

South Dakota Petitions US Supreme Court for Opportunity to Overturn Quill

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On October 2, 2017, the State of South Dakota (State) filed its petition for a *writ of certiorari* with the United States Supreme Court (Court). A copy of the cert petition is [available here](#) and the case, *South Dakota v. Wayfair, Inc. et al.*, is expected to be docketed on October 3, 2017. The State is asking the Court to overturn its physical presence standard used to determine whether an entity has substantial nexus under the dormant Commerce Clause. This comes only a few weeks after the [South Dakota Supreme Court ruled against the State in favor of the online retailer defendants](#), citing the Court's physical presence standard upheld in *Quill* on *stare decisis* grounds.

Practice Note

This development comes as no surprise to the state and local tax community, and begins what is likely to be one of the most closely watched cert petitions in years. Going forward, the online retailers have three options: (1) acquiesce that the Court should grant cert; (2) waive their right to file a response to the cert petition; or (3) file a brief in opposition. If the online retailers choose the third option, they will have 30 days from today (if the case is in fact docketed today) to file their brief in opposition. This deadline is subject to extensions, upon request (the first of which is always granted as a matter of right). We expect a number of groups to file *amicus curiae* briefs regarding this cert petition given the significance of the issue raised. If the online retailers do file a brief in opposition, the State will be given an opportunity to file a reply brief, rebutting the points made by the online retailers and reiterating the arguments made in the State's cert petition. Unlike the cert petition and the brief in opposition, which must be filed with the Court under strict deadlines, the exact timing of the reply brief varies. As a general rule of thumb, a reply brief is usually filed approximately 10 days after filing of the brief in opposition.

While this dispute is a *long* way from being heard by the Court on the merits (if at all), the cert petition is a critical first step that will have implications to Congress, the courts, state legislatures, taxpayers, and revenue departments across the country. Stay tuned for more coverage of this cert petition and the developments that follow.

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