

Supreme Court Case Could Mean Billions of Dollars for Western States

On Tuesday, April 17, the U.S. Supreme Court heard arguments in an internet sales collection case that could mean billions of additional dollars for Western states if state and local governments are given the authority to collect sales taxes from remote sellers.

In *South Dakota v. Wayfair*, South Dakota is asking the Supreme Court to overrule 1992's *Quill v. North Dakota*, in which the Supreme Court reaffirmed the physical presence requirement and barred states from forcing companies to collect sales taxes if they do not have a local physical presence. Thirty-four states and the District of Columbia have filed supporting briefs.

In 2014, The Council of State Governments (CSG), in partnership with the State and Local Legal Center (SLLC) and the other members of Big Seven organizations representing state and local governments filed an amicus brief critiquing *Quill*, which prompted Justice Anthony Kennedy to ask for a case to overturn the ruling.

"Since the *Quill* case was decided in 1992, the retail marketplace has been transformed," CSG Executive Director/CEO David Adkins said. "Quill is an obsolete law and CSG, on behalf of the states, seeks to have that ruling overturned. By overturning *Quill*, the Supreme Court can advance equitable taxation and uphold the principles of federalism."

The U.S. Government Accountability Office estimated that state and local governments could have gained about \$8 billion to \$13 billion in 2017 if states were given authority to require sales tax collection from all remote sellers. But a previous calculation from the National Conference of State Legislatures (NCSL), based on a University of Tennessee study put the figure much higher at \$26 billion. NCSL estimated the uncollected taxes from remote sales in 2012 for **Western states at \$6,823,816,507**.

The Supreme Court is expected to issue an opinion by the end of June.

"It is unlikely the Supreme Court accepted this case to congratulate the South Dakota Supreme Court on correctly ruling that South Dakota's law is unconstitutional," SLLC Executive Director Lisa Soronen said. "Said another way, if the Supreme Court wanted to leave the *Quill* rule in place it probably would have simply refused to hear *South Dakota v. Wayfair*."

Brick-and-mortar companies are often seen as being at an unfair disadvantage because they are required to collect sales taxes and online companies are not customers buying from online retailers are required to pay their state's sales tax, but they rarely do when the retailer does not collect it at the time of purchase.

In a concurring opinion to *Direct Marketing Association v. Brohl*, Justice Kennedy criticized *Quill* for many of the same reasons stated in the amicus brief; specifically, internet sales have risen astronomically since 1992 and state and local governments have been unable to collect most taxes due on sales from out-of-state vendors.

Following the Kennedy opinion, a number of state legislatures passed laws requiring remote vendors to collect sales taxes in violation of *Quill*. South Dakota's law was the first for Supreme Court review.

About The Council of State Governments

Founded in 1933, The Council of State Governments is our nation's only organization serving all three branches of state government. CSG is a region-based forum that fosters the exchange of insights and ideas to help state officials shape public policy. This offers unparalleled regional, national and international opportunities to network, develop leaders, collaborate and create problem-solving partnerships.

About the State and Local Legal Center

The SLLC files *amicus curiae* briefs in support of states and local governments in the U.S. Supreme Court, conducts moot courts for attorneys arguing before the Supreme Court, and provides other assistance to states and local governments in connection with Supreme Court litigation. Since 1983 the SLLC has filed over 300 *amicus* briefs in the Supreme Court. The Big Seven national organizations representing state and local elected and appointed officials are members of the SLLC.