

SCOTUS Internet Sales Tax Decision: What To Do

The June 21, 2018 decision by the U.S. Supreme Court in the *South Dakota vs Wayfair, Inc.*, immediately caused both celebration and devastation for business owners across the country. The biggest losers are going to be small to medium size Internet businesses for reasons I'll make clear below.

For those who haven't been able to unravel what this all means, in a nutshell, the Supreme Court overturned an old Supreme Court case. Doesn't happen often but it does. So, the first thing one must do is **read the decision** to see what the legal arguments in the case were and what the justices said when the decision was announced to the public.

[*SOUTH DAKOTA v. WAYFAIR, INC.*](#) (), 2017 S.D. 56, 901 N. W. 2d 754, vacated and remanded.

In this particular case, South Dakota wanted companies who sell items on the Internet be subject to a sales tax even when Company B has no physical presence in the state. No employees, no offices, no warehouses.

However, there was a case standing in their way:

“South Dakota, like many States, taxes the retail sales of goods and services in the State. Sellers are required to collect and remit the tax to the State, but if they do not then in-state consumers are responsible for paying a use tax at the same rate. Under *National Bellas Hess, Inc. v. Department of Revenue of Ill.*, [386 U. S. 753](#), and *Quill Corp. v. North Dakota*, [504 U. S. 298](#), South Dakota may not require a business that has no physical presence in the State to collect its sales tax.”

It is important in reading the syllabus to click on the link

for *Quill Corp. v. North Dakota* in the decision. Again, this will tell you the importance of past history regarding a case.

The meat of the argument is states, in this case the plaintiff, South Dakota, are losing billions in revenues by not being able to collect sales tax from giants like Wayfair, Inc. South Dakota makes the argument they need the money for things like education, building roads, etc.

But, isn't that what the citizens of South Dakota already pay for in taxes at the city, county and state level?

[The Supreme Court Just Destroyed the Economy in the Hunt for Taxes](#)

“The Supreme Court in **SOUTH DAKOTA v. WAYFAIR, INC**, just handed down the most devastating and unconstitutional rule perhaps in American history in a 5-4 ruling that we will look back upon as the straw that broke the back of the economy. The Supreme Court has totally rejected **EVERYTHING** that the United States was built upon – **No Taxation Without Representation**. Instead of the greed of states being confined to their own citizens, the Supreme Court has ruled that if you are **not** a citizen of that state, the state still has jurisdiction to compel you to collect taxes as an economic slave **WITHOUT ANY RIGHT TO BE REPRESENTED IN THAT STATE** to oppose such legislation. This is exactly what the American Revolution was all about. The English Parliament would pass legislation that compelled Colonists to pay taxes yet they were **NOT** represented in the English Parliament to object. This is the most fundamentally **UNCONSTITUTIONAL** and ant-Democratic decision **EVER** handed down by the Supreme Court all because of the Hunt for Money by the States.

“There will be states that now simply go nuts and I will have to decline doing business in certain states for the **risks** will be far too great and the cost of compliance will only make it disproportionate per state to conduct business. If you fail to

collect sales taxes, they will hit you with penalties and interest rates in the 20%+ level that will far exceed the gross sales in those states. This will simply make it **IMPOSSIBLE** to conduct business nationwide.”

States are hungry for money. States like Illinois and California are seeing mass exodus because taxes have become so high their citizens simply cannot afford to live there anymore. They've been squeezed dry. The more people who leave a state or move to a less expensive part of a state down goes tax revenues where residents won't see their hard-earned money blown out of rectal sphincters by city, county and state elected officials who just love to spend your paycheck.

Mis-management of revenues and funding for unnecessary, absurd regulations and unfair laws are killing off the pursuit of life, liberty and happiness in states across the country. We the people are being taxed to death to pay for political agendas, hoaxes like climate change, incompetence AND –

States are drowning in pension obligations they can't meet. All those fat retirement pensions might sound good at the time but over time we see disaster:

[Pension Fund Problems Worsen in 43 States](#). If you go look at the chart, South Dakota's funding ratio has fallen. Not as severe as some states but the money has to come from somewhere or pension recipients take a cut in their monthly income which can be devastating.

