The Supreme Court Ruled that States May Collect Sales Taxes from Out-of-State Retailers: Now What?

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On June 21 the Supreme Court overruled its prior cases that prevented states from collecting sales taxes from out-of-state retailers. The prevailing rationale in the opinion involved the evolution of retail commerce from brick-and-mortar stores to internet sales and e-commerce. While the Supreme Court recognized how internet sales and e-commerce have impacted the application of the rule on "minimum contacts," the Court's decision did not address the other practical issues related to evolving retail commerce. A brief history of retail commerce sales tax puts some perspective on those practical issues.

When states began enacting sales tax laws, about 1930, most retail transactions involved the passing of title in a tangible good at the retailer's place of business. State and local governments had jurisdiction over those businesses located in their states. Therefore, they had no problem identifying and tracking retails sales and collecting sales taxes on those retail sales. The Supreme Court's first ruling on sales taxes in 1944 held that states could not collect sales taxes on retail sales made in another state. In response, states enacted use taxes. Use taxes are essentially a sales tax that the consumer pays.

As you might imagine, compliance rates for use tax collection have been a problem ever since. In 2010 Colorado passed a law requiring out-of-state retailers to provide retail sales information that would assist in collection of use taxes. The Supreme Court struck down the Colorado law. The Supreme Court's *Wayfair* decision specifically mentioned the low use tax compliance rates, states' loss of revenues, and the Colorado case.

So although the Supreme Court has now held that states can require out-of-state retailers to collect sales taxes on transactions within the state, retail commerce has changed since the 1992 case that the *Wayfair* decision overruled. And the practical issues involved with use tax laws may guide states' reaction to the *Wayfair* decision.

Obviously, states will amend their legislation to require collection of sales taxes by out-of-state retailers. But states might want to consider a holistic approach to take into consideration the current and future evolution of retail commerce. For

instance, the jurisdiction for taxation of an online transaction is not as easy to determine as a cash register at a brick-and-mortar store. Brick-and-mortar stores deal mostly with tangible goods. Sales of digital products (music, video, e-books, mobile applications), usually via internet or wireless network download, continue to grow. Neither Missouri nor Illinois tax digital products that are not transferred via a tangible medium (disc, flash drive). Global commerce is another consideration. Two of my recent online purchases were from vendors in China and France. One was a mobile app that I downloaded over my smartphone. Thus, reverting to sales tax statutes that were written to capture mail order sales of tangible goods may not work in today's retail commerce. States, and local governments, may want to consider these issues when amending their sales tax statutes.