

# The Supreme Court Has Changed the Game for Internet Retailers

With the overturn of *Quill Corporation v. North Dakota*, online retailers can now be required to collect sales tax wherever a good is purchased.



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The world is about to change for online retailers in a very significant way. The Supreme Court ruled on Thursday that internet retailers can be required to collect sales taxes in states where they have no physical presence.

Thanks to a 1992 Supreme Court ruling, *Quill Corporation v. North Dakota*, internet retailers had been free of that burden. On Thursday, the court overruled that ruling by a 5-to-4 vote.

Remote sellers had been only required to collect sales taxes on purchases if they had a physical presence in the state where the goods were bought. The burden for paying the local sales tax on those transactions fell to the end consumer, who rarely ever paid these taxes. The end result is an estimated \$17.2 billion in local sales taxes that went uncollected each year.

More than 40 states had asked the Court to overturn this ruling, and the issue came to a head when South Dakota passed a law that required all merchants to collect a 4.5 percent sales tax if they had more than \$100,000 in annual sales or more than 200 individual transactions in the state, which resulted in the state filing suit against three companies, including Wayfair. The Court heard oral arguments on this case in May.

Justice Anthony Kennedy, who was joined by Justices Clarence Thomas, Ruth Bader Ginsburg, Samuel Alito, and Neil Gorsuch in his vote, said that the physical presence rule had outlived its useful existence.

“Each year, the physical presence rule becomes further removed from economic reality and results in significant revenue losses to the States,” he wrote in the majority opinion. “These critiques underscore that the physical presence rule, both as first formulated and as applied today, is an incorrect interpretation of the Commerce Clause.”

So where does this leave internet retailers? For many, the answer is: very confused. Based on today’s Supreme Court decision, each local tax jurisdiction can now impose its own sales tax construct on internet retailers. There are presently just under 10,000 different taxing jurisdictions in the U.S., each with its own compliance requirements, rates and collection processes.

That means a retailer based in New York that sells a product to a consumer in Chicago could be required to collect a 1.25 percent Chicago city sales tax, a 1.75 percent Cook County sales tax, the 6.25 percent Illinois sales tax and a 1 percent “special” sales tax. That’s just one city!

When I wrote about this issue back in May, I suggested that a federal, standardized law may be in the best interest of everyone. Not every internet retailer is as large as Wayfair or Amazon. Without the structure or capacity to build tax collection apparatus in 45 different states, smaller online vendors — such as third-party sellers on Amazon — would benefit greatly from one federal rate that would simplify matters.

If that’s a real possibility remains to be seen. But for online retailers, if there was ever a time to proceed with caution, it’s right now. The game has changed, and they will have to be hyper vigilant to make sure they’re ready for what comes next.

Published in Inc. on June 21, 2018

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