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change how states can tax sales by ecommerce merchants and other out-of-state sellers. The case, *South Dakota v. Wayfair, Inc.*, challenges the Court's decision in *Quill Corp. v*

Gail Cole • Jan. 13, 2018

The U.S. Supreme Court has [agreed to consider a case](#) that has the potential to change how states can tax sales by ecommerce merchants and other out-of-state sellers. Reporting in the [Avalara blog](#), Gail Cole notes that the case, [South Dakota v. Wayfair, Inc.](#), challenges the Court's decision in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992). Upholding an earlier decision, *Quill* reaffirmed that a state could only require a business with a physical presence in the state to collect and remit sales tax. Businesses lacking that physical presence could not be required to collect or remit the tax.

That was before the birth of ecommerce. The internet has made it much easier for retailers to reach consumers in all states. Online sales have exploded in recent years, but state and local sales tax revenue has not increased by a corresponding amount to in great part to consumers who purchase online and do not pay sales or use tax. In fact, states estimate they're losing out on at least [\\$13 billion](#) in sales tax revenue annually due to untaxed remote sales. States like South Dakota that have no income tax and rely heavily on sales tax claim to have been particularly affected by their inability to tax all internet sales.

To challenge the physical presence precedent upheld by *Quill*, South Dakota created an [economic nexus law](#) in 2016. The law requires out-of-state sellers making at least 200 sales of taxable goods or services in South Dakota or making more than \$100,000 from sales of the same in the state to collect and remit South Dakota sales and use tax. The state declared the law was necessary because there is an “[urgent](#)

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the way for all states to tax remote sales. Exactly how they would do that is, at this point, unclear.

If the Court decides in favor of Wayfair, Inc., the issue would remain unresolved. Another state would likely step forward to challenge Quill, most likely Wyoming, Indiana, or Tennessee, all of which have related cases in the pipeline. And the U.S. Congress would likely face increased pressure to deal with the issue.

Congress has toyed with the issue of untaxed remote sales for years. In 2013, the Senate approved the Marketplace Fairness Act (MFA) of 2013, which sought to grant states with simplified sales tax laws the right to tax certain remote sales. However, the measure was stalled in the House Judiciary Committee. Later iterations of the MFA and at least two versions of a similar measure, the Remote Transactions Parity Act, have never made it to the floor of the full House.

Retailers who sell into multiple states but who don't currently collect and remit tax wherever they sell should monitor this case closely.

Sales Tax

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