Add that to the deadly serious shortage in funding for private pension funds – meaning citizens have less to spend – and the time bomb millions of pensioners know nothing about, believing their retirement nest egg is safe and secure gets closer to going off.

[Catastrophic News: Will YOU Be Next?](#) July 24, 2017

“February was a bad month for Larry Burruel and thousands of

other retired Ohio iron workers. His monthly take-home pension was cut by more than half from \$3,700 to \$1,600.

“Things have been rough in the Rust Belt, but this was a particularly powerful punch in the pocketbook for Burruel, who started in the trade at 19 and worked 36 years before opting for early retirement to make way for younger workers. Unfortunately, this sagging industry doesn’t have enough younger workers to pay for retirees like Burruel, whose pension plan is in what the U.S. Treasury Department calls “critical and declining status.”

“Burruel and the 4,000 members of his Cleveland Iron Workers Local 17 pension plan are the canaries in the coal mine as far as pension cutbacks go. At least 50 Midwestern pension plans – mostly the kind jointly administered by trustees for a labor union and a group of employers – are in this [decrepit condition](#). Several plan sponsors have already applied to the Treasury Department to cut back retirees’ allotments...”

If you go back and look at the chart in the link about pension fund problems 43 states above you’ll see Ohio’s numbers. Not good.

Getting back to the *SD v Wayfair* case. One must remember the U.S. Supreme Court does NOT make new laws. At least they aren’t supposed to:

[Supreme Court Offers Opinion, Doesn’t Make Law](#) – Please, take the time to read this fairly short explanation (full text at link above) as it will help understand what the court said in *Wayfair*: vacated and remanded and what Chief Justice John Roberts said in his dissenting along with Justice Breyer, Justice Sotomayor, and Justice Kagan:

“In *National Bellas Hess, Inc. v. Department of Revenue of Ill.*, [386 U. S. 753](#) (1967), this Court held that, under the dormant Commerce Clause, a State could not require retailers without a physical presence in that State to collect taxes on

the sale of goods to its residents. A quarter century later, in *Quill Corp. v. North Dakota*, [504 U. S. 298](#) (1992), this Court was invited to overrule *Bellas Hess* but declined to do so. Another quarter century has passed, and another State now asks us to abandon the physical-presence rule. I would decline that invitation as well.

“I agree that *Bellas Hess* was wrongly decided, for many of the reasons given by the Court. The Court argues in favor of overturning that decision because the “Internet’s prevalence and power have changed the dynamics of the national economy.” *Ante*, at 18. But that is the very reason I oppose discarding the physical-presence rule. 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. The Court should not act on this important question of current economic policy, solely to expiate a mistake it made over 50 years ago...

“This is neither the first, nor the second, but the third time this Court has been asked whether a State may obligate sellers with no physical presence within its borders to collect tax on sales to residents. Whatever salience the adage “third time’s a charm” has in daily life, it is a poor guide to Supreme Court decisionmaking. If *stare decisis* applied with special force in *Quill*, it should be an even greater impediment to overruling precedent now, particularly since this Court in *Quill* “tossed [the ball] into Congress’s court, for acceptance or not as that branch elects.” *Kimble*, 576 U. S., at ___ (slip op., at 8); see *Quill*, 504 U. S., at 318 (“Congress is now free to decide” the circumstances in which “the States may burden interstate . . . concerns with a duty to collect use taxes”).

