



Trump backs state bid to tax online sales as case reaches Supreme Court

Brittany De Lea

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National Economic Council Director Larry Kudlow on President Trump targeting Amazon.

The Supreme Court will begin on Tuesday hearing arguments in a case that could reshape the online shopping landscape.

In *South Dakota v. Wayfair Inc.*, the plaintiff is asking the court to consider overturning a two-decades-old ruling that allows online sellers to avoid collecting sales taxes in states where they have no physical, brick-and-mortar presence.

If the current law is changed, a state will be able to tax all online purchases made by its residents even for a transaction carried out beyond its borders. In some cases, such a change would raise prices for consumers shopping online.

The Supreme Court decided the current tax structure in *Quill Corp. v. North Dakota*, in 1992, when e-commerce made up a much less substantial portion of retail sales.

E-commerce sales in the fourth quarter of 2017 increased to \$119 billion, up more than 3% from the previous quarter and nearly 17% from a year earlier, according to U.S. Census Bureau data. The online sales comprised more than 9% of total sales in the U.S.

States have argued that they are missing out on a serious chunk of revenue, while brick-and-mortar retailers say they are at a disadvantage compared with e-commerce companies because they have to charge sales tax at the time of purchase.

The Trump administration is backing South Dakota in the case, arguing that the highcourt could not have expected how rapidly e-commerce would expand when it made the 1992 ruling.

“In light of internet retailers’ pervasive and continuous virtual presence in the states where their websites are accessible, the states have ample authority to require those retailers to collect state sales taxes owed by their customers,” U.S. Solicitor General Noel Francisco said in a friend-of-the-court brief.

During an interview with FOX Business earlier this month, National Economic Council Director Larry Kudlow said changing the law could level the playing field between traditional and e-commerce retailers.

“There was a time when we wanted the United States, as a matter of policy, to protect nascent internet businesses by keeping down the tax burden, but that time is long gone,” he said.

Not only does allowing states to collect these new taxes on consumers have the potential to raise online prices, it could also harm some businesses.

Amazon and Ebay’s third-party vendors, for example, are often cited as an example of small retailers that could suffer from changes to the current tax structure. While Amazon already collects sales tax on products it sells, its small vendors do not.

“The issue is just whether they also collect sales taxes on third-party Amazon vendors,” Chris Edwards, director of tax policy studies at the Cato Institute and editor of DownsizingGovernment.org, told FOX Business. “Imposing taxes on them would add a large compliance burden – especially to small e-tailers – that would harm the economy.”

Each state has a complex sales tax system, which was cited in the 1992 Quill case as a reason against requiring businesses to collect the dues in states where they had no physical presence.

As a result, some small companies might stop selling to certain states in order to avoid compliance, Ilya Shapiro, a senior fellow in constitutional studies at the Cato Institute, told FOX Business.

Alternatively, some people argue that the costs associated with being forced to comply with these new regulations could put some smaller retailers out of business entirely.