

Too little too late: Internet sales tax ruling can't stop brick-and-mortar retail apocalypse

The Supreme Court's decision requires online retailers to collect state sales tax, but could also impose new fees on smaller shops

By Keith Larsen | June 26, 2018

Retail trade groups claimed a big victory for their brick-and-mortar store constituency when the U.S. Supreme Court ruled that states can collect sales tax from internet retailers. Even President Trump notched it as a win.

But retail experts question how much the change will really help or even affect traditional brick and mortar retailers, which have been losing out to e-commerce businesses for a host of reasons. For smaller shops, the ruling could even mean additional expense for costly software.

E-commerce accounted for 13 percent of overall retail sales in 2017, up from 11.6 percent in 2016, according to the U.S. Commerce Department. At the same time, sales continue to slow at many traditional retail outlets, and large retailers such as Macy's, JC Penney have announced store closures. In the notable case of Toys R' Us, among many others, it has meant bankruptcy.

Nationwide, brick-and-mortar retail vacancy rates are expected to rise to 12 percent by the third quarter of 2019, from 10 percent in the first quarter of 2018, according to Statista.

Trade groups such as the National Retail Federation maintain the court's decision last week could toss a lifeline the industry. In particular, the ruling could help some "high street retailers" such as Nike or H&M to make their prices more cost competitive with online businesses, according to Gregory Kirsch, managing director of Newmark Knight Frank's Chicago office.

"The vast majority of malls are hemorrhaging," said Kirsch. But even he wasn't so sanguine. "It's going to marginally help."

The Supreme Court's ruling closed a loophole that prevented states from collecting sales tax on internet retailers that didn't have a physical presence in that state. Justice Anthony Kennedy referenced studies showing the loophole cost states \$33.9 billion annually in uncollected sales taxes.

The biggest impact could be on pure-play online retailers such as Wayfair and Overstock.com, which have no offices or physical presence in some states. Amazon, meanwhile, would be largely unaffected because it has established a physical location in states with its numerous fulfillment centers.

"Some of the bigger retailers already have a presence in the state and already pay online sales tax," said **Richard Schermer**, a commercial real estate partner with the Miami law firm **Pathman Lewis**.

Elad Dror, co-founder of the commercial brokerage PD Properties in New York, said the online shopping trend is far too established at this point for the Supreme Court decision to have much of an impact.

Brad Mendelson, vice chairman at Colliers New York Retail group, agreed, saying it's not about the

price. It's about shopping while sitting on your couch, sipping an iced mocha.

"Online businesses will make money because it's more convenient," he said. "Not because it's cheaper."

And far from leveling the playing field, the ruling could also place a greater burden on smaller businesses, which also have an online presence. Now, those businesses will have to comply with tax laws in each jurisdiction they sell their products.

The South Dakota law that led to the Supreme Court case required businesses to collect sales tax once the seller had 200 separate sales or \$100,000 in sales into South Dakota. For smaller companies, this means that even a small online sales presence could require businesses to collect sales tax from every state and jurisdiction they do business in.

The question for those businesses, said David Blum, a tax attorney in Akerman's Chicago office, is: 'what happens to our online presence?' We don't want to register in dozens of our states.'"

Blum said this could potentially mean more compliance costs and spending more on tax software for small businesses. Uncertainty, he said, appears to be the biggest takeaway from the court's ruling.

"We are not sure how this is going to play out," Blum said. "Only time will tell who are the real winners and losers."

Eddie Small contributed reporting.