

STATES BATTLE E-RETAILERS AND FEDERAL PRECEDENT OVER DIGITAL SALES TAX

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South Dakota and several online retailers are currently engaged in a battle over the state's new internet sales tax law (SB 106) aimed at online businesses who sell products to South Dakota residents but which are not obligated to pay sales tax to the state.

Decades ago, during the internet's infancy, the U.S. Supreme Court concluded in *Quill v. N. Dakota* that states are prohibited from requiring companies without a physical presence in those states to collect sales tax from its residents. Among the four internet retailers sued by South Dakota are the popular Overstock.com and Newegg.com.

The state acknowledges in its complaint that SB 106 is a violation of Supreme Court precedent. However, it has stated that the purpose of the suit is to facilitate Supreme Court review, because *Quill* is outdated in the internet age.

Several outcomes to the case are possible, including a grant of summary judgment for either of the parties with a determination of the applicability of *Quill* and the constitutionality of SB 106. If South Dakota's law is struck down as unconstitutional, other states may face legal challenges to their digital sales tax laws. If it is upheld, more states are likely to pass such laws.

South Dakota's suit is just one of several recent actions taken by states to "modernize" sales tax laws for application to online retailers. Alabama has enacted its own law, which requires out-of-state retailers without a physical presence in the state to collect sales tax when it sells more than \$250,000 worth of products to Alabama residents within a calendar year.

The Tennessee Department of Revenue has also submitted proposed regulations that would force sales tax collections on out-of-state retailers who sell more than \$500,000 worth of products to state residents.

Meanwhile, Colorado has its own battle over their notice and reporting requirement imposed on out-of-state retailers who do not collect state sales tax.

Based on legal precedent, the South Dakota law is likely to be found unconstitutional. However, in an earlier phase of the current Colorado case which reached the Supreme Court last year, Justice

Kennedy issued a concurrence which mentioned the “serious, continuing injustice” that *Quill* has had on the states, described the case’s authority as “doubtful”, and suggested that the court would re-examine the issue when raised in a more appropriate case.

MEET THE TEAM



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