

In The News

Akerman Partner Michael Bowen Examines Impact of *Wayfair* on Other State Tax Cases

June 14, 2023

South Dakota v. Wayfair has been cited frequently in other high-profile cases in the five years since the U.S. Supreme Court's decision, by which the justices upheld South Dakota's sales tax law requiring businesses to collect and remit the tax whether or not they had a physical presence in the state. For example, the North Carolina Supreme Court agreed with the state's tax agency that *Wayfair* supported the state's authority to impose sales tax on Wisconsin-based Quad Graphics. The case has been appealed to the U.S. Supreme Court for a writ of certiorari. The justices however, denied a certiorari petition from California-based Ooma Inc. that asked them to overturn an Oregon Supreme Court decision that found Ooma was subject to the 911 tax.

Akerman's State and Local Tax Practice Chair Michael Bowen represented both Quad Graphics and Ooma Inc. A *Law360* Tax Authority State & Local Editorial Board Member, Bowen spoke with the publication about the impact of *Wayfair* on the two cases.

Law360 wrote: "In both cases, he [Bowen] argued that *Wayfair* was incorrectly applied. In *Quad*, that was for reasons including that it was the wrong precedent, he said, and that *Wayfair* didn't answer a key question of his case — whether the company had transactional nexus with the state. In *Ooma*, the

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issue was that *Wayfair* required virtual contacts, he argued, and without them a case would fail *Wayfair's* tests.”

Bowen was quoted: “*Wayfair* made that a joint test, meaning it’s not enough to have economic contact with the state. Sure that’s one step, or one hoop that you have to jump through. But there’s more than that.”

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