

Sales/Use/Indirect:

Federal: US Supreme Court Asked to Review Case Disregarding *Dilworth* and Upholding Constitutionality of Taxation

Docket No. _____, US (petition for cert filed 3/14/23). A taxpayer has petitioned the US Supreme Court to review the North Carolina Supreme Court's decision from late last year, which held 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 North Carolina's sales tax regime violative of the Commerce and Due Process Clauses. The underlying case involves an out-of-state commercial printer that sold printed materials to customers in North Carolina via common carrier and to customers who had the printed materials delivered to third-party recipients with North Carolina addresses using a common carrier. The taxpayer in the case has now petitioned the US Supreme Court (Court) to review whether:

URL: <https://www.supremecourt.gov/docket/docket.aspx>

1. The North Carolina Supreme Court was correct that state courts and taxing authorities no longer must follow *Dilworth* because the Court has implicitly overruled it; and
2. The Court should overrule or retain the holding of *Dilworth* that a state may not tax sales that occur outside its borders.

In its 2022 decision, the North Carolina Supreme Court had 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 facts at hand, the North Carolina Supreme Court then held that North Carolina's imposition of sales tax on the transactions at issue was constitutional under the relevant test provided by *Complete Auto*. Please contact us with any questions.

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