“Congress has in fact been considering whether to alter the

rule established in *Bellas Hess* for some time. See Addendum to Brief for Four United States Senators as *Amici Curiae* 1–4 (compiling efforts by Congress between 2001 and 2017 to pass legislation respecting interstate sales tax collection); Brief for Rep. Bob Goodlatte et al. as *Amici Curiae* 20–23 (Goodlatte Brief) (same). Three bills addressing the issue are currently pending. See Marketplace Fairness Act of 2017, S. 976, 115th Cong., 1st Sess. (2017); Remote Transactions Parity Act of 2017, H. R. 2193, 115th Cong., 1st Sess. (2017); No Regulation Without Representation Act, H. R. 2887, 115th Cong., 1st Sess. (2017). Nothing in today’s decision precludes Congress from continuing to seek a legislative solution. But by suddenly changing the ground rules, the Court may have waylaid Congress’s consideration of the issue. Armed with today’s decision, state officials can be expected to redirect their attention from working with Congress on a national solution, to securing new tax revenue from remote retailers. See, e.g., Brief for Sen. Ted Cruz et al. as *Amici Curiae* 10–11 (“Overturning *Quill* would undo much of Congress’ work to find a workable national compromise under the Commerce Clause.”).

“The Court proceeds with an inexplicable sense of urgency. It asserts that the passage of time is only increasing the need to take the extraordinary step of overruling *Bellas Hess* and *Quill*: “Each year, the physical presence rule becomes further removed from economic reality and results in significant revenue losses to the States.” *Ante*, at 10. The factual predicates for that assertion include a Government Accountability Office (GAO) estimate that, under the physical-presence rule, States lose billions of dollars annually in sales tax revenue. See *ante*, at 2, 19 (citing GAO, Report to Congressional Requesters: Sales Taxes, States Could Gain Revenue from Expanded Authority, but Businesses Are Likely to Experience Compliance Costs 5 (GAO–18–114, Nov. 2017) (Sales Taxes Report)). But evidence in the same GAO report indicates that the pendulum is swinging in the opposite direction, and has been for some time. **States and local governments are**

already able to collect approximately 80 percent of the tax revenue that would be available if there were no physical-presence rule. See Sales Taxes Report 8. Among the top 100 Internet retailers that rate is between 87 and 96 percent. See *id.*, at 41. Some companies, including the online behemoth Amazon,¹* now voluntarily collect and remit sales tax in every State that assesses one—even those in which they have no physical presence. See *id.*, at 10. To the extent the physical-presence rule is harming States, the harm is apparently receding with time.”

As superb researcher and writer, Kelleigh Nelson, pointed out in her recent column on that rancid decision: [The Destructive Internet Sales Tax And Those Who Promoted It](#)

“Small business is supposed to be the engine of economic growth and the internet is now the engine of small business growth. The Scotus decision is potentially the engine of small business death. This is a job for Congress before the [small businesses fail](#). Federal legislation is required. Absent such a solution, the little engine that could, small online business, may immediately become the little engine that can’t.

“The Supreme Court decision may be like Valentine’s Day candy for big-spending governors, but it is a chocolate-covered sucker punch for the American people. Those of us who still value low taxes and fiscal responsibility at every level of government will need to join in to save internet small businesses. The politicians who support this mandate and do nothing for the little guys will hopefully receive thorns, not roses, from the American people. With over 10,000 city, county, and state sales taxes in America, the costs to very small internet businesses are astronomical and untenable.

“Online sellers would have to keep track of each state and locality’s definition of what constitutes a taxable good. They would also have to stay up-to-date on thousands of various filing and registration procedures, threshold amounts and

sales tax holidays just to remain in compliance. That suffocating deluge of red tape will close businesses, kill jobs and increase the cost of goods to customers.

“The operations of small businesses are different than large retailers, and state tax actions targeting them raise additional legal questions that are not addressed by this decision. Congress needs to step in and provide clear tax rules, with a strong small business exemption, to help small businesses take advantage of the internet to grow and create local jobs.”

Yes, Congress can step up to the plate today and overturn the decision, but will they? Unless, there is such a roar from the American people, consumers as well as business owners, every state in the Union will jump on the band wagon.

Now, in 2016, SD passed an emergency Act (See the Supreme Court decision link top of column) because they need money. But, what about all the other states? Will their legislatures now enact (although dozens are out of session just like Texas is until Jan. 2019) emergency ‘acts’ to begin collecting those taxes on e-commerce with strict enforcement?

