

Supreme Court allows challenge to Colorado Internet tax law

March 3 2015, by Sam Hananel

A unanimous Supreme Court ruled Tuesday that federal courts can hear a dispute over Colorado's Internet tax law. One justice suggested it was time to reconsider the ban on state collection of sales taxes from companies outside their borders.

The ruling is a win for business groups that want to challenge the state's so-called "Amazon tax," which requires extensive reporting by out-of-state retailers that don't collect the state's 2.9 percent sales tax from Colorado customers.

Online retailers claim Colorado is violating protections for companies doing business in other states. A federal court agreed that the law violates the Commerce Clause of the U.S. Constitution.

But a federal appeals court ruled that cases challenging state laws about tax collection can only be filed in state court.

The high court reversed, finding that retailers were not challenging the actual collection of taxes, only a law giving state officials information about people who owe taxes.

Writing for the court, Justice Clarence Thomas said the federal law barring state taxes from being challenged in federal court does not cover "notice and reporting requirements" that might improve Colorado's ability to collect sales taxes from consumers. He said the lawsuit is also not seeking to restrain tax collection.

The court sent the case back to the appeals court, suggesting there may be other arguments for refusing to hear the case.

Thomas did not directly address the legality of Colorado's law, but Justice Anthony Kennedy wrote separately to question the half-century-old Supreme Court case that bans states from collecting sales taxes on out-of-state purchases if a business—such as Amazon—does not have a physical presence in the state.

"There is a powerful case to be made that a retailer doing extensive business within a state has a sufficiently substantial nexus to justify imposing some minor tax-collection duty, even if that business is done through mail or Internet," Kennedy said.

Kennedy noted the "startling revenue shortfall" in many states from losing millions of dollars in taxes on Internet sales and the "unfairness to local retailers and their customers who do pay taxes at the register."

Customers are technically required to pay sales tax to the state annually, though few know that or do it. The Colorado law requires larger online retailers to tell customers that they owe sales tax on their purchases. They also have to send an annual list of purchases to customers who spent more than \$500.

Colorado passed the reporting requirements in 2010, when the state budget was in shambles and lawmakers were looking for new revenue to shore it up. However, the law was immediately challenged in court so it has not been enforced, according to Barbara Brohl, executive director of the state Department of Revenue.

It's not clear exactly how much money the state could gain if the law, which exempts smaller retailers, is upheld. Carolyn Tyler, a spokeswoman for Attorney General Cynthia Coffman, said the state lost

an estimated \$172 million in tax revenue on online sales in 2012.

Tyler downplayed the ruling, saying it only involved jurisdiction and did not address the merits of Colorado's law.

"We look forward to going back to the 10th Circuit," she said.

Colorado Republican state lawmakers opposed the tax when it was passed and still believe it will eventually be thrown out.

"It clearly violates interstate commerce," said Sen. Kent Lambert, a Republican who is one of the state's top budget-writers.

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