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SCOTUS Ruling Opens Door for States to Collect Taxes for Online Sales

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Consumers should soon expect their online purchases to be subject to state sales taxes. On June 21, 2018, the Supreme Court ruled in *South Dakota v. Wayfair, Inc.* that a law allowing taxation of an out-of-state seller with no physical presence in the state is constitutional. South Dakota's requirement that out-of-state companies collect sales tax on purchases made by South Dakota residents is likely to entice other states to pass laws that push online retailers who do not have a physical presence in the state to do the same. The decision notes that even Congress could enact such a law.

Currently, South Dakota's law, S. 106, only applies to online retailers who exceed $100,000 in gross revenue from South Dakota sales or make 200 or more separate transactions in one calendar year. Smaller online retailers who do not have a presence in South Dakota should decide upfront if they want to remit sales tax or limit their sales to stay below the law's thresholds. Given that additional states will likely pass similar laws, online retailers likely will face compliance with different sales tax regimes across the country.

While widespread passage of laws like South Dakota's S. 106 will simplify the question of how online retailers are responsible for remitting taxes, it will also force online retailers to contend with differing sales tax codes on a state-by-state basis instead of passing along the responsibility to consumers to file their use taxes. State laws currently require online retailers to comply with differing policies on how taxes must be collected. For example, Colorado requires retailers to give consumers notice that the purchase may be subject to sales tax, while others, such as Georgia, have instead expanded what counted as having a physical presence.

Third party sellers, such as those using Amazon Marketplace, are often exempt from these taxes unless they exceed a certain volume or sell into Washington state. While Amazon has already begun collecting state sales tax in all 45 states that have a sales tax, many online retailers were able to avoid remitting the sales tax in states where they had no physical presence. In states that pass laws like S. 106, online retailers can now work closely with in-state affiliates without fear of increased tax vulnerability.

The effect of this ruling should increase tax revenue in states that have relied on a consumer reported use tax but will also increase the upfront cost of goods sold by online retailers, even if the net cost was identical when consumers were supposed to pay the use taxes. While it is unlikely that the addition of sales tax to online purchases will cause a significant decrease in e-commerce, brick and mortar stores no longer are disadvantaged by online retailers' ability to reduce upfront costs by not applying sales tax. However, consumers are often drawn to online shopping not to avoid sales tax, but because of the convenience, targeted marketing, and the large selection. And while major online marketplace stocks fell shortly after the ruling, they have since stabilized.

The above material is for informational purposes only and does not constitute tax advice. Retailers should consult with an attorney regarding their practice of sales tax collection on e-commerce activities.

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