

Supreme Court Rules that Internet Businesses must collect all State Sales Taxes

The Supreme Court in June ended a dispute as old as the internet, ruling that all online sales are subject to the same state and local sales taxes that are collected on purchases at brick-and-mortar retailers. The decision will inject billions of dollars into state coffers, but also increase prices for many online shoppers.

By a 5-4 vote, the justices overturned past rulings that had shielded internet sellers from collecting taxes from customers in states where they had no stores, warehouses or other physical presence. Instead the justices – addressing an issue that Congress has for years failed to resolve – brought internet commerce into line with taxing rules that apply to mall shops, big box stores and other traditional retailers.

Justice Anthony M. Kennedy, speaking for the court, said it was not fair to allow remote sellers to escape the duty to collect and remit sales taxes. “It’s unfair and unjust to those competitors, both local and out of state, who must remit the tax; to the consumers who must pay the tax; and to the states that seek fair enforcement of the sales tax – a tax many states for many years have considered an indispensable source for raising revenue,” he wrote in *South Dakota vs. Wayfair*.

The court was split along usual lines, Justices Clarence Thomas, Ruth Bader Ginsburg, Samuel A. Alito Jr. and Neil M. Gorsuch, as well as Anthony M. Kennedy formed the majority.

In dissent, Chief Justice John G. Roberts Jr. said the court should have waited for Congress to decide the issue. He said Congress has the power to regulate interstate commerce and changing the tax rules state-by-state has “the potential to disrupt the development of such a critical segment of the economy.”

Justices Stephen G. Breyer, Sonia Sotomayor and Elena Kagan agreed.

The National Conference of State Legislatures called the ruling “a victory for Main Street America. Brick-and-mortar stores will no longer be penalized for collecting the tax revenues that fund our schools, infrastructure and the vital public services that state and local governments provide,” said South Dakota State Senator Deb Peters, the group’s president.

Matthew Shay, president of the National Retail Federation said, “Retailers have been waiting for this day for more than two decades.... This ruling clears the way for a fair and level playing field where all retailers compete under the same sales tax rules whether they sell merchandise online, in-store or both.”

The ruling may pose a headache for small-scale web merchants who will have to keep track of and remit sales taxes for thousands of jurisdictions.

Jonathan Johnson, an executive for Overstock.com, which joined the suit against the South Dakota tax law, said Congress should pass legislation “to lessen the potential impact of the ruling on internet innovation.”

The court’s opinion left unanswered several questions, including whether very small businesses which make only a few sales online, can be forced to remit taxes for all the states it sells to.

Tax experts say better software has made it easy to quickly calculate the exact rates for each locale and many states have devised a “streamlined” filing system, in which a single state office collects and dispenses taxes for its counties and cities.

Kennedy cited a Commerce Department estimate that online retail sales were \$453 billion dollars in 2017. He said the outdated “physical presence” rule was costing states and localities between \$8 billion and \$33 billion a year in lost revenue. Earlier this year, California tax officials estimated that the state could have taken in an extra \$2 billion a year if they could collect sales tax on all internet sales in their state.

It is the second court decision in two months that could result in higher revenue for states. Last month, the justices struck down the federal ban on sports betting. Many states are now expected to license betting on sports and recoup tax revenue from it. But doing so will require new state laws.

“Each state is different and some will need to pass new laws” said Max Behlke a budget and tax policy expert in Washington for the group representing state legislatures. “I don’t think most states will be able to do this in 60 days.” A reference to the upcoming summer break.

Legal experts said many state tax laws were written with the assumption that only businesses with a physical presence were subject to collecting and remitting sales taxes.

Source: www.latimes.com