States can now force online retailers to collect sales tax

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The Supreme Court overturned a 1992 ruling on Thursday, giving states the authority to force online retailers to collect sales tax in states where they have no physical presence.

The ruling – in South Dakota vs. Wayfair Inc. – means 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 could raise prices for consumers shopping online.

The Supreme Court decided the previous 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. 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 backed South Dakota in the case, arguing that the high court 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 in April, 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 tax structure. While Amazon already collects sales tax on products it sells, its small vendors do not.

"Imposing taxes on [small, third party vendors] would add a large compliance burden – especially to small e-tailers – that would harm the economy," Chris Edwards, director of tax policy studies at the Cato Institute and editor of DownsizingGovernment.org, told FOX Business.

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 could stop selling to certain states in order to avoid compliance, Ilya Shapiro, a senior fellow in constitutional studies at the Cato Institute, previously 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.

Shares of online retailers, such as eBay and Groupon, were trading lower after the Supreme Court released its decision.