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## **Supreme Court Widens Reach of Sales Tax for Online Retailers.**

WASHINGTON — Americans have done more and more of their shopping online in recent years, drawn by the promise of low prices, wide selection and buy-from-home convenience. But e-commerce has also had another edge: Many of those sales were, in effect, tax-free.

The Supreme Court on Thursday moved to close that loophole, ruling that internet retailers can be required to collect sales taxes even in states where they have no physical presence.

The decision, in *South Dakota v. Wayfair Inc.*, was a victory for brick-and-mortar businesses that have long complained they are put at a disadvantage by having to charge sales taxes while many online competitors do not. And it was also a victory for states that have said that they are missing out on tens of billions of dollars in annual revenue.

“State and local governments have really been dealing with a nightmare scenario for several years now,” said Carl Davis, research director at the Institute on Taxation and Economic Policy, a Washington think tank. “This is going to allow state and local governments to improve their tax enforcement and to put local business on a more level playing field.”

In Thursday’s ruling, the court effectively overturned a system that it created. In 1992, the court ruled in *Quill Corporation v. North Dakota* that the Constitution bars states from requiring businesses to collect sales tax unless they have a substantial connection to the state. The Quill decision helped pave the way for the growth of online retail by letting companies sell nationwide without navigating the complex patchwork of state and local tax codes.

But as online retailing has grown, the dynamics have shifted. Online sellers are no longer scrappy upstarts competing with more established businesses. Amazon had \$119 billion in revenue from product sales last year, making it bigger than all but the largest traditional retailers.

And state budgets are increasingly feeling the pinch. Writing for the majority in the 5-to-4 ruling, Justice Anthony M. Kennedy said the Quill decision caused states to lose annual tax revenues of up to \$33 billion.

“Quill puts both local businesses and many interstate businesses with physical presence at a competitive disadvantage relative to remote sellers,” he wrote. “Remote sellers can avoid the regulatory burdens of tax collection and can offer de facto lower prices caused by the widespread failure of consumers to pay the tax on their own.”

Justices Clarence Thomas, Ruth Bader Ginsburg, Samuel A. Alito Jr. and Neil M. Gorsuch joined the majority opinion.

In dissent, Chief Justice John G. Roberts Jr. agreed that the court’s rulings in this area had been “wrongly decided,” but said there were insufficient reasons to overrule the precedents. “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," he wrote.

Justices Stephen G. Breyer, Sonia Sotomayor and Elena Kagan joined the dissent.

In the years since 1992, three members of the court had indicated that they might be ready to reconsider the Quill decision. In a 2015 concurring opinion, for instance, Justice Kennedy seemed to call for a fresh challenge.

South Dakota responded by enacting a law that required all merchants to collect a 4.5 percent sales tax if they had more than \$100,000 in annual sales or more than 200 transactions in the state. State officials sued three large online retailers — Wayfair, Overstock.com and Newegg — for violating the law. Lower courts ruled for the online retailers, citing the Quill decision.

Marty Jackley, South Dakota's attorney general, called Thursday's ruling "a big win for South Dakota and Main Streets across America." He said the decision could be particularly significant for rural areas where local businesses have been hit hard by competition from online retailers.

Mr. Jackley is a Republican. But South Dakota's appeal drew bipartisan support, including from attorneys general in 35 states and the District of Columbia.

Mr. Jackley estimated that South Dakota would be able to begin collecting sales tax on online purchases in 30 to 90 days. Other states may be close behind: Anticipating Thursday's ruling, several states, including North Dakota, have passed laws modeled on South Dakota's.

Other states will have to change their laws if they want to take advantage of the decision, said Hayes Holderness, a law professor at the University of Richmond. He predicted a flurry of activity in legislatures.

Many of those laws could face their own legal challenges. Justice Kennedy's decision left open the possibility that some transactions were so small and scattered that no taxes should be collected. The court also did not decide whether states may seek sales taxes retroactively, which South Dakota's law does not.

Thursday's ruling should benefit local coffers as well, at least where local sales taxes are collected at the state level. But it won't help municipal governments in states such as Pennsylvania and New Mexico where quirks in tax codes prevent local jurisdictions from taxing remote sellers.

For consumers, the reversal of Quill could mean paying more for products bought online. In theory, most states already require consumers to pay a "use tax" equivalent to the state sales tax when buying online. But in practice, few consumers do so.

Owners of brick-and-mortar stores welcomed the ruling.

"I firmly believe that it's a huge stride in leveling the playing field," said Jason Patton, owner of Oz Music in Tuscaloosa, Ala. "In my record store, the average price point is around \$20. I'm not going to say I continually lost customers because of the sales tax, but on higher-ticket items, that tax absolutely matters."

Shares in Amazon fell 1.1 percent on Thursday, and other online retailers took a bigger hit. Overstock.com shares were down more than 7 percent.

"Today, the U.S. Supreme Court has reshaped the interstate commerce landscape in a move that could impact small business innovation on the internet, which has been a driving force behind our

nation's economy for the last 15 years," said Jonathan E. Johnson III, a member of Overstock.com's board.

Overstock said the decision would have little impact on its business but argued that with more than 12,000 different state and local taxing districts, the ruling would present a "compliance challenge" for internet start-ups. Chief Justice Roberts made a similar argument in his dissent.

Many experts, however, played down that problem. When the Supreme Court decided the Quill case in 1992, complying with various state and local tax laws would have been a major hurdle for small businesses. But today, many companies offer software that helps small businesses navigate local laws.

"The digital and internet revolution contributed to the problem, but those same factors contributed to the solution, which is easy-to-use tax-automation software," said Daniel Hemel, a University of Chicago law professor.

Wayfair, in a statement, said it already collected sales tax on approximately 80 percent of its orders in the United States. "As a result, we do not expect today's decision to have any noticeable impact on our business," the company said.

The impact on Amazon could be even smaller: As of last year, the company collected sales tax in the 45 states that have one.

But about half of Amazon's total online sales come from independent merchants who simply post their inventory on the online store. In most states, those merchants are responsible for calculating and paying the various state taxes if they are owed. In the past year, Washington State and Pennsylvania have enacted laws requiring internet retailers to collect taxes on third-party sales. More states are expected to follow suit.

Amazon declined to comment on the ruling.

In his ruling on Thursday, Justice Kennedy wrote that world had changed since 1992, when mail-order sales totaled \$180 million. Last year, remote sellers racked up sales exceeding half a trillion dollars, he noted.

That growth seems unlikely to slow. Stacy Mitchell, co-director of the Institute for Local Self-Reliance, a group that supports independent businesses, said the tax-free nature of online retail had given Amazon and other internet sellers a big advantage when they needed it most.

"It's hard to overstate how much not having to collect sales tax mattered in the first 15 years of Amazon's growth," Ms. Mitchell said.

## **The New York Times**

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