



The Daily Dish

Point, Click, Pay Sales Tax

DOUGLAS HOLTZ-EAKIN | JUNE 22, 2018

Eakinomics: Point, Click, Pay Sales Tax

Yesterday, the Supreme Court decision in *Wayfair v. South Dakota* [opened the door](#) for states to require online, out-of-state retailers to collect sales tax on their behalf. [Prior to this decision](#), the law of the land had been set by the Supreme Court in *Quill v. North Dakota*, in which it ruled that a business had to have a physical presence in the state in order to be obligated to collect and remit sales tax. The *Quill* decision has been the source of ongoing controversy, and the state of South Dakota set out to test it. It passed a law that required all merchants to collect a 4.5 percent sales tax as long as they had more than \$100,000 in sales or more than 200 individual transactions in the state. The latter provisions were included to alleviate the burden on small businesses. South Dakota then sued the online furniture seller Wayfair for violating the law.

As *The New York Times* reported, "Writing for the majority in the 5-to-4 ruling, Justice Anthony M. Kennedy said the *Quill* decision had distorted the nation's economy and had caused states to lose annual tax revenues between \$8 billion and \$33 billion. 'Quill puts both local businesses and many interstate businesses with physical presence at a competitive disadvantage relative to remote sellers,' he wrote. 'Remote sellers can avoid the regulatory burdens of tax collection and can offer de facto lower prices caused by the widespread failure of consumers to pay the tax on their own.'"

What is the economic upshot of this decision? Certainly, it puts in-state and brick-and-mortar retailers on a level playing field with online sellers. In isolation, that is an improvement in the efficiency of the economy because people will shop based on the product and experience and not the tax consequences. [Recall](#), however, that in many states a resident is liable for the "use tax" on her out-of-state purchases. If the sales tax is now being collected, it will be important for states either to drop the use tax or to make sure that there is no double taxation in some other way. If not, then the result of this decision will

be less efficiency.

Another aspect of the decision is the impact on federalism and the notion of representation. The decision means that South Dakota can now dictate some of the business operations of firms that have no representation in the South Dakota legislature. Is that fair? Moreover, firms can no longer shop among states to find the sales tax regime that they like best — they will be subject to the same sales taxes across the country regardless of where they operate.

The Wayfair v. South Dakota decision promises to be just as significant — and just as controversial — as the Quill v. North Dakota decision it replaces.