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The Council of State Governments



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## Supreme Court Sides With States in Remote Sales Taxes Case

**LEXINGTON, KY**—The U.S. Supreme Court has ruled that state and local governments have the authority to collect sales taxes from remote sellers, which could mean billions of additional dollars in state and local government coffers.

In siding with South Dakota in *South Dakota v. Wayfair*, the court overruled 1992's *Quill v. North Dakota* decision, in which the Supreme Court reaffirmed the physical presence requirement and barred states from forcing out-of-state companies to collect sales taxes.

Justice Anthony Kennedy delivered the opinion, which stated, "*Quill's* physical presence rule intrudes on States' reasonable choices in enacting their tax systems. And that it allows remote sellers to escape an obligation to remit a lawful state tax is unfair and unjust. It is unfair and unjust to those competitors, both local and out of State, who must remit the tax; to the consumers who pay the tax; and to the States that seek fair enforcement of the sales tax, a tax many States for many years have considered an indispensable source for raising revenue."

In 2014, The Council of State Governments, in partnership with the State and Local Legal Center and members of the Big Seven organizations representing state government, filed an amicus brief critiquing *Quill*, which prompted Justice Anthony Kennedy to ask for a case to overturn the ruling.

In a concurring opinion to *Direct Marketing Association v. Brohl*, Kennedy criticized *Quill* for many of the same reasons stated in the amicus brief; specifically, internet sales have risen astronomically since 1992 and state and local governments have been unable to collect most taxes due on sales from out-of-state vendors.

Brick-and-mortar companies are often seen as being at an unfair disadvantage because they are required to collect sales taxes and online companies are not. Customers buying from online retailers are required to pay their state's sales tax, but they rarely do when the retailer does not collect it at the time of purchase.

Following the Kennedy opinion, a number of state legislatures passed laws requiring remote vendors to collect sales taxes in violation of *Quill*. South Dakota's law was the first ready for Supreme Court review.

"This is a big win for states. The current tax law was out of step with how commerce is

conducted today due to increased sales in the online retail marketplace since the *Quill* case was decided," CSG Executive Director/CEO David Adkins said. "This decision is a step in the right direction to ensure equitable taxation. CSG will continue to support state leaders as they begin working to implement fair sales tax laws for everyone doing business in their respective states."

SLLC Executive Director Lisa Soronen previously said it was unlikely that the Supreme Court accepted the case to congratulate the South Dakota Supreme Court on correctly ruling that South Dakota's law was unconstitutional. If the Supreme Court wanted to leave the *Quill* rule in place, it probably would have simply refused to hear *South Dakota v. Wayfair*.

"The Supreme Court created the physical presence rule in 1967, which was causing states and local governments to lose billions of dollars annually in 2018," Soronen said after the ruling on Thursday. "The court should be commended for correcting its error in *South Dakota v. Wayfair* rather than leaving it to Congress, which has failed for decades to act on this issue."

The U.S. Government Accountability Office estimated that state and local governments could have gained about \$8 billion to \$13 billion in 2017 if states were given authority to require sales tax collection from all remote sellers. A previous calculation from the National Conference of State Legislatures based on a University of Tennessee study in 2015 put the figure much higher at \$26 billion.

### **About The Council of State Governments**

Founded in 1933, The Council of State Governments is our nation's only organization serving all three branches of state government. CSG is a region-based forum that fosters the exchange of insights and ideas to help state officials shape public policy. This offers unparalleled regional, national and international opportunities to network, develop leaders, collaborate and create problem-solving partnerships.

### **About the State and Local Legal Center**

The SLLC files *amicus curiae* briefs in support of states and local governments in the U.S. Supreme Court, conducts moot courts for attorneys arguing before the Supreme Court, and provides other assistance to states and local governments in connection with Supreme Court litigation. Since 1983 the SLLC has filed over 300 *amicus* briefs in the Supreme Court. The Big Seven national organizations representing state and local elected and appointed officials are members of the SLLC.

For more information about The Council of State Governments, visit [csg.org](http://csg.org).