



MULTISTATE TAX COMMISSION

Resolution 2018-01

**Urging Restraint by Congress as States and Other Stakeholders
Work Through the Implications of *South Dakota v. Wayfair, Inc.***

Whereas, on June 21, 2018, the U.S. Supreme Court overturned *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992)—a case upholding *National Bellas Hess, Inc. v. Department of Revenue of Ill.*, 386 U. S. 753 (1967)—by holding that the *Bellas Hess/Quill* physical presence rule for substantial nexus was “unsound and incorrect” and had become an “inefficient ‘online sales tax loophole’ that gives out-of-state businesses an advantage.” *South Dakota v. Wayfair, Inc.*, 585 U. S. ____ (2018); and

Whereas, the Court in *Wayfair* recognized that the physical presence rule was no longer a bright line standard, nor could it reasonably serve as a proxy for the burdens of sales and use tax collection that might be imposed on particular sellers. It also found that South Dakota’s law provided reasonable protections for smaller sellers; and

Whereas, the Court was unanimous in concluding that, as pointed out in the dissent, “*Bellas Hess* was wrongly decided”; and

Whereas, *Wayfair* was remanded for further proceedings and is not yet final; and

Whereas, states have worked, and are working, individually and together, including members of the Streamlined Sales and Use Tax Agreement, to simplify their tax administration systems to encourage voluntary compliance and reduce the complexity and burdens faced by both in-state and out-of-state sellers; and

Whereas, states are also in the process of engaging all stakeholders related to the issue of remote-seller collection authority to identify and resolve both policy and implementation issues, being mindful of minimizing burdens on interstate commerce; and

Whereas, Congress had the opportunity to act with respect to remote-seller collection authority and its efforts have, for decades, been unsuccessful. As a result, the states have lost billions in taxes that were owed and Main Street businesses and local development has suffered; now therefore be it

RESOLVED that the Multistate Tax Commission urges Congress to give states the chance to make this transition without federal intervention.

ADOPTED this 25th day of July 2018 by the Multistate Tax Commission.



Gregory S. Matson
Executive Director