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The Post-Wayfair Future of SALT Controversies: The Due Process Clause

This is the fourth in a series of articles written for MICPA members examining the far-reaching impact of the Supreme Court's decision in South Dakota v. Wayfair, Inc.

As discussed in a previous E-News article, (MICPA News June 26, 2018), the recent *Wayfair* decision removed the physical presence requirement of the Commerce Clause.[i] In general, a state may tax an out-of-state company if two constitutional limitations are satisfied – one under the Commerce Clause and another under the Due Process Clause. The Commerce Clause requires that a state tax does not unduly burden interstate commerce. The Due Process Clause requires that a company has at least minimal contacts with the state that seeks to impose a tax.

Although many state tax disputes previously focused on the Commerce Clause, the fact that *Wayfair* lowered the Commerce Clause's bar likely means that the Due Process Clause will be significantly more important in deciding whether a state can require out-of-state companies to collect sales tax. Companies must now consider the due process doctrine to determine if enough connection exists for the state to have jurisdiction over them.

Continue reading.

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