**United States Supreme Court Sides with Brick-and-Mortar Businesses in Internet Sales Tax Case**

Before the Internet became a tool for commerce, the United States Supreme Court established the legal framework for the collection and payment of state sales taxes for online purchases.

In National Bellas Hess, Inc. v. Department of Revenue of Illinois (1967) and Quill Corporation v. North Dakota (1992), the Court held that a State may not require a business to collect its sales tax if the business lacks a physical presence in the State. Instead, a State must rely on its residents to pay the use tax owed on their purchases from out-of-state sellers.

Now that annual e-commerce retail sales exceed $450 billion, the merits of the so-called "Physical Presence Rule" are debatable. Online retailers can sell their products without having to charge, collect or remit state sales taxes. Their community-based competitors do not have that option. State governments also lose out because shoppers rarely pay the applicable use tax for the products they buy online.

In 2016, South Dakota passed a law which requires any business that does not have a physical presence in the state to collect taxes on the sales of goods or services into the state as if the seller had a physical presence in the state. The law exempts businesses that made fewer than 200 taxable transactions and received less than $100,000 in gross revenue in South Dakota in the preceding year.

South Dakota lawmakers knew their law broke the Physical Presence Rule but thought it might prompt a legal challenge that would eventually lead the nation's highest court to revisit the issue. They were correct.

The United States Supreme Court concluded that the Physical Presence Rule is "unsound and incorrect" and upheld South Dakota's Internet Sales Tax law. Writing for the Court's majority, Justice Anthony stated:

South Dakota's tax system includes several features that appear designed to prevent discrimination against or undue burdens upon interstate commerce. First, the Act applies a safe harbor to those who transact only limited business in South Dakota. Second, the Act ensures that no obligation to remit the sales tax may be applied retroactively. Third, South Dakota is one of more than 20 States that have adopted the Streamlined Sales and Use Tax Agreement.

The Trump Administration and a coalition of 40 states, including Wisconsin, had filed separate "Friend of the Court" briefs in support of the South Dakota law. With that in mind, WIB believes Wisconsin lawmakers will consider adopting a similar law during the 2019-2020 legislative session.