CLIENT ALERTS & INSIGHTS

Supreme Court Says States Have the Right to Require Online Retailers to Collect Sales Tax

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In a 5 to 4 decision Thursday, the Supreme Court ruled that states have the right to require online retailers to collect sales tax.[1] Their decision in *South Dakota v. Wayfair, Inc., et al.* No. 17-494 overturns previous precedent establishing that states could only levy taxes on those businesses with a physical presence, a brick-and-mortar location, within the state.[2]

Although the IRS requires individual taxpayers to keep track of all purchases made online and to pay all applicable taxes on those purchases, few taxpayers actually fulfill those obligations. In his majority decision, Justice Kennedy noted that states lose an estimated $8 - $33 billion every year in sale tax revenue because of the previous brick-and-mortar rule.

The Supreme Court's decision is a clear win for the states who have continually argued that tax-free internet sales were costing them billions in lost revenue. Brick-and-mortar stores also win with the decision, as they will now have an even playing field with online retailers, as both entities will likely now have the same obligation to collect and remit sales tax to states in which sales are made.

This decision will most likely lead to an increase in the cost of online goods as retailers pass sales tax for online sales to the end consumer. Small online retailers will have an even more difficult time competing with big name brands, as they will now have additional costs and expenses associated with tracking and collecting sales tax for many disparate local taxing jurisdictions at the point of sale.

States will most certainly begin to enact legislation requiring online retailers to collect and remit sales tax, and there is some discussion of a federal legislative initiative to harmonize state sales tax obligations and rates.

For more information on this topic, contact a member of Benesch's Intellectual Property/3iP Practice Group.

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[1] Decided June 21, 2018.

[2] *See National Bellas Hess, Inc. v. Department of Revenue of Ill.,* 386 U.S. 753 and *Quill Corp. v. North Dakota, 5*04 U.S. 298.