

New Law Can Be Taxing

By Reg P. Wydeven
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It's hard to believe, but we're less than six months away from Christmas. So after stores take down their back-to-school displays, the Christmas ones will go up.

While I still love to snag great deals in the stores on Black Friday, the last few years, we've been doing most of our holiday shopping online. You can do it from the comfort of home without having to go out into the cold at the crack of dawn to face violent and angry crowds. Your packages are shipped straight to your door, typically for free.

And I'm not alone. Shoppers across the country spend billions of dollars online each year. This Christmas shopping season, however, people might notice a little bump in their spending.

Last month, the U.S. Supreme Court overturned *Quill Corp. v. North Dakota*, a quarter-century-old case affecting online shopping. The 1992 decision was based on the Dormant Commerce Clause, which prevents states from interfering with interstate commerce unless authorized by Congress.

North Dakota attempted to collect sales tax on licensed computer software sold by the Quill Corporation, an office supply retailer. Quill claimed that keeping track of each state's sales tax rules would be overly burdensome. The Court agreed, and held that because Quill had no physical presence in the state, North Dakota couldn't require the company to collect sales tax.

Then the Internet came along and eventually online shopping. Because of the Quill decision, online retailers didn't have to collect sales tax on their transactions. When a retailer doesn't collect sales tax, most states, including Wisconsin, put the burden on the taxpayer to pay the tax. Called the "use tax," taxpayers are required to report on their individual returns and pay any tax on sales where the retailer didn't collect it.

To accommodate demand, large retailers, such as Amazon, built many distribution centers across the country. So the online juggernaut, along with actual retail stores offering online shopping, such as Walmart and Target, have a physical presence in almost every state. As a result, these companies collect sales tax.

But those online retailers that didn't have multiple locations still relied on Quill to avoid collecting sales tax. Because so few shoppers observe their state's use tax requirement, the Government Accounting Office estimated that in 2017, states still lost over \$13 billion in uncollected use tax.

Fed up, South Dakota introduced a measure last spring known as the "Kill Quill Bill," which required online retailers to collect sales tax. They tried to be reasonable by aiming the bill at larger companies, meaning those that had over \$100,000 in sales or more than 200 transactions in the state. South Dakota sent notices to these larger companies, including Wayfair and Overstock, but they refused to comply, relying on Quill.

So South Dakota sued in state court, knowing they would lose, in the hopes of having their case heard before the U.S. Supreme Court. Recognizing the emergence of online shopping over the last 25 years, the Court ruled in a 5-4 decision that states can require merchants to collect sales tax for online purchases.

Wasting no time, Wisconsin announced that it will require online retailers to collect sales tax beginning on October 1. The Legislative Fiscal Bureau estimates the move will generate an additional \$90 million in revenue over the next year, and \$120 million the following year.

I asked my accountant what he thought about the new law and he said it's accrual world. I guess only tax preparers would appreciate these puns.

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