

## South Dakota court rejects law aimed at online sales taxes

September 14 2017

---

South Dakota's Supreme Court on Thursday struck down a law that would require out-of-state retailers to collect sales taxes on in-state purchases—a defeat the state expected and welcomed in a case that eventually could have national implications for e-commerce.

Attorney General Marty Jackley hopes to persuade the U.S. Supreme Court to reconsider rulings issued mostly before the online shopping boom that exempt retailers from having to collect [sales taxes](#) in [states](#) where they have no physical presence. He said they give out-of-state online retailers an unfair competitive advantage over local retailers.

"Today's decision paves the way to respectfully request the U.S. Supreme Court to provide that much needed fairness to save main streets and jobs across South Dakota," Jackley said in a statement.

South Dakota has no income tax and depends heavily on sales taxes, and the state estimates it loses about \$50 million in tax revenue annually to e-commerce. Jackley said the U.S. Supreme Court should particularly reconsider its 1992 ruling in a North Dakota case "in light of the extraordinary growth of the internet and the exponential technological advances that have been made in the last quarter century."

States have pushed Congress to address the issue without success so far, and one estimate put the loss to states at roughly \$26 billion in 2015. South Dakota is the furthest along of several states attempting to overturn the precedent.

Many e-commerce companies rely on the 1992 ruling to avoid collecting state sales taxes, while some, such as Amazon, do so despite the precedent. Online retailers Wayfair, Overstock and Newegg challenged the South Dakota law at the trial [court](#) level.

The state Supreme Court acknowledged that as online sales have risen, South Dakota's revenues have decreased. That prompted the Legislature to pass the law with little opposition last year as a deliberate challenge to several U.S. Supreme Court rulings on how to apply the Commerce Clause of the Constitution, which generally gives Congress exclusive authority to regulate interstate trade.

South Dakota is pinning its hopes on a concurrence written by Justice Anthony Kennedy in a 2015 Colorado case that questioned the advisability of abiding by those precedents on sales tax collections given the "dramatic technological and social changes ... in our increasingly interconnected economy," the state's high court noted. It also acknowledged that before joining the U.S. Supreme Court this year, Neil Gorsuch raised similar concerns when he was a federal appeals court judge.

But the South Dakota justices wrote that however persuasive the state's arguments may be for revisiting the issue, the 1992 decision has not been overruled and remains the controlling precedent.

South Dakota will now take its case to the U.S. Supreme Court, where to be heard, it would need the votes of four justices.

The National Retail Federation issued a statement calling on Congress to pass carefully crafted legislation allowing states to require online sellers to collect sales taxes, which it said would be far preferable to a U.S. Supreme Court ruling that reverses the 1992 decision without addressing the details of implementation.

© 2017 The Associated Press. All rights reserved.

Citation: South Dakota court rejects law aimed at online sales taxes (2017, September 14)  
retrieved 27 April 2024 from <https://phys.org/news/2017-09-south-dakota-court-law-aimed.html>

This document is subject to copyright. Apart from any fair dealing for the purpose of private study or research, no part may be reproduced without the written permission. The content is provided for information purposes only.