

June 28, 2018

ABOUT

Supreme Court's Online Sales Tax Decision Gives Virginia Options

On June 21, the U.S. Supreme Court opened the door for states to require out-of-state online retailers and other remote sellers to collect state and local sales taxes. For Virginia, the decision could mean additional state revenue of \$250 to \$300 million each year, according to estimates from Secretary of Finance Aubrey Layne. The court's ruling overturns a pair of previous rulings that were decided before the rapid growth of e-commerce and the decision has been praised by state lawmakers and small business owners.

Under the old framework, Virginia's local brick-and-mortar stores, which are required to collect sales tax on the goods they sell, were at a competitive disadvantage against large online retailers that had no physical location or employees within Virginia. Under the old court rulings, out-of-state retailers could not be required to collect those taxes. Instead, customers are supposed to self-report and pay taxes on those purchases, but this requirement is exceedingly difficult to enforce, and few consumers do so. And as more and more consumer spending has shifted online, that has meant less revenue for important public services like schools and public safety.

After the ruling, Virginia lawmakers quickly signaled that they will address the issue during the 2019 session, which would position the state to begin requiring these tax collections next year. In crafting their own legislation, state lawmakers can look to aspects of South Dakota's online sales tax law that were cited favorably in the court's ruling. South Dakota's law only applied to sellers that met thresholds of either \$100,000 in sales into the state or had at least 200 separate transactions into the state. The South Dakota law also protected out-of-state retailers from back-tax liability. To accommodate compliance and streamline the administration process, Virginia should consider signing onto the Streamlined Sales Tax Agreement, of which nearly half of the states, including South Dakota, are full members.

In addition, due to a provision in Virginia's 2013 transportation funding package that tied fuel tax rates to Congressional action on remote seller legislation, lawmakers also will need to clarify whether additional sales tax revenues from out-of-state online retailers would be directed to the state's general fund, or to transportation projects. In particular, this would be necessary if Congress passes legislation in response to the court ruling.

Although some lawmakers may resist investing these new resources into ongoing needs like K-12 schools, e-commerce is not one-time revenue and has represented a steadily growing area of consumer spending. Sales tax collections from out-of-state online retailers should remain fairly stable.



The Commonwealth
Institute for Fiscal
Analysis provides
credible, independent

and accessible information and
analyses of fiscal and economic
issues with particular attention to
the impacts on low- and moderate-
income persons.

June 28, 2018

ABOUT

As technology transforms how we shop, travel, and watch movies and TV shows, our tax code needs to keep up. Bringing the sales tax into the 21st century is very much part of this process. And by adopting legislation in the wake of this latest ruling, Virginia will be able to create a more even playing field for businesses while also investing new revenues into public services that support families and businesses across the state.

— *Chris Wodicka, Policy Analyst*

Learn more about The Commonwealth Institute at
www.thecommonwealthinstitute.org



The Commonwealth
Institute for Fiscal
Analysis provides
credible, independent

and accessible information and
analyses of fiscal and economic
issues with particular attention to
the impacts on low- and moderate-
income persons.