

## WAYFAIR AND FAREWELL

In June 2018, the U.S. Supreme Court issued its decision in *South Dakota v. Wayfair, Inc.*, 138 S.Ct. 2080. The Court overruled *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), and held that an out-of-state seller with no physical presence in a state can be required to collect and remit sales tax to that state for sales to in-state purchasers. The Court noted that

Respondents argue that “the physical presence rule has permitted start-ups and small businesses to use the Internet as a means to grow their companies and access a national market, without exposing them to the daunting complexity and business-development obstacles of nationwide sales tax collection.” Brief for Respondents 29. These burdens may pose legitimate concerns in some instances, particularly for small businesses that make a small volume of sales to customers in many States. State taxes differ, not only in the rate imposed but also in the categories of goods that are taxed and, sometimes, the relevant date of purchase. *Eventually, software that is available at a reasonable cost may make it easier for small businesses to cope with these problems. Indeed, as the physical presence rule no longer controls, those systems may well become available in a short period of time, either from private providers or from state taxing agencies themselves.* And in all events, Congress may legislate to address these problems if it deems it necessary and fit to do so.

138 S.Ct. at 2098 (emphasis added).

We know the first three sentences of that passage from *Wayfair* are correct (not counting the cite to respondents’ brief), as is the last sentence, of course. And we hope the middle sentences, which we have italicized, come true too. Since *Wayfair*, most states – all but one, actually – have retained or adopted regulations that reflect recognition of the fragility of at least some tiny enterprises. The one exception is Kansas, and so, with deep regret, we sent letters like the one on the next page to our four subscribers (now former subscribers) in Kansas. Every day is a new day, and we hope that on one of them we will meet again.

For a handy summary of the state of tax law in this area, check out the “Economic Nexus State Guide” here: [www.salestaxinstitute.com/resources/economic-nexus-state-guide](http://www.salestaxinstitute.com/resources/economic-nexus-state-guide).

*Ex Ante*



THE GREEN BAG  
AN ENTERTAINING JOURNAL OF LAW

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*Editor-in-Chief*

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[name]  
[address1]  
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Dear [name]:

Alas, I have been advised that in light of the Kansas Department of Revenue's Notice 19-04, it would be prudent for the *Green Bag* to cease selling to Kansans. So, we have cancelled the subscriptions of all four of our subscribers in Kansas. A refund check for the balance of your subscription is enclosed. I am very, very sorry about this.

Regretfully, and with best regards,