One thing discussed in the case was a level playing field for ‘brick and mortar’ stores being destroyed by Internet sales. I submit to you that started with China (Wal) Mart. My mother lives in a small town NE of Sacramento, California.

Their downtown was vibrant with stores carrying just about everything you need. Around the outskirts were feed stores and such as that is also a rural agricultural area. Lots of farms and ranches. Then one day, in comes China Mart; Big box, like Target, Cosco and others. Buy everything you need in one place. Never mind [the harsh tactics China Mart used for vendors](#). Whoopie!

Within a short period of time one store after another closed. Businesses family owned for decades, owners and some of the

employees became cashiers at China Mart, retired or moved. Downtown today has a fraction of the businesses it once had and growth is virtually dead just like my town.

I always buy local when I can. Here in Big Spring, TX where I live and before I moved here in 2006, in came China Mart and there went the once busy, downtown. Now it's a few businesses here and there but it's street after street of abandoned buildings making the area look crummy and undesirable.

Yes, the Internet has most certainly made it a great marketplace to get things one simply cannot get locally. Like where I live. Even though I live 'only' 40 miles from Midland, TX which has a population of roughly 155,000, I still can't get some things I absolutely must have, i.e., hydrolyzed collagen I take every day. (Make sure it's GMO free, preferably organic, grass fed bovine.)

Not every store in every town (unless it's like Dallas, LA or some other massive dense population) can carry every thing you might want to purchase. If we all keep buying as much as we can local and purchase things on line we simply can't find, I think over time it balances out. Besides, as some products become super popular through requests and word-of-mouth, local retailers will start stocking them.

I could go on about that and monopolies like Amazon but what I want to do is help you stay in business as many small business owners following the decision believe they have to throw in the towel. Small business owners ARE the backbone and engine of our economy. I want everyone, if possible, to stay in business despite that Supreme Court decision.

Yes, this does affect me as I sell my very important little booklet, [Why A Bankrupt America](#), on my web site. Now, the decision is less than two weeks old so what do you do? For small to medium business, every penny means a lot. Some will be able to check with their CPA but most operate on a very

slim margin; accountants cost money.

The big problem is going to be collection. As Kelleigh points out in her column there are so many taxes at every level in all 50 states it's enough to choke a python. But, collecting taxes by business is nothing new so there is existing software that companies simply integrate into your shopping cart that calculates those taxes and assists you in getting all the different states paid.

But, since that decision is so fresh, what changes, if any by any of the 50 states are going to happen? *Right now, we just don't know so don't panic.* We know SD passed an Act mentioned above so if they stick with that, that's one state down unless you do more than \$100,000.00 a year in sales. If you're an e-commerce retailer you might already know which states do charge sales or use tax and have already been complying. Right now, though, *getting accurate information is the first step.*

So, this is what I spent a couple days last week finding out and believe me, it's like wading through a 100 square mile corn field looking for a piece of rice. And, not everything purchased on the Internet is taxable so you have to find out from each state on that. One article I read said in one case you pay sales tax on a product just because it has flour in it! Insane.

First, because there are a zillion tax laws eating us all up (city, county, state) when it comes to commerce there is something called a [Streamlined Sales and Use Tax Agreement](#):

"This Agreement is the result of the cooperative effort of 44 states, the District of Columbia, local governments and the business community to simplify and make more uniform the sales and use tax collection and administration by retailers and states.

"The Agreement minimizes costs and administrative burdens on retailers that collect sales tax, particularly retailers

operating in multiple states. It encourages “remote sellers” selling over the Internet and by mail order to collect tax on sales to customers living in the Streamlined states.”

There is no charge to register to use that tax agreement.
[HOWEVER:](#)

By completing this registration:

- You are **registering to collect, report and pay sales and use tax in [ALL Streamlined Full Member States](#)** and any selected [Streamlined Associate or Contingent Member State](#).
- You will be **responsible for filing and paying sales tax directly to each state**, unless you indicate in your registration that you do not have sales in that state and you have no legal requirement to file in that state.

So, currently there are **44 states**. A month from now it could be all 50. What it means is that this system provides you with the information you need on sales and use taxes but **you will have to individually remit to each state**.

