

Sales/Use:

North Carolina County Court Says Tax Imposition on Sales Transactions at Issue is Unconstitutional

Case No. 20 CVS 7449, N.C. Super. Ct., Wake County (6/23/21). In a case involving an out-of-state commercial printer that sold printed materials to customers in North Carolina via common carrier, as well as to customers who had the printed materials delivered to third-party recipients with North Carolina addresses using a common carrier, a North Carolina superior court (Court) held that North Carolina does *not* have a sufficient transactional nexus with the sales at issue under the Commerce Clause to impose sales tax on such transactions under principles set forth in *Dilworth*, because title to the purchases passed to the customers and third-party recipients *outside* of North Carolina. While the opposing parties both made “compelling arguments regarding the impact of *Dilworth*, *Complete Auto*, and *Wayfair* on this case,” the Court concluded the following:

- *Complete Auto* did not overrule “*Dilworth* formalism;”
- *Wayfair* did not overrule the “*Dilworth* formalism;” and
- Therefore, the *Dilworth* formalism “remains the law of the land.”

In doing so, the Court agreed with the out-of-state company that, under *Dilworth*, “a state sales tax survives scrutiny under the Commerce Clause only where the purchase of tangible personal property – *i.e.*, the transfer of ownership from the seller to buyer – takes place in the taxing state.” The Court reasoned that the sales at issue should *not* be sourced to North Carolina under N.C.G.S. § 105-164.4B (2010) given that title passed to the purchasers and third-party recipients outside of North Carolina. Accordingly, because “*Dilworth* formalism” remains good law, imposing North Carolina sales tax on such transactions was deemed unconstitutional.

Note that this case was limited to the North Carolina sales tax, and it did not address a use tax collection requirement which often is imposed in similar situations by other jurisdictions without raising the same Commerce Clause concerns. Please contact us with any questions.

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