June 26, 2018

To: Mayors, Managers, Administrators, Fiscal Officers and Attorneys

From: Barbara Van Epps, NYCOM Deputy Director

Subject: Supreme Court Internet Sales Tax Ruling

Yesterday, in a 5-4 decision, the Supreme Court in *South Dakota v. Wayfair* overruled two prior U.S. Supreme Court cases, *Quill v. North Dakota* and *National Bellas Hess, Inc. v. Dept. of Revenue of Ill.*, and held that state and local governments can require remote retailers with no physical presence in the state to collect and remit sales taxes. Keep in mind, this decision does not impose any new taxes, but instead would close what many have considered an unfair tax loophole that has cost state and local governments billions in lost revenue each year and has placed Main Street brick and mortar businesses at a competitive disadvantage.

While rejecting the physical presence standard, the Court reaffirmed the importance of the substantial nexus standard as articulated in the first prong of the *Complete Auto Transit, Inc. v. Brady* (1977) test, which held that state taxes will be sustained so long as they apply to an activity with a substantial nexus with the taxing state. What remains to be seen is whether yesterday’s ruling will be clarified in further litigation now that the Supreme Court has bounced the decision back to the lower courts. Given there are thousands of state and local laws governing sales tax, many online retailers (e.g., Etsy, eBay and Wayfair) are calling on Congress to act by creating a clear and uniform solution that they hope with include an exemption for smaller businesses. In addition, states, such as New York, that don’t already have laws in place that would require retailers having a substantial economic presence to collect and remit sales taxes would need to enact such. NYCOM has been and will continue to encourage our State leaders to enact legislation (similar to what was proposed in the 2018-19 Executive Budget) providing for the collection of the sales tax on merchandise sold online to New York residents.

Suffice it to say, while yesterday’s court decision is a step in the right direction, the actual impacts of the decision remain to be seen. We will continue to update you on the important issue as more information becomes available. If you have any questions, please feel free to contact me at Barbara@nycom.org or 518-463-1185.