



This Week in State Tax (TWIST)

January 9, 2023



NORTH CAROLINA



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North Carolina: Court Rejects U.S. Supreme Court Holding Addressing Distinction Between Sales and Use Tax

On December 16, 2022, the North Carolina Supreme Court ruled in favor of the state in *Quad Graphics, Inc. v. N.C. Dep't of Revenue*. In an earlier decision, the state's Business Court concluded that North Carolina lacked sufficient nexus to impose a *sales tax* collection obligation on Quad Graphics in light of the U.S. Supreme Court's 1944 decision in *McLeod v. Dilworth*. In *Dilworth*, the U.S. Supreme Court determined Arkansas had no authority under the Commerce Clause to impose a tax on the sale of machinery or mill supplies purchased from Tennessee corporations when title passed upon delivery to a common carrier within Tennessee before the goods were ultimately brought into Arkansas for delivery. In the *Dilworth Court's* view, these sales were consummated in Tennessee and were not subject to Arkansas sales tax. Similar to the sales at issue in *Dilworth*, title passed to Quad Graphics' customers outside of North Carolina. As such, it was the taxpayer's position (with which the North Carolina Business Court agreed) that the Department of Revenue could not assess sales tax on those sales. On appeal, the North Carolina Supreme Court concluded that although *Dilworth* was never explicitly overturned, the formalism doctrine established in *Dilworth* had not survived more recent U.S. Supreme Court decisions in *Complete Auto* and *Wayfair*, and therefore the imposition of North Carolina *sales tax* as opposed to *use tax* passed constitutional scrutiny. This decision has implications outside the sales and use tax context, as there are cases holding that only the U.S. Supreme Court, rather than lower federal courts or state courts, can overrule its prior holdings. It is not yet clear whether Quad Graphics will file a petition for certiorari with the U.S. Supreme Court. Please stay tuned to TWIST for future updates on this case.



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