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State, local taxes can be imposed on internet sellers

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Q: How has internet sales tax collection changed?

A: The U.S. Supreme Court decided June 21, in the case of South Dakota v. Wayfair, Inc. et al, that a state can require out-of-state retailers to collect the state's sales tax, in some circumstances, even if there the seller doesn't have a store or warehouse in the state, clearing the way to allow state sales tax on internet purchases. The court held a South Dakota law requiring out-of-state sellers to collect and remit the state's sales tax "as if the seller had a physical presence in the state" doesn't violate the Commerce Clause of the U.S. Constitution.

Q: How does this affect the Commerce Clause?

A: The court stated that under the Commerce Clause two basic principles apply, which are that a state may not discriminate against interstate commerce, and a state may not impose undue burdens on interstate commerce. In applying these standards, the court determined a rule applied in earlier cases that a seller couldn't be required to collect a state's sales tax unless the seller had actual physical presence in the state has long been criticized as giving out-of-state sellers an advantage; and that each year that rule becomes further removed from economic reality and results in significant revenue losses to the states. The court said evolution and extent of e-commerce has made the physical presence rule now an artificial standard that arbitrarily limits state collection of sales tax and prevents businesses from competing on an even playing field. Based on these facts and effects of the physical presence rule today, the court held that it's now an incorrect interpretation of the Commerce Clause. The argument that the physical presence rule should be preserved to protect small out-of-state businesses and startups from having to collect sales tax of numerous states was countered and overcome by the South Dakota law provisions that only required the state sales tax to be collected by out-of-state businesses with a significant level of sales to customers in the state.

Q: When must state taxes be collected by online retailers?

A: In the Wayfair case, the South Dakota law was challenged by online retailers with no employees or real estate in South Dakota, but who met threshold standards to be subject to the law by on an annual basis delivering more than $100,000 of goods or services into the state or engaging in 200 or more separate transactions for delivery of goods or services into the State.

Q: What's Oklahoma's law regarding internet sellers collecting sales tax?

A: Oklahoma recently has enacted a new law that contains requirements for reporting, collection and payment of Oklahoma sales and use tax by remote sellers for sales of tangible personal property to customers in Oklahoma through the internet. The new Oklahoma law has features that appear to be similar to the South Dakota law upheld by the Court in the Wayfair case, although the threshold level of sales to customers in the state ($10,000) under the Oklahoma law is less than what is provided for in South Dakota's law.

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