus for a seller. Several Justices seemed concerned by this position, and did not appear confident that Congress would act expeditiously to adopt a bright-line test should

they act to overturn Quill. The Solicitor General also indicated that the states could apply economic nexus retroactively if Quill were to be overturned.

- Justice Breyer in particular seemed frustrated by the contradictory information included by the parties in their briefs, such as the costs of complying with sales and use tax laws, and the accuracy of sales and use tax compliance software. Because the appeal arose from a grant of summary judgment, there was no record of facts or evidence supporting each party's position.
- Much of the discussion was focused on policy and the practical considerations associated with Quill being overturned. There was a surprising lack of discussion and debate about South Dakota's statute and constitutional law in general.

## What's next?

At this point, there is no clear indication as to how the Court will rule, although there will likely be much speculation in the coming weeks. While the outcome is uncertain at present, it is expected that an opinion will be released before the Court recesses for the summer in late June.

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