



The Daily Dish

Tax Reform and the Supreme Court

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Eakinomics: Tax Reform and the Supreme Court

The Tax Cuts and Jobs Act is not the only tax reform game in town. The Supreme Court has [agreed to hear](#) the *South Dakota v. Wayfair* case, which would revolutionize the collection of sales taxes on internet-based sales. The difficulty of collecting state sales taxes on cross-border sales is not a new issue; it dates to the invention of mail-order catalogues (if not earlier). The current treatment of online sales stems from the 1992 Supreme Court decision in *Quill Corp. v. North Dakota (Quill)*, which held that an out-of-state seller did not have to collect and remit sales tax unless it had a “nexus” — a physical presence, e.g., a store — in that state. Under *Quill* retailers have no obligation to collect sales taxes on online sales (some do so voluntarily). Most states have a corresponding “use tax” on out-of-state purchases that their residents are supposed to pay, but these rules are riddled with non-compliance.

The result is that brick-and-mortar retailers in a state and online retailers outside the state face different tax burdens, which distorts the choice of transactions and organization of businesses. It may also lead to states facing revenue shortfalls as transactions shift to online platforms, but other revenue sources can compensate for this. (Only five states do not have a sales tax.) Notice, however, that simply jacking up the sales tax rate will just exacerbate the problem, so the current system also tends to distort the mix of revenues chosen by a state.

To date, Congress would have had to pass legislation to enable states to collect these taxes and a variety of efforts have failed to pass in recent years. (There is also the issue of which tax to collect — that of the state of the purchaser or the state of the seller — which AAF’s Gordon Gray explores further [here](#).) South Dakota passed a law in 2016 that requires retailers with over \$100,000 in annual sales in South Dakota to collect the 4.5 percent tax. It did so with the specific intent of challenging *Quill* in the courts.

The Supreme Court will hear arguments this spring and decide the case by the end of its term in June. The implications for state tax policy will be enormous, regardless of which way the Court ultimately rules.