

High Court: Online shoppers can be forced to pay sales tax

Originally published June 21, 2018 at 7:24 am Updated June 21, 2018 at 11:25 am



FILE – In this Oct. 10, 2017, file photo, the Supreme Court in Washington is seen at sunset. States will be able to force shoppers to pay sales tax when they make online purchases under a Supreme Court decision June 21, 2018, that will leave shoppers with lighter wallets but is a big win for states. (AP Photo/J. Scott Applewhite, File)

In addition to being a win for states, who said they were losing out on billions of dollars annually, the ruling is also a win for large retailers, who argued the physical presence rule was unfair.

By [JESSICA GRESKO](#)
The Associated Press

WASHINGTON (AP) — States will be able to force more shoppers to pay sales tax when they make online purchases under a Supreme Court decision Thursday that will leave shoppers with lighter wallets but is a big financial win for states.

Consumers can expect to see sales tax being charged on more online purchases — likely over the next year and potentially before the Christmas shopping season — as states and retailers react to the court's decision, said one attorney involved in the case.

The Supreme Court's 5-4 decision Thursday overruled two, decades-old Supreme Court decisions that states said cost them billions of dollars in lost revenue annually. The decisions made it more difficult for states to collect sales tax on certain online purchases, and more than 40 states had asked the high court to overrule them.

The cases the court overturned said that if a business was shipping a customer's purchase to a state where the business didn't have a physical presence such as a warehouse or office, the business didn't have to collect the state's sales tax. Customers were generally responsible for paying the sales tax to the state themselves if they weren't charged it, but most didn't realize they owed it and few paid.

Justice Anthony Kennedy wrote that the previous decisions were flawed.

"Each year the physical presence rule becomes further removed from economic reality and results in significant revenue losses to the States," he wrote in an opinion joined by Justices Clarence Thomas, Ruth Bader Ginsburg, Samuel Alito and Neil Gorsuch. Kennedy wrote that the rule "limited States' ability to seek long-term prosperity and has prevented market participants from competing on an even playing field."

The ruling is also a win for large retailers, who argued the physical presence rule was unfair. Large retailers including Apple, Macy's, Target and Walmart, which have brick-and-mortar stores, already generally collect sales tax from their customers who buy online. That's because they typically have a physical store in whatever state the purchase is being shipped to. Amazon.com, with its network of warehouses, also collects sales tax in every state that charges it, though third-party sellers who use the site don't have to.

Sellers that have a physical presence in only a single state or a few states have been able to avoid charging sales taxes when they shipped to addresses outside those states. Online sellers that haven't been charging sales tax on goods shipped to every state range from jewelry website Blue Nile to pet products site Chewy.com to clothing retailer L.L. Bean. Sellers who use eBay and Etsy, which provide platforms for smaller sellers, also haven't been collecting sales tax nationwide.

Under the ruling Thursday, states can pass laws requiring out-of-state sellers to collect the state's sales tax from customers and send it to the state. More than a dozen states have already adopted laws like that ahead of the court's decision, according to state tax policy expert Joseph Crosby.

The National Retail Federation trade group, said the court's decision was a "major victory" but the group said federal legislation is necessary to provide details on how sales tax collection will take place, rather than leaving it to each state to interpret the court's decision.

Chief Justice John Roberts and three of his colleagues would have kept the court's previous decisions in place.

“E-commerce has grown into a significant and vibrant part of our national economy against the backdrop of established rules, including the physical-presence rule. Any alteration to those rules with the potential to disrupt the development of such a critical segment of the economy should be undertaken by Congress,” Roberts wrote in a dissent joined by Justices Stephen Breyer, Elena Kagan and Sonia Sotomayor. The lineup of justices on each side of the case was unusual, with Roberts joining three more liberal justices and Ginsburg joining her more conservative colleagues.

The case the court ruled on involved a 2016 law passed by South Dakota, which said it was losing out on an estimated \$50 million a year in sales tax not collected by out-of-state sellers. Lawmakers in the state, which has no income tax, passed a law designed to directly challenge the physical presence rule. The law requires out-of-state sellers who do more than \$100,000 of business in the state or more than 200 transactions annually with state residents to collect sales tax and send it to the state.

South Dakota wanted out-of-state retailers to begin collecting the tax and sued several of them: Overstock.com, electronics retailer Newegg and home goods company Wayfair. After the Supreme Court’s decision was announced, shares in Wayfair and Overstock both fell, with Wayfair down more than 3 percent and Overstock down more than 2 percent.

South Dakota Gov. Dennis Daugaard called Thursday’s decision a “Great Day for South Dakota,” though the high court stopped short of greenlighting the state’s law. While the Supreme Court spoke approvingly of the law it sent it back to South Dakota’s highest court to be revisited in light of the court’s decision.

The Trump administration had urged the justices to side with South Dakota.

The case is South Dakota v. Wayfair, 17-494.

Follow Jessica Gresko on Twitter at <http://twitter.com/jessicagresko>