

## Sales/Use/Indirect:

### North Carolina Supreme Court Reverses Lower Court to Uphold Constitutionality of Tax Imposition

*Case No. 2022-NCSC-133, N.C. (12/16/22).* 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, the North Carolina Supreme Court (Court) reversed a 2021 opinion issued by a North Carolina superior court in the taxpayer's favor [see *State Tax Matters*, Issue 2021-26, for more details on this lower court ruling] to hold that the formalism doctrine of *Dilworth* has not survived the subsequent decisions of the US Supreme Court in *Complete Auto* and *Wayfair* so as to render the sales tax regime of North Carolina violative of the US Constitution's Commerce Clause and Due Process Clause. The Court found the formal distinction between the use tax and sales tax to be immaterial. In doing so, the Court explained that *Complete Auto* provides the "relevant modern test" for the imposition of a state tax on interstate commerce and *Wayfair* applies this test to a tax regime materially identical to that of North Carolina without regard for *Dilworth's* holding. Applied to the case at hand, the Court then held that North Carolina's imposition of sales tax on the transactions at issue is constitutional under the relevant test provided by *Complete Auto*. Previously, the lower court held that North Carolina did *not* have a sufficient transactional nexus with the sales at issue under the Commerce Clause to impose sales tax on such transactions pursuant to principles set forth in *Dilworth*. A dissenting opinion follows. Please contact us with any questions.

**URL:** <https://appellate.nccourts.org/opinions/?c=1&pdf=41983>

**URL:** [https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/STM/210702\\_16.html](https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/STM/210702_16.html)

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