

## **Supreme Court Paves Way for Internet Sales Tax Collection, Clients Need to Plan Ahead**

(June 21, 2018) Ecommerce merchants may need to pay sales tax for applicable products sent into states in which they have no presence after the U.S. Supreme Court reversed its long-standing precedent that linked tax payments to a merchant's physical presence.

In the past, the general rule was that, if an online retailer did not have a physical presence in the state, it did not need to collect a sales tax but rather left it to the buyer to pay a use tax. However in *South Dakota v. Wayfair, Inc.*, the court struck down the rule. While the decision technically applies only to South Dakota and provides for some exemptions, it is likely that many online merchants will need to collect and pay sales taxes on applicable sales in all state even where they have no physical presence.

In the majority opinion, the Court noted internet commerce has expanded rapidly since the old rule was adopted “and it shows no sign of any slower pace.” Internet sales “has also increased the revenue shortfall faced by States seeking to collect their sales and use taxes. In 1992, it was estimated that the States were losing between \$694 million and \$3 billion per year in sales tax revenues as a result of the physical presence rule. . . . Now estimates range from \$8 to \$33 billion.”

“The argument, moreover, that the physical presence rule is clear and easy to apply is unsound. Attempts to apply the physical presence rule to online retail sales are proving unworkable. States are already confronting the complexities of defining physical presence in the Cyber Age,” the court said.

Technically, the ruling only applies to South Dakota, which exempts retailers that make less than \$100,000 in sales or less than 200 transactions annually in the state. The opinion leaves the door open slightly to contest upon some other principle imposition of a sales tax on ecommerce. About 46 states have some form of sales tax. Some counties and cities also impose sales tax.

While it may take some time for the ruling to be implemented by individual states, there are actions online merchants may take to prepare:

- contact your accountant to make sure you can and do record sales by state.
- determine if your current ecommerce platform has individual state sales tax collection capabilities.
- check out other programs that calculate the tax and prepare remittance papers for each state.

Some states, such as Washington, already have laws in place requiring either the collection of sales tax for online purchases or that the retailer give written notice that the buyer must pay the use tax or pay a fine, so merchants need to comply with those existing laws.

*South Dakota v. Wayfair, Inc.*, Supreme Court No. 17-491, Issued June 21, 2018.

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