



Background of



South Dakota v. Wayfair, Inc

March 23, 2018



NATIONAL CONFERENCE
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Relevant U.S. Supreme Court Cases



National Bellas Hess v. Department of Revenue (1967)

The Supreme Court ruled that the Commerce Clause prohibits a state from imposing the duty of use tax collection and payment upon a seller whose only connection with customers in the state is by common carrier or by mail.

Complete Auto Transit Inc. v. Brady (1977)

The Supreme Court established a four-part test to determine if a state tax scheme unduly burdens interstate commerce:

1. **Substantial nexus** - connection between a state and a potential taxpayer clear enough to impose a tax.
2. **Nondiscrimination** - interstate and intrastate taxes should not favor one over the other.
3. **Fair apportionment** - taxation of only the apportionment of activity that transpires within the taxing jurisdiction.
4. **Fair relationship to services provided by the state** - company enjoys services such as police protection while in a state.



Quill Corp. v. North Dakota (1992)

U.S. Supreme Court Opinion -

Due Process

Due Process Clause does not bar enforcement of the State's use tax against *Quill*.

“Quill has purposefully directed its activities at North Dakota residents, the magnitude of those contacts are more than sufficient for due process purposes, and the tax is related to the benefits Quill receives from access to the State.”

Substantial Nexus

“Nor is *Bellas Hess* inconsistent with *Complete Auto*. It concerns the first part of the *Complete Auto* test and stands for the proposition that a vendor whose only contacts with the taxing State are by mail or common carrier lacks the "substantial nexus" required by the Commerce Clause.”

“the Commerce Clause and its nexus requirement are informed by structural concerns about the effects of state regulation on the national economy.

“The evolution of this Court's Commerce Clause jurisprudence does not indicate repudiation of the *Bellas Hess* rule.”

Quill led to the Creation of the Streamlined Sales and Use Tax Agreement



AK



MAP LEGEND

■ Joined Streamlined Sales and Use Tax Agreement

■ Have Not Joined Agreement

■ No Information

DMA v. Brohl

“Given these changes in technology and consumer sophistication, it is unwise to delay any longer a reconsideration of the Court’s holding in *Quill*. A case questionable even when decided, *Quill* now harms States to a degree far greater than could have been anticipated earlier.”

– Justice Kennedy in *DMA v. Brohl*, March 3, 2015



States Got Tired of Waiting for Congress...

“If we are going to do it [pass legislation to challenge *Quill* in the states], we need to have a bill ready January 1 and be ready to rock 'n' roll on it because committee hearings start the second week in January.”

– *Senator Deb Peters (S.D.), Nov. 20, 2015*

Jan. 8, 2016 – NCSL Task Force on State and Local Taxation

- Task Force members heard from a Supreme Court expert and discussed a state legislative proposal to collect sales taxes.
- Proposal was sent to legislative leaders and tax chairs across the country.



South Dakota S.B. 106 (2016)



Requires an out-of-state seller to follow all applicable procedures and requirements of law as if the seller had a physical presence in the state, if they:

- 1) Generated more than \$100,000 in revenues from sales into the state the previous calendar year, or
- 2) Had more than 200 separate transactions (sales) into the state the previous calendar year.

South Dakota S.B. 106

- ❖ Notably included legislature’s “findings” in legislation.
- ❖ Directed the state legal system to hear and rule on any case challenging the law “as expeditiously as possible.”
- ❖ Does not apply any provisions of the law retroactively.



S.B. 106: From Pierre to SCOTUS



Jan. 27, 2016

Senator Deb Peters introduced Senate Bill 106.



March 22, 2016

Gov. Dennis Daugaard (R) signed S.B. 106 into law.

March 25, 2016

The S.D. DOR sent notices to 206 sellers it identified as meeting the statutory requirements of S.B. 106.



S.B. 106: From Pierre to SCOTUS

April 28, 2016

The state filed a declaratory judgement action against 4 retailers for not collecting sales taxes per S.B. 106.

Sept. 13, 2017

The S.D. Supreme Court upheld the lower court's ruling that S.B. 106 was unconstitutional.

Jan. 12, 2018

SCOTUS granted South Dakota's petition.

Oct. 2, 2017

South Dakota petitioned the U.S. Supreme Court to hear the case. SLLC submitted an amicus brief.

March 6, 2017

The South Dakota 6th Judicial Circuit ruled that S.B.106 is unconstitutional.



S.B. 106: From Pierre to SCOTUS

April 17, 2018

SCOTUS will hear
oral arguments.

SOUTH DAKOTA
SOUTH



Supreme Court Considerations



- ❖ Dormant Commerce clause
- ❖ State sales tax simplification
- ❖ State activity – laws and regulations
- ❖ Retroactivity
- ❖ Advancements in technology
- ❖ Small seller thresholds/exemptions
- ❖ *Quill* will be applied only to traditional mail-order retailers (Solicitor General's argument)
- ❖ *Complete Auto Transit Inc. v. Brady* - Four prong test

After SCOTUS Rules on South Dakota v. Wayfair

- ❖ If South Dakota loses – Threatens the long-term viability of the sales tax
- ❖ If SCOTUS issues a narrow ruling. The court could find:
 - South Dakota's law is constitutional
 - Streamlined Sales Tax states are granted collection authority
- ❖ If SCOTUS overturns *Quill* – Every state could be granted collection authority
 - State and local governments will need to work to ensure smooth implementation.

