

Tax attorney Richard Lehman reviews South Dakota v. Wayfair, a recent United States Supreme Court tax decision

In his most recent published article, Richard S. Lehman comments on the case that overturns precedent about seller's liability to collect and remit sales tax.

BOCA RATON, FLORIDA, UNITED STATES, November 24, 2018 /EINPresswire.com/ -- Long established Supreme Court precedent has held that "that an out-of-state seller's liability to collect and remit the tax to the consumer's State depended on whether the seller had a physical presence in that State, but that mere shipment of goods into the consumer's State, following an order from a catalog, did not satisfy the physical presence requirement." Richard Sam Lehman, in a recently published Blog article, reviews the changes brought about by South Dakota v. Wayfair. If state may not require the seller to collect the sales tax, they have to rely on self-reporting by individual purchasers, which results in



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significant lost tax revenue for the states. This obviously has increasing significance in today's ecommerce, with state tax losses estimated at between \$8 to \$33 billion every year.

The estimated impact on South Dakota is even higher than normal because South Dakota has no income tax, relying significantly on sales tax revenue. South Dakota estimated that it loses \$48 to \$58 million in lost sales tax. In order to remedy the problem of lost tax revenue, South Dakota passed a law that “requires out-of-state sellers to collect and remit sales tax “as if the seller had a physical presence

in the state.” §1. The Act applies only to sellers that, on an annual basis, deliver more than \$100,000 of goods or services into the State or engage in 200 or more separate transactions for the delivery of goods or services into the State.” The enforcement of the act was stayed “until the constitutionality of the law has been clearly established.” After the law was struck down in state courts due to US Supreme Court precedent, the Supreme Court granted cert.

[Mr. Lehman](#) points out that the majority opinion noted that modern commerce clause cases “rest upon two primary principles that mark the boundaries of a State's authority to regulate interstate commerce. First, state regulations may not discriminate against interstate commerce; and second, States may not impose undue burdens on interstate commerce.” Built upon these principles, “[t]he Court will sustain a tax so long as it (1) applies to an activity with a substantial nexus with the taxing State, (2) is fairly apportioned, (3) does not discriminate against interstate

commerce, and (4) is fairly related to the services the State provides.” Acknowledging the criticism that the physical presence test has received, the majority opinion acknowledged that the test is no longer appropriate measure of substantial nexus. “The ‘dramatic technological and social changes’ of our ‘increasingly interconnected economy’ mean that buyers are ‘closer to most major retailers’ than ever before— ‘regardless of how close or far the nearest storefront.’” “[T]he real world implementation of Commerce Clause doctrines now makes it manifest that the physical presence rule as defined by Quill must give way to the ‘far-reaching systemic and structural changes in the economy’ and ‘many other societal dimensions’ caused by the Cyber Age.” Thus, the majority opinion overturned long established precedent of physical presence test and upheld the constitutionality of the South Dakota law. The case is South Dakota v. Wayfair, Inc., No. 17-494.

The review will be published in full on the Blog of [Richard Lehman](https://richardlehmanblog.blogspot.com/) at <https://richardlehmanblog.blogspot.com/>

About Richard Sam Lehman, Florida Tax Attorney

[Richard S. Lehman](#), Tax Lawyer, has established a sophisticated private practice focusing on tax law. His background, education, and experience has distinguished him in this complex field. A published author and noted speaker, Mr. Lehman has carved a reputation as a powerful client advocate.

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The image shows a screenshot of a web browser displaying the website for Richard S. Lehman, Esq., a tax attorney. The website header features a quote from Judge Learned Hand: "There is nothing sinister in so arranging one's affairs as to keep taxes as low as possible. Everyone does so, rich or poor; and all do right. Nobody owes any public duty to pay more than the law demands; taxes are forced exactions, not voluntary contributions." - Judge Learned Hand. The website also highlights "RESOLVING THE TOUGHEST, MOST SOPHISTICATED TAX CASES" and "LEHMAN TAX LAW" with "RICHARD S. LEHMAN, Esq. • ATTORNEY AT LAW". The navigation menu includes "Firm Profile", "Attorney Profile", "Areas of Practice", "Tax Law Articles", "Law Blog", "Video Library", and "Contact Us". Below the navigation, there is a "Search By Topic" search bar and a "Firm Profile" section with the text: "Today's tax and financial planning landscape is a complex one, undergoing constant change." Below this, there is a YouTube video player with the title "New IRS Amnesty, FATCA & FFI Reporting" and the subtitle "Richard S Lehman, Video on IRS Amnesty FATCA and FFI Reporting on Youtube". The video player shows a video thumbnail with the text: "TOPICS IN THE SEMINAR INCLUDE: The I.R.S. New Amnesty Program Foreign Account Tax Compliance Act (FATCA) Foreign Financial Institutions (FFI's) Report On Americans By Richard S. Lehman, Esq. TAX ATTORNEY www.LehmanTaxLaw.com". The video player also shows a progress bar at 0:07 / 1:01:43 and a "Share" button.

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