



PRESS RELEASE
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Note: This replaces a June 21, 2018 version of this release. This version is updated to reflect our improved understanding of changes needed to current Ohio law.

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U.S. Supreme Court overturns outdated sales-tax rule Ohio should take steps so on-line merchants collect taxes that are due

In a long overdue and long-awaited decision (*South Dakota v. Wayfair*), the U.S. Supreme Court last month reversed obsolete precedents from 1967 and 1992 and empowered states to require online, catalog, and other remote retailers to collect sales tax on their sales to their residents even if the seller does not have employees or facilities in the state. This should help Ohio and other states to require collection of sales tax that has always been due, but has often gone uncollected because the state could only collect it from the purchaser. The Government Accountability Office estimated in a [recent report](#) that Ohio could potentially gain between \$288 million and \$456 million a year if all remote sellers were required to collect the tax. That includes both state and local governments; Ohio counties and transit agencies would be among those that [gain](#). The Supreme Court decision also should level the playing field for brick-and-mortar retailers who have been at a pricing disadvantage because they were required to charge sales tax while their online competitors weren't.

An argument can be made that existing Ohio law allows the state to start requiring collection from all remote sellers. However, the state [taxation department](#) and some other experts believe that would require the General Assembly to change the law. South Dakota, the state that brought the Supreme Court case, passed a law specifically requiring collection, while exempting sellers with less than 200 sales into the state and or less than \$100,000 in total sales into the state. Other states have approved similar laws. Ohio should do the same, with the same thresholds.

Even without any such change, a provision in the state budget bill approved last year [requires](#) sellers that use in-state software and have more than \$500,000 in annual Ohio sales to collect the tax. That covers smart-phone apps, so it means that most major retailers are covered. Another section of the law mandates that those with \$500,000 in annual Ohio sales that use networks of local computer servers to accelerate delivery of their web pages to customers also must collect

the tax. Asked just prior to the Wayfair decision, the state taxation department said it did not have any data on how much was being or might be collected because of these provisions, but it appears they are being enforced. The American Catalog Mailers Association challenged both of these provisions in a [court action](#). While that is still pending, a number of the claims that depended on the physical presence requirement now appear to be without foundation.

Like South Dakota, Ohio is a full member of the [Streamlined Sales Tax Project](#) (SST), which has worked for years to harmonize state sales taxes to allow for easier collection. That group has set up an online system allowing any company to simultaneously register with all the participating states through a single portal. The SST states also have committed to paying the cost of the compliance software for retailers that are not physically present in each state. As a result, Ohio is well-positioned to collect the tax that has always been due, but that was not required to be collected by remote retailers lacking a physical presence in Ohio.

In addition to approving a threshold like South Dakota's for all remote sellers, the General Assembly should make clear that there is no requirement to retroactively collect back taxes on any sales covered by new legislation. Justice Anthony Kennedy cited these two elements of the South Dakota law, along with the state's participation in the Streamlined Sales and Use Tax Agreement, for providing protection to small merchants. Ohio should allow time for companies to come into compliance with new collection requirements that may be legislated after the Wayfair decision.

Ohio already has taken many of the steps to ensure that substantial out-of-state retailers collect the tax that is due on their sales to Ohioans. The General Assembly should move to take the remaining ones necessary so that tax already owed is collected.

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Policy Matters Ohio is a nonprofit, nonpartisan state policy research institute with offices in Cleveland and Columbus.