

Supreme Court decision gives states power to tax online purchases

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In a decision that will have a sweeping impact on the taxation of Internet sales in the US, the Supreme Court upheld the right of South Dakota (and thus, all states) to require online retailer Wayfair, Inc. (and thus all out-of-state retailers) to collect sales tax from a South Dakota resident buyer and to remit such tax to the State of South Dakota, even though Wayfair, Inc. has no physical presence in the state of South Dakota.

The 5-4 Supreme Court decision overturned prior precedent in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), and *National Bellas Hess, Inc. v. Department of Revenue of Ill.*, 386 U.S. 753 (1967), both of which had ruled that states could not require an out-of-state retailer to collect sales tax on sales to in-state residents unless such retailer had a physical presence in a state.

Generally, this is a victory for brick and mortar retailers, who have been at a price disadvantage in some states while Quill was the law of the land. The Wayfair decision makes it more likely that the remaining states that do not collect taxes from out-of-state retailers will do so in the coming years. In a reversal of fortune, many of the online retailers that have opposed a federal solution may be coming to Congress to help them streamline what could be a complex web of state by state tax collection regimes.

The legal and lobbying battle will now shift to the states that have sales and use taxes, and those states will have to decide: 1) if they want to require the collection of sales taxes by out-of-state retailers for sales to in-state residents; 2) whether they will exempt from this requirement certain types of sales, such as sales by out-of-state small businesses under a certain size, or below a threshold of sales to in-state residents; and 3) whether they will join in a multi-state effort to harmonize sales taxes (with respect to what goods are taxed and how much) to make it easier for out-of-state sellers to determine how much they need to collect and remit for any sale.

There is a possibility that Congress could act to require all states (those that have sales and use taxes) to adopt similar regimes requiring sales tax collection for sales by out of state sellers to in-state residents. Given the current political environment, however, it is unlikely that Congress will act on this matter any time soon. So it is much more likely that each state with a sales and use tax will have to decide for themselves what it will require and that online retailers will have to navigate an extremely complex state tax framework.

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