



South Dakota v. Wayfair Ruling: What It Means for Taxes on eCommerce

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In June 2018, the U.S. Supreme Court passed down a decision that could impact any eCommerce businesses selling to customers in the United States.

The South Dakota vs. Wayfair ruling recognized South Dakota’s authority to impose state-level sales tax on transactions completed within the state — even if the vendor does not have a physical presence in the state.

The decision marks a big change in how eCommerce businesses have handled their tax obligations in America. Before the ruling, interstate sales taxes were relatively straightforward. The Supreme Court’s ruling changes that.

Now, “any state is allowed to require that an online seller who makes a sale into their state collect sales tax,” say Michael Fleming, Cathie Stanton and Mike Dillon, as part of an expert panel at TaxJar. “This adds a significant sales tax compliance burden for online businesses.”

Here’s what that compliance burden looks like: eCommerce businesses may start having to collect sales taxes on *any* sale they make. Those taxes would then subsequently be remitted to the state where the customer is located. If a business sells to customer in all 50 states, that means 50 different taxation and remittance obligations.

This could bring an added challenge to new transactions and customers. Here’s what this change means for eCommerce businesses selling to consumers across the US.

Context of the South Dakota v. Wayfair Ruling

The roots of the South Dakota v. Wayfair ruling trace all the way back to 1992, with another Supreme Court ruling. In *Quill Corp. v. North Dakota*, the court determined that states could not collect sales taxes if the vendor did not have a physical presence in the state. Law professor Timothy M. Todd at Forbes called this a “bright-line rule” — a clear decision for the time.

This ruling firmed up the idea of a “tax nexus.” This describes the minimum activity a corporate taxpayer needs to have in a state before a state can collect taxes, writes [Carolynn Kranz](#) of Kranz & Associates. Interstate commerce continued relatively unfettered in the US under this court ruling until the past few years.

That said, the court did leave the door open to change in the 1992 ruling. “When the Supreme Court issued its decision in *Quill*, it expressed some doubt, recognizing that commerce was becoming less dependent on traditional sales at brick-and-mortar companies,” [Rebecca Newton-Clarke](#) writes at the Thomson Reuters Tax & Accounting blog.

“Still, the court emphasized the administrative difficulty for remote sellers of following the rules of so many different states and localities if the physical presence requirement were eliminated.”

The *South Dakota v. Wayfair* decision seems to have introduced those administrative difficulties. The issue at hand came about when South Dakota passed a law in 2016 aimed at collecting sales taxes from out-of-state sellers — primarily, major eCommerce companies. The state law applied only to sellers with more than \$100,000 in sales or more than 200 unique transactions to collect taxes.

About a year later, nearly two dozen other states had introduced similar bills, so-called “kill *Quill*” bills. At least one major eCommerce vendor doing sales in the state refused to comply with the law, citing the original *Quill* decision as the higher authority. South Dakota took *Wayfair, Inc.* to court to resolve the matter.

In 2017, the South Dakota Supreme Court sided with *Wayfair*, citing the *Quill* decision from 1992. This state-level ruling, [Jef Feeley](#) writes at Bloomberg, is what brought the case before the U.S. Supreme Court in 2018.

Breaking Down the Supreme Court’s Decision

In a 5-4 decision, the Supreme Court found that states could collect sales taxes on purchases from out-of-state vendors, even if the seller doesn’t have a physical presence in the state where the sale is made.

[Joseph Bishop-Henchman](#) at Tax Foundation outlines the majority and dissenting opinions. The majority focused on how the ruling poses no barrier to interstate commerce and updates standards to the digital age. The dissenting opinion held that Congress should address the issue.

More specifically, [Sarah Horn](#), [Jill C. McNally](#), [Rebecca Newton-Clarke](#) and [Melissa Oaks](#) at Accounting Today point out that one critical part of the decision was the idea that electronic sales, cookies and digital marketing allow eCommerce companies to have a presence in a state without a *physical* presence.

Conversely, [Trevor Burrus](#) and [Matthew Larosiere](#) at the CATO Institute point to the part of the dissent that affirms eCommerce as “a significant and vibrant part of our national economy,” and that a court ruling in the arena has the potential to “disrupt the development of such a critical segment of the economy.”

The [text of the ruling](#) itself highlights how modern eCommerce has, by its very nature, challenged the idea of a physical presence test: “When the day-to-day functions of marketing and distribution in the modern economy are considered, it becomes evident that *Quill*’s physical

presence rule is artificial, not just at its edges, but in its entirety. Modern e-commerce does not align analytically with a test that relies on the sort of physical presence defined in Quill.”

3 Ways South Dakota v. Wayfair Could Impact Your eCommerce Business

What, exactly, the court ruling means for eCommerce business remains to be seen. Still, there is sure to be an impact. For starters, [Emily Stewart](#) at Vox points out that the stock prices of major eCommerce retailers (including Wayfair) tanked the day of the court decision.

But what about *your* business? Here are a few tips to keep in mind:

1. Prepare for Long-Term Changes Instead of Immediate Fallout

Accountant and consultant [Shane Ratigan](#) reminds eCommerce businesses that the impact will not be immediate. “Of all the states with a sales tax, only about 16 or 17 of them have passed similar laws to South Dakota. The states are all watching what’s happening. It’s easy to get the impression that starting tomorrow, every state is going to collect. It’s not true.”

[Bryan Willman](#) at Techfino says businesses should be preparing anyway. You can start by checking whether you already have the ability to collect state taxes. Willman also recommends setting up sales tax automation software.

Note, too, that an eCommerce partner like Scalefast can act as the Merchant of Record. This means that partner acts as the proxy for brands and is responsible for all tax reporting and remittance. By having such a partner, brands don’t experience logistical disruptions from rulings such as South Dakota v. Wayfair. They only have new tax obligations.

2. The Impacts Will Vary State to State

[Mike O’Brien](#) at Multichannel Merchant advises eCommerce companies to look at signs coming out of the states where they do the most sales. The decision will not codify South Dakota’s law across the country, but that law has been held up as an example for future state legislation.

According to [Thomson Reuters](#), several states have applied that example to their own laws. Connecticut, for example, will soon apply state taxes to out-of-state retailers that earn at least \$250,000 in gross revenue and have 200 or more retail sales in the state within a 12-month period. That is set to take effect on December 1, 2018.

At least three states — Iowa, Ohio and Massachusetts — will have to apply the Wayfair ruling to their existing laws to test whether those laws are constitutional, Thomson Reuters says.

“Many states have laws on the books that by their plain language exceed the physical presence standard and assert nexus based on remote solicitation and resulting in-state sales,” Thomson Reuters says. “Traditionally, taxing agencies in those states tended to accept the physical presence standard and have adopted regulations or issued guidance to that effect, but with the physical presence rule eradicated, those are likely to be repealed or rescinded in short order.”

In other words, most states have an incentive to collect taxes on in-state eCommerce. The Wayfair ruling opens the door for them to collect those taxes.

3. Collecting Sales Tax is Sure to Affect Customers

Writing at Racked, Chavie Lieber reminds business owners to remember the impact that changing tax obligations could have on their customers. “Shoppers will now have to allocate more money to their online shopping habit,” Lieber writes.

This would be the case if the brand or the retailer passes those tax obligations onto customer with higher prices or a surcharge. Every company in the eCommerce space will need to make a critical decision about how these new US tax obligations will impact their customer experiences.

Whatever the impact in the coming years, it will be important to keep your eye on state-level tax obligations in the US as you continue to grow your eCommerce brand. As always, it’s a good idea to have the systems in place to handle a major change to how you collect payment and taxes.