



## Legislative Issues TCCE Policy Center

---



### Wayfair Ruling for Texas

#### Background

In June of 2018, the United States Supreme Court ruled states could collect taxes on internet sales (The Wayfair Ruling). Internet purchases were not exempt from taxes, but in many cases, it looked that way to consumers. Sales taxes, which exist in 41 states, apply to most purchases within the state. The seller has the responsibility to collect the tax and forward the money to the state.

Congress has prohibited states from taxing **internet access** in a law known as the Internet Tax Freedom Act (ITFA). The Wayfair ruling did not change the ITFA law. ITFA only applies to what you pay to connect to the internet. The property or employee rule, or physical presence rule, dates back to 1967's Bellas Hess Case, where the Supreme Court held that Illinois could not require an out-of-state catalog company to collect sales tax.

The idea was that sales tax is so complex that forcing out-of-state sellers to do so puts too high a burden in interstate commerce. That ruling was reaffirmed by the court in the 1992 Quill case, with some misgivings.

Between 1992 and 2018, several factors undermined the physical presence rule. E-commerce emerged and grew sharply, resulting in some online retailers not collecting sales tax despite widespread directed sales and activity in a state. Technology advances reduced the cost of collecting sales taxes, including platforms created by some e-commerce websites. The physical presence rule proved to be an ineffective restraint on state tax power.

Before the Wayfair ruling, 31 states required tax collection in minimal cases of physical presence in a state, such as airport stopovers or website cookies on computers within a state. The main question the Supreme Court addressed was whether the state (South Dakota) discriminated against interstate commerce. If required to collect the state's sales tax system is sufficiently burdensome on an interstate seller, it would be unconstitutional, regardless of the seller's physical presence in the state.

The court evaluated six fundamental guidelines the state of South Dakota established to prevent discrimination against or an undue burden on interstate commerce. The six essential features are 1) safe harbor excluding those who sell limited amounts in the state; 2) no retroactive tax collection; 3) single, state-level administration of sales tax; 4) a simplified tax rate structure; 5)

uniformed definition and other rules; 6) access to software provided by the state, with immunity for those who rely on it.

A state that does not provide those six key elements will undoubtedly face legal challenges.

## **Issue**

The discussion is centered around how the Texas Comptroller is developing rules for implementation of the Wayfair ruling. On January 3, 2020, Texas Comptroller Office laid out proposed rules in section (Local Sales and Use Tax (34 TAC 3.334) for consideration of **origin** versus the **destination**. Cities that do have warehouses, e-commerce centers or distribution facilities that deal with online orders “only” may lose out on sales tax revenues based on **origin** (where the product is shipped from) to cities where items are delivered (**destination**). The change from **origin** to **destination** is designed to create “an even playing field” for all cities in Texas. Several Texas cities have provided sales tax incentives in which a municipality has agreed to share sales tax revenues with an e-commerce distribution center company as part of their incentive package to attract the facilities to their community.

These cities claim that change from **origin** to **destination** will affect their local taxpayers and cause an increase in local property tax, because of the loss of sales tax generated from the e-commerce distribution center. The Texas Comptroller has assigned 1.75 percent for local sales tax collections for internet sales for Texas cities.