

Texas internet sales tax take may not be a bonanza

By John Austin CNHI State Reporter 13 hrs ago



AUSTIN — The U.S. Supreme Court recently ruled that states are entitled to collect sales taxes from online sales, even if the vendor lacks a physical presence there, but the payoff in Texas may not be as large as some expected.

The 5-4 decision in *South Dakota v. Wayfair* came after dozens of states, including Texas, successfully challenged a precedent-setting ruling on sales tax collection rendered in 1992, long before the internet transformed brick-and-mortar retailing.

Previous estimates from the Texas comptroller's office of the amount of money the state was leaving on the table in the form of uncollected taxes from remote sales exceeded \$1 billion per year.

"Gains from the ruling are likely to be lower than previous estimates of taxes uncollected by remote sellers," according to a statement released on Wednesday by the Texas comptroller's office. "In the past year, for example, some remote sellers have volunteered to collect in anticipation of the *Wayfair* decision or for other reasons.

"*Wayfair*, the named plaintiff in this case, already collects Texas sales and use taxes."

Sales taxes yielded \$29 billion or 26 percent of all fiscal 2017 Texas tax collections, according to the comptroller's office.

Sales taxes for May 2018 were \$2.76 billion, up 10.2 percent from May 2017.

As yet there's no estimate of the amount of revenue Texas can expect from remote-seller sales taxes, including money due from third-party Amazon sellers who may have previously ducked collecting and remitting state taxes.

Kevin Lyons, a spokesman for the Texas comptroller's office, said that an updated figure on gains from the ruling will be available "within the next couple of months."

Regardless of whether the state rakes in as much as originally estimated, George Kelemen, president of the Texas Retailers Association, said the decision represented a win for his members.

Not charging sales taxes on remote sales in Texas essentially gave online vendors who didn't have a physical presence in that state an opportunity to offer buyers a discount compared to what in-state retailers charged.

"We're very pleased," Kelemen said. "It will level the playing field once it's implemented."

Implementation of any needed rule amendments should begin in early 2019.

Meanwhile, there was a note on one issue that could be of interest to online retailers who may not have previously collected and remitted Texas sales taxes: there won't be any retroactive application of the new law to remote sellers with no physical presence in Texas, according to the comptroller's statement.

Meanwhile, although the state piggybank may not get as large a tax-dollar deposit as originally projected, whatever the figure is, "it's money we didn't have," Lyons said.

But, John Kennedy, senior analyst at the not-for-profit Texas Taxpayers and Research Association, said there's more to the story.

Under a grandfather clause in the Internet Tax Freedom Act, Texas and six other states that were taxing monthly subscription fees for internet access when the ITFA was enacted in 1998 have been able to continue doing so.

"Texas, and Texas cities, apply sales taxes to internet access charges in excess of \$25 per month," according to the Texas Municipal League website.

President Barack Obama in 2016 signed legislation ending the authority to charge the taxes.

The change takes effect in 2020.

Kennedy said that will cost Texas upwards of \$400 million per year.

Consequently, even if Texas sees a positive net result when the soon-to-be lost internet-access taxes are balanced against gains from new internet sales tax money, there won't be a bonanza.

"What one hand gives, the other takes away," Kennedy said.

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