



Are the Supremes Ready to Rule on Online Sales Taxes (Again)?

If you think internet companies aren't paying any taxes for online sales and that's killing bricks-and-mortar retailers and states' budgets, you, my friend, have been duped. Nothing could be further from the truth. The internet isn't a tax-free zone, nor is the lack of revenue the issue with state budgets. There is, however, a battle about whether state and local governments should be allowed to collect taxes from out-of-state companies.

A 1992 Supreme Court decision (*Quill Corp. v. North Dakota*) reaffirmed a previous decision that a business must have a significant presence in a state before that state can require it to collect sales taxes. That means a mother selling handcrafted goods on Etsy doesn't have to collect sales taxes from her consumers unless they are physically located in her state. However, Amazon collects sales taxes from customers in all 45 states that have a statewide sales tax because of its vast distribution network.

Most state lawmakers want to see *Quill* overturned, allowing them to force out-of-state companies to collect sales taxes on their behalf. This argument was just heard by the Supreme Court in the case of *South Dakota v. Wayfair Inc.* If the states were to win, they would be able to reach into the pockets of that mom selling her paintings on Etsy, even though she may live on the other side of the country, didn't elect other states' officials and never agreed to those states' tax laws.

More tragically for consumers, tax competition among states would also be lost if *Quill* were overturned. Under the new regime, online consumers — no matter where they shop or what they buy — would lose the ability to shop around for a better tax system. Without the competitive pressure and the fear of losing consumers to lower-tax states, lawmakers would not feel the need to try to rein in their sales tax burden. It's that pressure, which limits their tax grabbing abilities, that these lawmakers resent and want the Supreme Court to put an end to.

Some of them probably hope that more revenue would alleviate the need to put their financial house in order. They would be wrong. According to the Kaiser Family Foundation, 33 states faced shortfalls in fiscal 2017 and/or fiscal 2018, even though revenue collection has been growing in most states. That's because the more states collect in revenue the more they spend.

Besides, states are overestimating the revenue they'd get from the taxes. Internet sales are still a small



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share of overall sales, and taxing them wouldn't make much difference. According to a 2017 report by the Government Accountability Office, online sales represent less than 10 percent of retail sales. Also, the 100 biggest online retailers already tax roughly 90 percent of their sales. Desperate lawmakers shouldn't expect to collect any more than 2 to 4 percent of total state and local government tax revenues this way, according to the GAO, were *Quill* to be reversed.

A reversal would, however, jack up compliance costs for small online retailers, which, unlike Amazon, tend to have razor-thin profit margins. Imagine suddenly having to enforce taxes for the nation's 12,000 tax-collecting jurisdictions.

Talking to NPR on the morning of the *South Dakota v. Wayfair* hearing, a Republican state senator from South Dakota, Deb Peters, laughed at the notion that anyone would get hurt. According to her, free software provided to online retailers by the majority of desperate states would make that cost zero. This is questionable. As an eBay representative noted on NPR in response that morning, "in Minnesota, blankets are taxable, but baby receiving blankets are not taxable. In Texas, deodorant is taxable, but deodorant that has an antiperspirant is not." Tax software isn't that precise, and compliance would still have to be handled on a case-by-case basis. Repeat this for thousands of items and compliance is definitely not "free."

There is a lot to be lost in the *Wayfair* case. If *Quill* were to be overturned, compliance costs could skyrocket for many retailers, and good principles of taxation would be thrown out the window. Healthy tax competition is at stake. Let's hope the highest court in the land makes the right decision.

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