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Online Sales Tax Victory

In case you didn't hear the big news, in June 2018 the U.S. Supreme Court ruled 5 to 4 in favor of allowing states to collect sales tax from online retailers that have an "economic interest" in their states. The decision overturns the longstanding 1992 Quill Corp. vs. North Dakota ruling, which found a state could not require out-of-state retailers to collect sales tax if they had no physical presence in that particular state. This new law now paves the way for all states to start collecting huge revenue lost under the old law, or more accurately, lost due to a state's inability to police the sales tax that should have been collected from out-of-state customers. In short, high sales tax states and cities can now force all online retailers to collect state and city sales tax on purchases made by residents that previously escaped sales tax.

The Supreme Court's sales tax ruling will level the playing field

TAX LAWS MISUNDERSTOOD

What many out-of-state customers have misunderstood for years is that purchases from a retailer with no physical presence in that customer's state were truly free of any sales tax. Yes, a retailer without a physical presence in a particular state did not have to collect sales tax from an out-of-state customer. But the out-of-state customer, whether online or mail order, was technically supposed to pay the sales tax (also called a "use tax") directly to their home state if a retailer did not collect it. Most taxpayers never paid it either because of their ignorance of the law or because they knew their state lacked the mechanism to track and collect sales tax on their out-of-state purchase. Whether inadvertent or purposeful, this tax cheating cost states billions of dollars in revenue each year.

REVENUE LOST AND NOW WON

States were losing an estimated $8–33 billion in annual revenue under the old law, according to the ruling opinion written by Justice Anthony Kennedy. While mail-order sales totaled around $180 billion in 1992, online sales account for approximately $450 billion with mail-order revenues pushing that figure past a half-trillion dollars, according to the ruling. "Quill puts both local businesses and many interstate businesses with physical presence at a competitive disadvantage relative to remote sellers," Kennedy wrote. "Remote sellers can avoid the regulatory burdens of tax collection and can offer de facto lower prices caused by the widespread failure of consumers to pay the tax on their own."

There are some online retailers who were already collecting at least some state sales tax. Amazon collects tax on items it sells directly, but an estimated 52 percent of its sales come from third-party vendors who were not required to collect and remit the tax. But many other large online companies never collected the sales tax, relying on their lack of a physical presence. In 2016, South Dakota passed a law compelling out-of-state online retailers to collect sales taxes and followed up by suing several large merchants (like Overstock, Wayfair and Newegg) to show they were serious. Following South Dakota's lead, the U.S. Supreme Court ruling now gives states the right to collect the sales tax revenue they've been missing. States like South Dakota and Tennessee, which have no state income tax and rely heavily on sales tax, stand to gain the most from the new ruling.

But these new sales tax laws won't come without a fair amount of tax reporting pain, especially for the smaller retailer. In a dissenting opinion from Chief Justice John Roberts, he wrote, "Correctly calculating and remitting sales taxes on all e-commerce sales will likely prove baffling for many retailers." Perhaps point-ofsale software companies and sales tax-tracking app developers will benefit from new sales tax collection and reporting compliance.

THE LAW'S IMPACT ON ALL RETAILERS

We've all seen online retailers win the pocketbooks of consumers, which now leads to: What impact will this new ruling have on online and brick-and-mortar retailers alike? In his opinion, Justice Kennedy said times have changed to such a degree that online retailers no longer qualify for "an arbitrary advantage over their competitors who collect state sales taxes" by claiming they don't have a physical presence in a state.

"The internet's prevalence and power have changed the dynamics of the national economy," Justice Kennedy wrote.

There's no arguing retailing has been transformed by the internet. In 1992, less than 2 percent of Americans had internet access, compared to about 89 percent today. Many brick-and-mortar retailers have seen their businesses crippled or even destroyed by the rise of e-commerce. So, it's no surprise brick-and-mortar retailers feel vindicated by the Supreme Court's decision and view it as a leveling of the retail playing field.

"Retailers have been waiting for this day for more than two decades," National Retail Federation President and CEO Matthew Shay said. "The retail industry is changing, and the Supreme Court has acted correctly in recognizing that it's time for outdated sales tax policies to change as well. 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."

Frankly, many online sellers have grown so big they no longer care about the break they've gotten on collecting sales tax. Even with Amazon, which has been speedily building its own fast-delivery network and expanding into physical retail by acquiring Whole Foods and opening Amazon Go and Amazon Books, the ruling will likely have little impact because they already collect sales tax on first-party sales in the 45 states that impose a sales tax.

But there is an unresolved "wait and see" issue. More than half of the units sold on Amazon worldwide last year came from third-party sellers, many of which are small and medium-sized merchants. Amazon's statement on this is: "We're not opposed to collecting sales tax within a system that's both simple and applied evenhandedly." Companies like eBay have asked Congress to intervene and set up some sort of tax rules to protect the merchants selling on their platform.

NO ONE LEFT TO BLAME

Online retailers, especially the bigger ones, can no longer rely on having a tax edge that has undoubtedly given them a price differential advantage over brick-and-mortar retailers. As for brick-and-mortar retailers, with a level playing field comes the harsh reality of owning up to any failure for not giving customers a good enough reason to come visit and buy. **MI**

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