

## Sales Tax Collection by Out-of-State Dealers

### ***South Dakota v. Wayfair* Eliminates Physical Presence Rule**

On June 21, 2018, the United States Supreme Court issued its decision in *South Dakota v. Wayfair, Inc.* and overturned the physical presence rule that previously applied under *Quill Corp. v. North Dakota*.

Prior to *Wayfair*, a state could not require an out-of-state dealer to collect its sales tax unless the dealer had a physical presence in the taxing state. After *Wayfair*, that physical presence rule no longer exists.

### **Sales Tax Rule 129(2) Not Currently Enforced**

As detailed in [Important Notices 17-01](#) and [17-12](#), Tennessee has established an economic nexus rule, Rule 129(2).

However, in May 2017 the Tennessee General Assembly passed legislation that prohibits the Department from enforcing Rule 129(2) until the General Assembly reviews the *Wayfair* decision.

### **Current status of the *Wayfair* issue in Tennessee**

If a dealer has no physical presence in Tennessee, the dealer is not required to collect Tennessee sales and use tax until the Department issues public notice stating the specific date and circumstances under which such dealers must begin to collect and remit the tax. (To receive this notice electronically, please sign up on our website [here](#).)

However, the Department encourages these dealers to voluntarily collect and remit the tax as a convenience to their customers. Additionally, remember that all dealers with a physical presence in Tennessee have always been required to collect and remit the tax.

Dealers may register through the online [Tennessee Taxpayer Access Point \(TNTAP\)](#) under "Register a New Business." Dealers may also register with Tennessee by accessing the [Streamlined Sales Tax Registration System](#).

### **No Retroactivity**

The Department will not apply Rule 129(2) retroactively. As stated above, dealers without a physical presence in Tennessee will not be required to collect sales and use tax until the Department provides public notice stating the specific date and circumstances under which such dealers must begin to collect and remit the tax. Dealers that had no physical presence in Tennessee and did not collect the tax will not be assessed for any periods that precede the Department's notice.

### **For More Information**

Visit [www.tn.gov/revenue](http://www.tn.gov/revenue). Click on Revenue Help to search for answers or to submit an information request to one of our agents.

### **References**

*South Dakota v. Wayfair, Inc.*, 138 S.Ct. 2080 (2018);  
*Quill Corp. v. North Dakota*, 504 U.S. 298 (1992);  
TENN. COMP. R. & REGS. 1320-05-01-.129(2); Chapter 452, Public Acts of 2017