[Correction: Supreme Court-Sales Tax-Small Businesses story](#)

“The cost can be reduced for retailers who sell to customers in the 24 states that participate in the Streamlined Sales Tax Agreement, a plan aimed at simplifying tax collection. ***Under the agreement, retailers can use a sales tax compliance service of their choice without charge for transactions in the participating states***, according to Craig Johnson, executive director of the [Streamlined Sales Tax Governing Board](#).”

That is something I will get an answer to this week and so should you; the bold italics emphasis above is mine.

[Streamlined Sales Tax Registration System \(SSTRS\)](#)

“Upon completion of this registration you will have a sales tax account and will be required to collect, report and remit

the applicable sales and use tax in ALL the following Streamlined member states. Arkansas, Georgia, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming. *Registration in Tennessee is optional.” **This link is very important on their site:** [Remote Sellers](#)

There is also a [Streamlined Sales Tax Exemption](#) form that might apply to you and your business.

Many businesses will find this court decision cost prohibitive and simply shut down. Wonderful family owned Internet businesses that provide homemade chemical free bath soap or homemade chemical free doggie treats or whatever. I want you all to stay in business.

Okay, if the SSTRS won't work for you because it will be too time consuming and you already work 80-hrs a week running your business and can't afford to hire additional bookkeeper services, there are a slew of companies that have been doing this type of tax collection compliance for decades. Of course, it doesn't come for free:

“The Streamlined Sales Tax Governing Board has certified the [following companies as Certified Service Providers.](#)” Click on the link and you'll see seven companies I assume have been vetted for quality and accuracy of service as well as a clean record. These companies specialize in keeping accurate tax rates at every level into data bases and software you integrate into your shopping cart.

I went through the web sites for all seven companies and spoke with a representative for four of them; they pretty much all perform the same services, some a bit more complicated than others; one does international taxes.

For me, it's pretty simple, just my booklet. I don't need

reports and analysis of sales and all that. What I only need is software which calculates the taxes. I'll just have to do the reporting to each state as I'm not Amazon with billions to hire companies to track, pay, analyze, etc. That's why I'm anxious to find out about the agreement I highlighted above and being able to use a service for free ([Correction: Supreme Court-Sales Tax-Small Businesses story](#))

I can't tell you which company you should call or use. Some like [Accurate Tax](#) base their pricing on calls received to your business. I checked them off my list. They also, like others, calculate those holiday tax free days, i.e., states that have them for back to school. [Check out their page here for a free test](#). I haven't spoken with [Taxometry](#) yet but they are on my list for today.

Naturally, you should speak with several if this is the route you choose to take to save your business. I know, it takes up time during business hours but word of mouth from friends who own businesses might help you in making a decision.

I know this is a bit long, but just to re-cap:

Get on the phone and [call your U.S. House of Representatives critter](#) and ask him/her if Congress is going to overturn that decision based on Art. 1, Sec. 8, Clause 3: "*To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;*" or will they allow the Supreme Court to again usurp their power? If Congress does not act swiftly, like Obamacare, this new forced taxation will get it's claws into everyone and undoing it will die.

I want it to be a win-win situation for both e-commerce and brick and mortar stores for all our business owners out there who provide us with so many wonderful choices. It would not surprise me to see a few lawsuits filed soon or even a class action lawsuit which would again put everything on hold.

Second, if you can afford to consult with an accountant, do it

and see what he/she advises as to how soon you should start compliance but then again, if you don't know which states and how much, a CPA might not know at this point, either.

That's why I started with the Streamlined Sales Tax Governing Board web site first so I could get as much accurate information as possible to begin looking for what will work for me and my booklet. Likely I'll end up doing more paperwork than most if this stands but most business owners simply don't have the time.

Please make this column go viral. Let's all share this information from coast to coast, border to border to help each other out. Knowledge is power but only if shared. Fire up all those social media forums and get the link to this column out there! Oh, and please check out my new book "[Taking Politics Out of Solutions](#)" Thanks.

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